THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
11~10~2022	20~10~2022

CORAM:
THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

W.P.No.28553 of 2013

T.M. Jeyachandran ... Petitioner

~Vs~

1. The Institute of Chartered Accountants of India
represented by its Secretary
ICAI Bhawan,
Indraprastha Marg,
New Delhi 110002.

2. The Director – Discipline,
The Disciplinary Directorate,
The Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg,
New Delhi 110002.

3. The Senior Executive Officer,
Disciplinary Directorate,
The Institute of Chartered Accountants of India,
ICAI Bhawan
Indraprastha Marg,
New Delhi 110002. ... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorari calling for records relating to the proceedings pursuant to the *prima facie* opinion of the 2nd Respondent in File No.PR-4/2012-DD/34/12 dated 23.09.2013 and letter of the 3rd Respondent in Ref.No.PR-04/2012-DD/34/2012/BOD/153/13 dated 27.09.2013 and Ref.No.PR-04/2012-DD/34/2012/BOD/153/13 dated 04.10.2013 and quash the same.

For Petitioner : Mr. AR.L. Sundaresan, Senior Counsel for M/s.A.L. Ganthimathi

For Respondents : Mr. Krishna Srinivasan for M/s.S.Ramasubramaniam & Associates [for R1]

R2 and R3 - No Appearance

ORDER

This Writ Petition has been filed to quash the proceedings relating to the *prima facie* opinion of the 2nd Respondent in File No.PR-4/2012-DD/34/12 dated 23.09.2013 and letter of the 3rd Respondent in Ref.No.PR-04/2012-DD/34/2012/BOD/153/13 dated 27.09.2013 and Ref.No.PR-04/2012-DD/34/2012/BOD/153/13 dated 04.10.2013.

2. It is the case of the Writ Petitioner that he is a Chartered Accountant by profession and practicing as a Chartered Accountant and rendering the services strictly in accordance with law, rules and regulations. The Central Bureau of

Investigation (CBI), New Delhi appears to have registered a case for Disproportionate Assets under Section 109 IPC r/w Section 13(2) and Section 13(1)(e) of the Prevention of Corruption Act, 1988 against one Dr.V.V.Sai Ram Babu and his wife Smt.V.V.Ramani alleging that the said Sai Ram Babu who was a Public Servant working as Port Health Officer, Chennai Sea Port and his wife were in possession of assets disproportionate to the known source of income.

3. The said Sai Ram Babu was known to petitioner's erstwhile clients Mr.V. Loganathan. He was brought to the Petitioner by the said Mr.V.Loganathan stating that he needed some professional services for computation of his cash flow complied Statement for the period 1997-98 to 2008-09. On the basis of the inputs inputs that had been given by Dr.Sai Ram Babu, the Petitioner prepared and given the cash flow complied statements based on the documents which were given by the said Sai Ram Babu in support of the same. The said statements said to have been given as a defence before the CBI by said Sai Ram Babu.

4. The said Sai Ram Babu contacted the Petitioner when he went home for Lunch and stated that he had to print out some documents which he has sent by

mail from the office of the Petitioner. As there was no power in the petitioner's office at that time, the Petitioner made a request to one Mr.K.P. Vasantha Kumar, Chartered Accountant, who was known to the Petitioner, to help Dr.Sai Ram Babu to get the required print out. The Petitioner did not suspect the said Sai Ram Babu and requested Mr. K.P. Vasantha Kumar to print out the documents as requested by the Sai Ram Babu. Thereafter the Petitioner came to know that a document purporting to be a memorandum of Mutual Cooperation as if entered on 1.8.2012 between Mr.V. Loganathan on one side and and Mrs. V.V. Ramani on the other side, was the document which was printed out by the said Dr.Sai Ram Babu and that he appears to have used the same in support of a Certificate of Payment dated 22.08.2009 given by Mr.V. Loganathan to Dr.V.V.Sai Ram acknowledging that he had paid a sum of Rs.55 lakhs to Mrs.V.V.Ramani between August 2002 and July 2005.

5. The Central Bureau Investigation (CBI) has filed a case against Dr.V.V. Sai Ram Babu and his wife Mrs. V.V.Ramani, who were in possession of assets disproportionate to the known sources of income. It is alleged by CBI that Dr.V.V. Sai Ram Babu and others entered into a criminal conspiracy along with the

Petitioner and created forged and fabricated documents in order to account for the disproportionate assets owned by the Dr.V.V. Sai Ram Babu in his name and in the name of his wife, children and parents. A “Memorandum of Mutual Cooperation” and the Accounts Statement prepared by the Petitioner on 22.09.2009 as if the same was executed on 01.08.2002 with a view to make false claim of Rs.55 lakhs alleged to have been received by the wife of the petitioner from V. Loganathan in order to show source for the Petitioner.

6. On a complaint from the CBI, the Board of Discipline constituted under Section 21A of the Chartered Accountants Act [as amended by the Chartered Accountants (Amendment) Act, 2006.] has formed *prima facie* opinion that the Petitioner is guilty of Professional and/or other misconduct falling within the meaning of Clause(2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949. Challenging the same, this Writ Petition is filed.

7. It is the contention of the Writ Petitioner that the said Sai Ram Babu was brought to him through his erstwhile client and sought some professional service for computation of his cash flow complied statement. Thereafter Mr. Sai Ram

Babu requested to allow him to take print out from his office since there was no power in his place it was taken from the office of one Vasantha Kumar, friend of the Petitioner. Thereafter the Petitioner came to know that the documents said to be a Memorandum of Mutual Cooperation as if entered on 01.08.2002. According to him in respect of computation of Dr.V.V. Sai Ram Babu's cash flow complied statement for the period 1997-98 to 2008-09 on the basis of the information furnished by Dr.V.V. Sai Ram Babu he had prepared the statement. He has not rendered any other service to him. The alleged Memorandum of Mutual Cooperation dated 01.08.2002 was neither prepared nor signed by him, nor executed before him and nor attested by him and hence the said document is not a document which can be said to have prepared by him. According to him he had only asked Mr. Vasantha Kumar to get a print out of the document and hand over the same to Dr.V.V.Sai Ram Babu. Despite his request to keep the proceedings in abeyance, pending the outcome of Court proceedings on the same charges, respondents proceeded and formed prima facie opinion. According to him continuing the disciplinary proceedings is erroneous and incorrect. The *prima facie* opinion has been formed on the basis of statements which are recorded in the course of criminal investigation as the said statement was not final and conclusive and information forwarded to the Disciplinary Committee Directorate on the same set of allegations which are subject matter of investigation in the criminal proceedings which are now pending before the Criminal Court. According to him, the parallel proceedings on the same set of allegations ought not to be pursued.

8. The Directorate also relied upon the statement of Mr.K.P. Vasantha Kumar given under Section 164(5) of Cr.P.C. forming *prima facie* opinion. As the said Criminal case is not attained finality, same cannot be given reliance. There is no evidence to show that who has created anti dated document. Hence, theis writ petition filed challenging the *prima facie* opinion formed by the Directorate (Discipline).

9. Learned Senior Counsel Mr.AR.L. Sundaresan appearing for the Peltitioner submitted that the *prima facie* opinion formed based on the allegations in the Criminal case. The allegations in the criminal case as against the Petitioner that they allegedly conspired with the main accused and prepared certain statements. Whether such statements are false documents or not has to be tested only in the criminal trial. Therefore, merely because as a professional prepared

certain statements, it cannot be presumed that there is false documents created by the Petitioner. The Directorate has formed a opinion based on the statement of witnesses which has not tested before the Court and also some other irrelevant documents and extraneous materials which is not admissible in law. Therefore, when the allegations in the departmental proceedings and criminal Proceedings are one and the same, department proceedings cannot be proceeded. As the very charge in both criminal case and departmental proceedings are one and the same. Hence it is his contention that the Directorate has in fact while forming a *prima facie* opinion discussed the entire materials which is not at all maintainable and in fact it is prejudice the rights of the Petitioner. It is his contention that if the Court finds that there is no falsification of records,the very charge and the departmental proceedings will go automatically. Therefore, when the criminal case ispending, departmental proceedings cannot be continued. Hence, submitted that the proceedings of the 2nd Respondent and the letter of 3rd Respondent have to be quashed.

10. Whereas the learned counsel appearing for the Respondent submitted that the entire disciplinary proceedings as against the Chartered Accountant falls

under the Chartered Accountants Act, 1949. It is his contention that Section 21A of the Chartered Accountants Act provides procedure for initiating disciplinary proceedings. On receipt of any information or complaint the Disciplinary Directorate shall arrive at a prima facie opinion on the occurrence of the alleged misconduct. Only after such *prima facie* opinion, the Disciplinary Committee will proceed, wherein necessary opportunity will be given to the petitioner as per law. Even against the orders of the Disciplinary committee, appeal provided under Section 22G of the Act. Therefore, it is his contention that when sufficient safe guard is made, merely at the stage of preliminary enquiry *primia facie* opinion is formed, same cannot be questioned in way of Writ Petition. The allegation against the Petitioner is that he is a party to the conspiracy and created false documents to support the main accused in disproportionate case. Based on the materials supplied by CBI, *prima facie* opinion is formed. Therefore at this stage, Writ Petition is premature and not maintainable. He has also submitted that mere pendency of the criminal case is not a bar for continuing the disciplinary proceedings.

11. In support of his contention he relied upon the following Judgments:

1. *Noida Enterpreneurs Association vs. Noida and others.* ***[(2007) 10 Supreme Court Cases 385]***

2. *Karnataka Power Transmission Corportion Ltd., vs. C.Nagaraju and Another* ***[(2019) 10 SCC 367]***

3. *Jebasingh Jothi vs. Institute of Chartered Accountants of India and others* ***[W.P.No.21427 of 2011 Dated 15.07.2013 – Madras High Court]***

12. I have perused the entire materials. The Writ Petition mainly challenged the *prima facie* opinion formed by the Disciplinary Directorate as per Section 21 of the Chartered Accountants Act, 1949. Disciplinary Directorate, on receipt of the complaint sent by CBI against the Petitioner for creation of false records has found *prima facie* found that the act of the Petitioner leads to disrepute to the profession of Chartered Accountants. Accordingly they formed the opinion that the case of the Petitioner would fall within the ambit of Part IV Sub-clause 2 of the Act. The crux of the allegations are CBI has proceeded against one Dr.V.V. Sai Ram Babu and his wife Smt.V.V. Ramani for acquiring the assets

disproportionate to the known sources of income. During the investigation in order to show that there is some documents to substantiate their stand, account statements have been created by the Petitioner with the conspiracy of the main accused and Memorandum of Mutual Cooperation also created as if it was entered on 01.08.2002. Further the allegation that the documents have been typed in the computers of the petitioner and CBI also said to have analysed the hard discs and found some materials to substantiate the charges. Based on the reports Disciplinary Committee after giving opportunity, formed *prima facie* opinion.

13. It is relevant to note that Section 21 deals with Disciplinary Directorate. Sub-Clause 2 of Section 21 makes it clear 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. As per Section 21 mere forming of *prima facie* opinion would not result in automatic punishment on the delinquent. The opinion is a base for initiating disciplinary proceedings. The disciplinary proceedings has to be conducted by the Council of Disciplinary Committee as per Section 21B of the Act. On a perusal of Section 21B of the Act makes it clear that the Disciplinary Committee afford to the member an

opportunity of being heard before making any order against him and may thereafter they proceed. As against the Disciplinary Proceedings the appeal is also provided under Section 22G of the Act.

14. Therefore, this Court is of the view that mere forming of *prima facie* opinion by the Directorate of Discipline based on the materials received, the petitioner contention that the same will prejudice his rights in the criminal case is not agreeable. The petitioner arrayed as one of the accused in the final report filed by the CBI. The Appellate Authority under Chartered Accountants Act, 1949, given powers to confirm, modify or set aside the order passed by the disciplinary committee. Therefore, the very scheme of the act itself indicates that prior to initiation of any disciplinary proceedings, there must be a *prima facie* opinion formed by the Disciplinary Directorate based on the materials or complaint. Therefore, this Court is of the view that mere forming a *prima facie* opinion one cannot contend that the order has to be set aside. It is relevant to note that the main allegations against the petitioner is that the main accused in the CBI case created false records and documents. It is the contention of the learned Senior Counsel that same set of allegations also pressed into criminal case. Though the

criminal proceedings and the departmental proceedings containing the same set of facts, this Court is of the view that it is only the disciplinary committee has to take call on it whether to proceed enquiry immediately or wait for the outcome of the criminal case.

15. It is well settled law that departmental enquiry is distinct from the criminal proceedings. Standard of proof required in departmental enquiry is not the same as required to prove criminal charge. Even the acquittal in criminal case does not bar the departmental enquiry. What is required for departmental enquiry is only the preponderance of probabilities and not strict proof of evidence. This view has been fortified in ***Noida Enterpreneurs Association vs. Noida and others. [(2007) 10 Supreme Court Cases 385]*** and also in ***Karnataka Power Transmission Corportion Ltd., vs. C.Nagaraju and Another [(2019) 10 SCC 367].***

16. In such a view of the matter, this Court is of the view that it is for the Disciplinary Committee to take a call whether to proceed or not on the similar set of facts before the criminal case concluded. What has challenged in the writ

petition is *prima facie* opinion. P*rima facie* opinion is required for initiation of the departmental proceedings, which has been done legally as per statute.

17. In a similar Writ Petition filed in ***Jabasing Jothi vs. Institute of Chartered Accountants of India [W.P.No.21427 of 2011 dated 15.07.2013]*** this Court considered various provisions of the Chartered Accountants Act, declined to interfere with the *prima facie* opinion. Considering the same and the departmental enquiry and criminal proceedings are distinct, they can go simultaneously, whether or not similar set of facts or identical facts in both cases, the disciplinary committee very well take a decision whether to continue the departmental enquiry immediately or wait for the outcome of the criminal case. There are sufficient safeguards provided in the statute and proper opportunities have also given to the petitioner to establish innocence. In such a view of the matter, this Court is not inclined to interfere the impugned order.

18. Accordingly, the Writ Petition is dismissed. No costs.

20.10.2022

ggs
Index : yes
Internet : yes
Speaking / Non-Speaking order

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N. SATHISH KUMAR, J.
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