IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.13947 of 2017
and
W.M.P.No.15136 of 2017

N.Visvanathan ... Petitioner

Vs.

The Institute of Chartered Accountant of India
Rep. by its Director, Disciplinary Directorate
ICAI Bhawan
Indraprastha Marg
Post Box No.7100
New Delhi - 110 002. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondent not to proceed further with the disciplinary proceedings until the disposal of the criminal case.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.P.R.Renganath

ORDER

This Writ Petition has been filed to issue a Writ of Mandamus directing the respondent not to proceed further with the disciplinary proceedings until the disposal of the criminal case.

2. The case of the petitioner is that a complaint has been filed by the Serious Fraud Investigation Office, Ministry of Corporate Affairs, against the petitioner before the respondent. In addition to this, a Criminal Complaint has been filed by the complainant before the Additional Chief Metropolitan Magistrate, Economic Offences - 1, Chennai, wherein, the petitioner was arrayed as A8. The Disciplinary Proceedings have been initiated on the same set of facts. Hence, the petitioner seeks a direction to the respondent not to proceed with the disciplinary proceedings till the criminal case is disposed of.

3. It is the further case of the petitioner that the petitioner was a partner in M/s.Bala & Co., and a Statutory Auditor of M/s.Paramount Airways Pvt. Ltd. (PAPL) for the period from 1998-99 till 2009-10. The

investigation was conducted by the Serious Fraud Investigation Officer and the report was submitted to the Ministry of Corporate Affairs, Government of India and prosecution was also launched against the petitioner.

4. The allegation against the petitioner is that the petitioner certified financial statements which contained inflated revenues, fictitious entries on capital account (share application money) and advances for capital goods. These statements were instrumental for bankers to extend additional / enhanced credit facilities to M/s.Paramount Airways Private Limited; the accounts of Paramount Airways Private Limited contained falsified entries and incorrect accounts under various heads like maintenance reserve accounts, debtors, etc; the petitioner did not disclose the securities under encumbrance at the time of borrowings raised by the company, and the contingent liabilities with banks.

5. Based on the serious allegations, the Disciplinary Directorate, after issuing notice to the petitioner, has formed a prima facie opinion under Section 21 of the Chartered Accountants Act, 1949. However, the petitioner

has made a request to the respondent to submit his response after the disposal of the criminal case.

6. The learned counsel for the petitioner would submit that the allegations in the disciplinary proceedings and the criminal case filed against the petitioner are one and the same. Hence, the disciplinary proceedings cannot be proceeded further. He also relied upon the following Judgments in support of his case.

i) Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. & Ors. [AIR 1988 SC 2118]

ii) R.P.Ramajayam Vs. Tamil Nadu Cements Corporation Ltd., Ariyalur [CDJ 1993 MHC 309]

iii) Ammaiappan Vs. The General Manager, Disciplinary Action section Circle Office & Others

7. Whereas, the learned counsel appearing for the respondent would submit that before the Disciplinary Directorate forming any opinion, this Writ Petition has been filed, and the process of disciplinary proceedings will be commenced only after prima facie opinion has been formed by the

Disciplinary Directorate under Section 21 of the Chartered Accountants Act, 1949. Only on such finding, the matter will be referred to the Disciplinary Committee, and thereafter, an enquiry would be conducted providing sufficient opportunity.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the entire materials on record.

9. Section 21 of the Chartered Accountants Act, 1949 deals with the complaint raised before the Disciplinary Directorate, which reads as follows:

> *(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 Schedule 1, 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) Where it appears to the High Court that the transfer of any case pending before it to another High Court, will promote

the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council. Explanation I: In this section "High Court" means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into carries on business, or has his principal place of business at the commencement of the inquiry: PROVIDED that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of the justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members. Explanation II: For the purposes of this section "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters,

namely,-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

10. As per the above provision, merely forming a prima facie opinion on the complaint does not initiate a disciplinary proceeding. The disciplinary proceeding has to be conducted by the Council of Disciplinary Committee as per the said Act. The above provision also makes it very clear that appropriate opportunity should be given to the petitioner while conducting the disciplinary proceedings. As against the order of the disciplinary proceedings, an appeal is also provided under the said Act. The Appellate Authority under Section 21 of the Chartered Accountant Act 1949 can confirm, modify or set aside the order passed by the Disciplinary Committee. The very scheme of the Act indicates that before initiation of the disciplinary proceeding, there must be a prima facie opinion formed by the Disciplinary Directorate.

11. It is also relevant to note that even the counter itself indicates that when the Disciplinary Directorate has formed a prima facie opinion and referred the matter to the Disciplinary Committee, the matter once again remitted to the Disciplinary Directorate to take into consideration of the documents and take a final decision whether there is a prima facie opinion to proceed further, and the relevant portion is extracted hereunder :

> *"11. It may be stated here that, internally, the Disciplinary Committee of the ICAI considered the prima facie opinion dated 06-Aug-21 of the Director (Discipline) along with the complaint and written statement of the complainant and the petitioner herein respectively.*
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> *12. The Committee referred the matter back to the Director (Discipline) in terms of Rule 9(2)(c) read with Rule 8(5) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, to re-evaluate the documents required and to investigate the matter and based on the said investigation to record the reasons and opine whether the petitioner is prima facie guilty or not guilty based on the fact and evidences as available on record."*

12. Only on that basis, a notice has been sent to the petitioner to submit a reply, and wherein, he has sought for postponement of the proceedings on the ground of criminal case and moved a Writ Petition before this Court. Therefore, this Court is of the view that when there is sufficient safe guard already available to the petitioner, there cannot be any direction not to proceed with the disciplinary proceedings.

13. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2022

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Internet : Yes / No
Index : Yes / No
Speaking order / Nonspeaking order

To

The Director (Disciplinary)
Institute of Chartered Accountant of India
ICAI Bhawan
Indraprastha Marg
Post Box No.7100
New Delhi - 110 002.

N.SATHISH KUMAR, J.

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