IN THE HIGH COURT OF JUDICATURE AT MADRAS

21.04.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.12251 of 2019
&
W.M.P.Nos.12530 & 12532 of 2019

Mr.N.Sethuraman .... Petitioner

Vs.

1. The Institute of Chartered Accountants of India,
Rep by it's the President,
ICAI Bhawan, Indraprastha Marg,
New Delhi - 110 002.
Also at:
ICAI Bhawan
Nungambakkam High Road, Thousand Lights West,
Thousand Lights, Chennai - 600 006.

2. Assistant Secretary
Disciplinary Directorate
Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprashta Marg,
New Delhi - 110 002.

…Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records of the 2nd respondent, impugned proceedings letter bearing reference No.PR/214/2014-DD/251/2014 dated 05.09.2014.

For Petitioner : Mr.J.Sivanandaraaj
Mr.S.Kaushik Ramasamy
For Mr.A.S.Bhargav Nath
Advocate for the petitioner.

For Respondents : Mr.Rajesh Ramanathan
Government Advocate

O R D E R

The petitioner was aged 83 years in 2019 when this writ petition was filed. He is a Chartered Accountant and challenges communication dated 05.09.2014 of R2, the Disciplinary

Directorate of the Institute of the Chartered Accountant of India (ICAI/Institute). The aforesaid communication formed the basis upon which disciplinary proceedings have been taken against him. The challenge is on various grounds, including the bar of limitation of seven (7) years as stipulated under the applicable Rules.

2. The facts as necessary to adjudicate upon and decide this writ petition are as follows:-

(i) The petitioner was a partner in Fraser & Ross ('Firm'). Having retired from the firm on 31st of March 2002, he did not hold a certificate of practice at the time of commencement of impugned proceedings.

(ii) The Institute is a statutory body and regulates the conduct of the profession by its various constituents being qualified chartered accountants.

(iii) The petitioner had carried out a statutory audit for the First Leasing Company of India Limited (in short 'Company') and the periods with which we are concerned in the present writ petition are financial years ending on 30.11.1999 and 30.11.2000.

(iv) The Company had been facing financial difficulties on account of which action had been initiated by financial institutions to which it owed substantial funds. Its assets were declared as non-performing assets (NPA) and the State Bank of India had initiated an inquiry into its business, including the veracity of its financial statements.

3. A forensic audit was conducted by an External Audit Agency, M/s Maharaj N.R. Suresh and Co. that had observed that the Company was in the habit of making 'arbitrary' disbursements by creating unsubstantiated entries in the books of accounts. It was also stated to be in the habit of 'inflating its income and assets since 1998'. It was alleged that the accounts had been 'window dressed to project a rosy financial picture'.

4. The forensic evidence revealed that the details of inflation were as under:-

Year	As per B/S	Actual Loss	Inflated Income
1998-1999	1858.37	669.35	2527.72
1999-2000	1656.90	1261.86	2918.76
2000-2002	1787.90	3926.42	5714.32

5. The conclusion in the forensic audit was that based on the erroneous picture projected in the income statements and the asset position, State Bank of India had provided financial assistance in excess of Rs.1,300 crore to the company, in which regard there had been defaults.

6. Based on the forensic evidence a reference had been made to the disciplinary council by the SBI calling for initiation of action against Fraser & Ross. The Institute corresponded with Fraser & Ross under the impugned communication dated 05.09.2015, asking them to disclose the names of the respective chartered accountants who would be answerable to the complainant, and in response Fraser & Ross had disclosed the names of the petitioner, N.Sethuraman and one K.N.Ramasubramanian, who is no more.

7. The complaint had been forwarded to the petitioner in response to which, on 15.04.2014, the petitioner submitted that he had retired from the profession on 31.03.2002 on attaining superannuation, no longer holds a certificate of practice, is not in possession of necessary records and that he had not been provided with any of the annexures to the complaint filed by SBI.

8. On 19.06.2015 the Disciplinary Directorate rejected the preliminary objections of the petitioner of his age and the elapse of time in commencement of proceedings. He was asked to submit a written statement within 21 days. The petitioner has raised an objection to the effect that the rejection by the Disciplinary Directorate is procedurally erroneous as such rejection, if at all, ought to have been by the Disciplinary Director.

9. In this context, Section 2 (c) of the Chartered Accountants (Procedure of Investigations of Professional & Other Misconduct and Conduct of cases) Rules, 2007 (in short 'Rules') define a 'director' to mean a Director (Discipline). However, there is some merit in the rebuttal of the respondents to the effect that the Disciplinary Directorate is superior, both in terms of rank as well as in the number of constituents, to a single director and hence there could be no prejudice that the petitioner has suffered in this regard.

10. They state that the preliminary objection had come to be considered by a larger body bearing in mind the magnitude of the financial irregularities and the scale of offences that had been alleged. I agree with the respondents on this score and reject this argument of the petitioner.

11. The petitioner thereafter, on 07.09.2015, made a detailed representation by way of a written statement, tendering his explanations in regard to the allegations of professional impropriety. He also reiterated that the annexures to the forensic report had not been forwarded to him and in view of the substantial elapse of time between the financial years in question, being 1999-2000 & 2000-2001, and the commencement of

the impugned proceedings in 2015, he was unable to respond effectively to the allegations on merits.

12. In any event, he made an attempt to reconcile the facts and figures based on the averments in the expert report. He pointed out that the timeframe for retention of audit documentation under Standard for Audit (SA).No.230, was only a period of seven (7) years from the dates of the audit report for the respective years. Thus there is no mandate/requirement for the petitioner to have retained any of the documents relating to financial years ending 30.11.1999 and 30.11.2000 in 2015, as the end-date for retention was 2006 and 2007 and the impugned proceedings were commenced only in 2015.

13. In addition, he also put forth a request for cross examination of the forensic auditor and reserved his right to summon other witnesses. This explanation has admittedly been received by the respondent proximate to the date of representation itself, in September 2015, notwithstanding which the Institute responded only on 14.02.2019 nearly four years later, concurring with the prima facie findings of the Disciplinary Directorate that the petitioner was guilty of professional misconduct in terms of the relevant provisions of the Chartered Accountant Act, 1949.

14. It thus conveyed its decision to proceed further with the investigation. Inter alia they state in passing, that the documents relied upon by the complainant had been forwarded along with the complaint, without expanding further in this regard and without addressing the specific objection of the petitioner that no such documents or annexures had been provided.

15. In response, the petitioner sought six(6) months to enable him to collate the required books of accounts and other records and file a written statement, and has parallelly approached this Court challenging order dated 14.02.2019. Learned counsel for the respondents would attack the maintainability of the writ petition stating that the petitioner has acquiesced in the proceedings as he has only sought time to respond, and the writ petition thus should not be entertained.

16. I disagree. The petitioner is well within his rights to canvass the aforesaid points before this Court and the mere fact that he has sought time before the authorities would not stand in the way of doing so. I see prima facie, merit in the points that have put forth in the written explanation of the petitioner and hence the challenge to order dated 15.04.2019 is held maintainable.

17. Coming to the merits of the objections themselves, the narration of facts as above would make it clear that there is no explanation put forth by the respondents nor any justification given for the unexplained delay in commencing the proceedings.

Article 23 reads as follows:-

> A23.SQC 1 requires firms to establish policies and procedures for the retention of engagement documentation. The retention period for audit engagements ordinarily is no shorter than seven years from the date of the auditor's report, or, if later, the date of the group auditor's report.

18. No doubt SA 230 is a guideline. It commences with the scope of the Audit Standard, that states that it is to be adapted as necessary in appropriate circumstances, when applied to audits of other historical and financial information. The argument of the respondent is that the period of seven years is only a minimum threshold and not a ceiling on the number of years for retention of documents.

19. Even if one were to accept this submission, the margin provided is only between the dates of the auditor's and group auditor's reports. There is nothing to show that the time gap as aforesaid, extended so as to justify the intervening periods between 2000/2001 to 2015.

20. That apart, though Article 23 prescribed a period of no less than seven years for retention of documents, there are no exceptions provided for the aforesaid period. The Institute, as the apex Regulatory body is well aware of the fact that there are instances of financial irregularities coming to light several years thereafter. The period of disengagement has thus been carefully crafted at seven years, as being a reasonable length of time when a professional is expected to stay engaged or connected with the matter.

21. Thus, and thus notwithstanding the language deployed in Article 23, there is no justification in expecting a professional to retain documents in connection with a particular audit, longer than the stipulated seven (7) years. No other provision in the Act or in the Audit Standards have been cited that require retention of documents any longer than seven (7) years in cases of an exceptional nature. In the absence of such a provision the period mentioned in Article 23 must be taken to be the absolute Rule. In the present case the financial periods in question are 15 years prior to the commencement of proceedings. In my view this delay is fatal to the case of the respondents.

22. That apart, it is entirely unclear as to what the relied-upon documents were based upon which the impugned proceedings have been commenced, and whether the same have been furnished to the petitioner. Learned counsel appearing for the respondents was also unable to provide clarity in this regard. The matter was specifically adjourned to 25.03.2022 to enable learned counsel to obtain clarifications in this regard and produce the list of documents referred to and relied upon by the respondent and supplied to the petitioner. Learned counsel confirms on 25.03.2022 that the list of documents/annexures to the communications is unavailable. There is also nothing to indicate that the documents/financial statements that have formed the basis for the impugned proceedings, have been supplied to the petitioner.

23. The petitioner places on record a letter dated 30.07.2015, that has been addressed to K.N.Ramasubramanian granting him additional time to file his written statement. It appears that he had also sought a copy of the annexures to the forensic audit report and under cover of letter dated 30.07.2015, the Disciplinary Directorate forwards the annexures.

24. Most importantly while a copy of letter dated 30.07.2015 has been sent to this petitioner, it is only for information and specifically states that 'no annexures have been supplied'. Thus, in the light of the admitted facts as aforesaid, the unambiguous conclusion that I draw is that the relevant documents have not been furnished to the petitioner even in 2019 when the preliminary objection was rejected, nearly two decades after the relevant financial years.

25. The Delhi High Court has in the cases of Wholesale Trading Services P. Ltd. V. The Institute of Chartered Accountants of India and others (W.P.(c) No.8071 of 2019 decision dated 01.08.2019), Vipin Malik V. The Institute of Chartered Accountants of India (W.P.(C). 2213/2013, decision dated 03.11.2014) and The council of the Institute of Accountants of India, New Delhi V. Dinesh Kumar and Others (1991 (21) DRJ 238), that involve similar facts and issues as in the present case, have concluded the matters in favour of the petitioners therein, and I draw support from the ratio of these decisions.

26. Even without going into the merits of the matter, this writ petition is liable to be allowed simply on account of the laches on the part of the respondents. There is unexplained and unjustified delay between the raising of the preliminary objections by the petitioner (who was 78 years old when the objections were raised by him) and the response from the Institute on 14.02.2019, after nearly four years.

27. For the reasons as set out above and on the basis of the discussion in the preceding paragraphs, this writ petition is allowed. Consequently connected writ miscellaneous petitions are also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The President,Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg,
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Disciplinary Directorate
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ICAI Bhawan, Indraprashta Marg,
New Delhi - 110 002.

+2ccs to Mr.V.Sankaranarayanan, Advocate, S.R.No.27264
+1cc to Mr.Rajesh Ramanathan, Advocate, S.R.No.27565

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