

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CREF-1-2017 (O&M)
Reserved on: 16.05.2022
Pronounced on: 02.08.2022

The Institute of Chartered Accountants of India Petitioner

Versus

Union of India and another Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Amar Vivek, Advocate and
Ms. Deepika Sood, Advocate,
Mr. Pritish Goel, Advocate
for the petitioner.

Mr. Kanwar Ashwani Kumar, Advocate and
Mr. Robert Kanwar, Advocate
for respondent No.2.

PANKAJ JAIN, J.

This is a reference at the behest of the Institute of Chartered Accountants (hereinafter referred to as 'institute') under Section 21(5) of the Chartered Accountants Act, 1949 (hereinafter referred to as '1949 Act') recommending that the name of respondent No.2 be removed from the register of members of the institute for a period of six months as a punishment on account of professional misconduct.

2. Respondent No.2 is a registered member of the petitioner-institute. A complaint was received in the prescribed Form 8 against him. Relevant portion of the complaint verified on 26.05.2006 by AGM, Indian Bank raising allegations against respondent No.2 reads as under:-

“(1) We are in receipt of two different B/s and P&L accounts alongwith Auditors Reports as on 31.3.04 in respect of our client M/s. Sitla Rice & General Mills Jagraon certified by respondent. The

respondent is thus guilty of professional misconduct under Sections 21(5) and 22 Part I for following:

(a) Certified in the name of his firm a report is financial statements as on 31.3.04 without examination of such statements and related records (Clause 2 of above sections).

(b) is grossly negligent in the conduct of his professional duties (clause 7 of above sections). Two different audited balance sheets and xxx alongwith auditors reports as on 31.3.04 (both agreement 27.7.04) by the respondent.”

3. The aforesaid complaint was considered by the Council of the Institute in its meeting held in August 2008. It was resolved that:-

“1174. Asstt. General Manager, Indian Bank, Chandigarh-vs-S.D. Jain (M.No. 15674) of M/s. S.D. Jain & Associates, Ludhiana [25-CA(137)/2006]

The Council was *prima facie* of the opinion that the Respondent was guilty of professional and/or other misconduct. It was, therefore, decided to refer the case to the Disciplinary Committee for inquiry.”

4. Disciplinary Committee in its report dated 06.04.2011 found respondent No.2 guilty of professional misconduct falling within the meaning of Clauses (6) and (7) of Part I of the Second Schedule to the 1949 Act. A copy of the report of the Disciplinary Committee was forwarded to the concerned parties soliciting their response. On 04.03.2013, written representation was received from respondent No.2, wherein he submitted:

“1. That the respondent has audited the financial statements of M/s. Sitla Rice & General Mills, Jagraon for the year ending 31.03.2004.

2. That the respondent has prepared the Auditor's Report dated 27.07.2004 on the financial statements of the said above mentioned firm showing a net loss of Rs.134585.94.
3. That the respondent has delivered the photocopy of audited Balance Sheet along with Auditor's Report thereon on 27.07.2004 in the morning and after few hours the partner of the Firm Sh. Gurbant Singh returned back and informed that the Balance Sheet prepared from the manual Books of Accounts is not correct due to some mistake due to wrong totaling and wrong posting in the accounts. The partner of the firm informed me that the accountant has already prepared the Computerizes books of accounts which may be rechecked and proper Balance Sheet may be prepared.
4. That the respondent has again prepared the fresh Auditor's Report on account made by the said firm after checking the computerized Books on the same date and got the report and signed the report 27.07.2004 showing a net profit of Rs.60572.78.
After preparation of Balance Sheet, the manual books of accounts maintained had been destroyed.
5. The Partners of the firm has wrongly given both the Balance Sheet to Indian Bank having their Branch at Jagraon for sanction of Working Capital Limits.
6. The affidavit from the partner of the said firm is enclosed giving the facts of the case.
7. The Differences in both the Auditor's Report showing Net Profit of Rs.60572.78 and Auditor's Report showing net loss of Rs.134585.94 is enclosed as per Annexure 'A'.

8. That there was no malafide bad intention of the respondent and the firm to provide wrong information for sanction of working Capital limits to Indian Bank at Jagraon.”

5. After considering the report of the Disciplinary Committee and the response filed by the complainant (bank), respondent No.2 and the oral submissions made by the parties, the Council resolved to accept the report of the Disciplinary Committee finding respondent No.2 guilty of professional misconduct as enumerated under Clauses (6) and (7) of part I of the Second Schedule appended to 1949 Act. Resolution was passed in accordance with Section 21(5) of the 1949 Act recommending for the removal of respondent No.2 from the membership of the institute for a period of six months by way of punishment and to make the reference. The same reads:-

“On consideration of the Report of the Disciplinary Committee alongwith the written representation dated 5th December, 2011 received from the Complainant-bank and the written representation dated 4th March, 2013 received from the Respondent and also the oral submissions made by the authorized representative of the Complainant-bank, the Council decided to accept the said Report and accordingly held that the Respondent was guilty of professional misconduct falling within the meaning of Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

The Council also decided to recommend to the High Court that the name of the respondent be removed from the Register of Members for a period of six months.”

6. The facts are not in dispute. Respondent No.2 in the written representation filed before the Council, admits of having prepared two

auditor's reports. As per him, he had no malafide intention. It is admitted that the reports were used by the firm i.e. M/s. Sitla Rice & General Mills, Jagraon for sanction of working capital limit from Indian Bank. Inadvertently both the reports were filed with the bank and the mischief was discovered. Sanction of limit was declined. Before this Court, counsel for respondent No.2 submits that since no financial loss has been caused to the bank and considering the fact that respondent No.2 is practicing as a Chartered Accountant for last more than 30 years, the present act be considered to be a bonafide mistake. Thus, he claims that the punishment imposed is excessive and disproportionate to the gravity of the charges and thus the same be reduced.

7. It will be apposite to advert to certain precedents wherein the duties of the auditors and the responsibilities have been enunciated. In the case of *Institute of Chartered Accountants of India vs. P.K. Mukherjee and another* reported as 1968 AIR (Supreme Court) 1104, Apex Court observed as under:-

“ XX XX XX

In *London Oil Storage Co. Ltd. v. Seear, Hasluck & Co. Dicksee on Auditing*, 17th Edn. P 632. Lord Alverstone stated as follows

“He must exercise such reasonable care as would satisfy a man that the accounts are genuine, assuming that there is nothing to arouse his suspicion of honesty and if he does that he fulfils his duty; if his suspicion is aroused, his duty is to probe the thing to the bottom and tell the directors of it and get what information he can.”

XX XX

10. Again In *Re Kingston Cotton Mill Co.* (1896-2 Ch. 279) Lopes L. J. observed:

" x x x It is the duty of an auditor to bring to

hear on the work he has to perform that skill and care and caution which a reasonably competent, careful, and cautious auditor would use, What is reasonable skill, care, and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful.”

8. Coming on to the scheme of the 1949 Act, Chapter V deals with misconduct. Section 21 deals with the procedure of inquiries relating to misconduct of the members of the institute. Section 22 defines misconduct. The same reads as under:-

“22. [Professional or other misconduct defined.- For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.]

9. Relevant provision of the Second Schedule reads:-

“THE SECOND SCHEDULE

[See Sections 21(3), 21B(3) and 22]

PART I

**PROFESSIONAL MISCONDUCT IN
RELATION TO CHARTERED ACCOUNTANTS
IN PRACTICE**

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;

(3) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;

(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.”

10. The Disciplinary committee found respondent No.2 guilty of having failed to disclose material facts that appeared in the financial statement with which he was concerned in the professional capacity. He was grossly negligent in the conduct of his professional duties and the same is admitted by respondent No.2. Thus, we find that respondent No.2 has been rightly held to be guilty of professional misconduct within the meaning of Section 22 read with Clauses (6) and (7) of the Second Schedule appended to the 1949 Act.

11. Coming on to the recommendation concerning punishment imposed under Section 21 of the 1949 Act in form of removal of the name of respondent No.2 from the roles for a period of six months, it needs to be noticed that respondent No.2 has remained member of the institute for more than 30 years. There is no evidence with regard to any allegation of misconduct against him in the past. The present complaint was filed against respondent No.2 in the year 2006. Meaning thereby, that the present proceedings have remained pending against him for over 16 years. In the similar facts and circumstances as noticed herein above, the Apex Court in the case of P.K. Mukherjee (supra) held that:

“For these reasons we hold that the charge of professional misconduct is established against respondent No. 1 falling under Clause (o) of the Schedule to the Act. The only question which now

remains is the final order to be passed against respondent No. 1. In our opinion, the conduct of respondent No. 1 is wholly unworthy of a Chartered Accountant who is expected to maintain a high standard of professional conduct. The proper punishment would have been the removal of the respondent No. 1's name from the Register for a limited period but in view of the fact that the proceedings have been pending against respondent No. 1 for a long time, we think that the ends of justice will be served in this particular case if respondent No. 1 is severely reprimanded for his misconduct under Section 21(2) of the Act. We also direct respondent No. 1 to pay the cost of the appellant in this Court and in the High Court. We accordingly set aside the order of the High Court dated December 5, 1962 and allow this appeal with costs.”

12. Keeping in view the fact that present proceedings against respondent No.2 have continued for more than 16 years without any past record of a professional misconduct against him and the precedent in P.K. Mukherjee's case, we think that the ends of justice will be served if respondent No.2 is severely reprimanded for his misconduct as provided under Section 21(6)(b) of 1949 Act.

13. Consequently, the reference is disposed off accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

02.08.2022

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes