



2025:DHC:524-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 29.01.2025*

+ LPA 595/2017

M JOSEPH LOUIS ALOYSIUS

.....Appellant

Through: Mr. S. Ravi Shankar, Ms. Ruhini Dey
and Ms. Yamunah Nachiar, Advs

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
& ORS

.....Respondents

Through: Ms. Pooja Mehra Saigal, Sr. Adv for
R-1**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present Letters Patent Appeal under Clause 10 of the Letters Patent seeks to assail the orders dated 20.11.2014 and 06.07.2017 passed by the learned Single Judge in W.P. (C) NO.5899/2013.
2. Vide the first impugned order dated 20.11.2014, the learned Single Judge has dismissed the writ petition preferred by the appellant challenging the order dated 17.07.2012 passed by the Appellate Authority of the respondent no.1/ The Institute of Chartered Accountants of India (ICAI), disposing of his appeal by modifying the penalty imposed on him by the Board of Discipline (BoD) under Section 21A of the Chartered Accountants Act, 1949 ('the Act'). We may at this stage itself note that the BoD had after holding the appellant guilty of 'other misconduct' as envisaged under Clause (2) of Part IV of the First Schedule to the Act, imposed a penalty of removal



of his name for a period of three months from the register of members of respondent no.1 alongwith a fine of Rs.10,000/-. This penalty was modified by the Appellate Authority to that of reprimand alongwith the same fine of Rs.10,000/- as imposed by the BoD.

3. The writ petition preferred by the appellant, we find, was dismissed by the learned Single Judge on 20.11.2014 primarily on the ground that the appellant had not assailed the findings of 'other misconduct' under the Act arrived at by the BoD. The appellant had then preferred a review petition before the learned Single Judge by urging that his appeal ought to have been adjudicated on merits. This review also came to be rejected on 06.07.2017 with the learned Single Judge again holding that once the appellant had given up his challenge to the BoD's finding of guilt before the Appellate Authority, he could not be now permitted to urge that his challenge to the findings recorded by the BoD holding him guilty of 'other misconduct' was not maintainable.

4. Being aggrieved, the appellant has approached this Court by way of the present intra Court appeal. In support of the appeal, Mr. S. Ravi Shankar, learned counsel for the appellant has urged three grounds. The first and foremost being that the learned Single Judge had, without appreciating the effect of the timely review preferred by the appellant before the Appellate Authority, came to an erroneous conclusion that he had given up his challenge to the findings of guilt. His plea being that when the appeal came to be disposed of by the Appellate Authority on 17.07.2012, the appellant was under a *bona fide* belief that if, as per the advice of the Appellate Authority, he paid a sum of Rs.5,00,000/- to respondent no.4/ the



complainant before respondent no.1, the complainant would not only withdraw the pending criminal complaint against the appellant under Section 138 of the Negotiable Instruments Act, 1881 but also his complaint filed before respondent no.1 under the Act alleging 'other misconduct' on the part of the appellant.

5. He submits that after the receipt of a copy of the order passed by the Appellate Authority on 17.07.2012, the appellant realized that the demand draft for amount offered by him to be paid to the respondent no.4 had been forwarded without considering the appellant's pleas regarding the findings of the BoD regarding his misconduct being unsustainable. Consequently, the appellant preferred a review petition, which was, however, dismissed by the Appellate Authority on 27.10.2012 by holding that there was no power available with the said authority to review its own orders. He, therefore, contends that the appellant has been deprived of the opportunity to urge before the Appellate Authority that the dishonor of cheques issued by him in favour of respondent no.4 would not in itself amount to any kind of misconduct, much less to say 'other misconduct' as defined under the Act.

6. Mr. S. Ravi Shankar, next contends that even the findings of the BoD, which have not been examined either by the Appellate Authority or by the learned Single Judge are wholly perverse and the appellant who has been practicing as a Chartered Accountant for the last 40 years has been condemned unheard. While urging that the term "*other misconduct*" as defined under the Act, would require an intentional act on the part of the member. He submits that there was no intention whatsoever of the appellant to cheat respondent no.4 as in the present case, the appellant had never



denied having issued the cheques but had prayed a *bona fide* defense that the said cheques had been given by way of a collateral security and the amount received from respondent no.4 by way of loan had already been returned to him in cash.

7. Finally, he contends that when the impugned order was passed by the BoD, the complaint preferred by the respondent no.4 under Section 138 of the Negotiable Instruments Act, 1881 was still pending adjudication and therefore, it was even otherwise premature for the BoD to hold the appellant guilty of any misconduct. In any event, now that the appellant stands acquitted in the complaint case preferred by the respondent no.4 under Section 138 of the Negotiable Instruments Act, 1881, it is evident that the findings of misconduct against him are liable to be set aside. He, therefore, prays that the appeal be allowed and the orders passed by the learned Single Judge as also by the Appellate Authority and the BoD of respondent no.1 be set aside.

8. *Per contra*, Ms. Pooja Mehra Saigal, learned senior counsel for the respondent no.1/ ICAI supports the impugned orders and submits that the appellant having voluntarily given up his challenge on merits to the findings of guilt of 'other misconduct' rendered against him by the BoD, neither the Appellate Authority nor the learned Single Judge could be faulted for not examining the appellant's plea for setting aside the findings of misconduct arrived at by the BoD on merits.

9. She further submits that even otherwise, the appellant's plea that mere dishonour of cheques would not fall within the ambit of the term 'other misconduct' as defined under the Act is incorrect as the term 'misconduct'



has to be examined in the context of the factual matrix of each case. In the present case, once the cheques issued by the appellant had been dishonoured for want of sufficient funds, it was evident that the appellant was always aware that the cheques would be dishonoured upon presentation. His plea of having refunded the loan amount to respondent no.4 in cash, having not been supported by any evidence before the BoD, she contends, the BoD was justified in coming to the conclusion that the appellant had failed to maintain the faith bestowed by the society of Chartered Accountants and, therefore, his conduct being unbecoming of a Chartered Accountant, he was guilty of 'other misconduct' under the Act.

10. Learned senior counsel for the respondent further submits that the appellant not only issued cheques which were dishonoured but had also issued pronotes on his letterhead depicting that he was a Chartered Accountant, which promotes also he failed to honour. In support of her plea that the ambit of the term 'other misconduct' as envisaged under the Act cannot be put in a straight jacket formula and would depend upon the facts of each case, she seeks to place reliance on the following decisions:

- i. ***Council of the Institute of Chartered Accountants And Anr vs. B. Mukherjea (1958 SCR 371)***
- ii. ***Institute of Chartered Accountants of India vs. H.S. Ghia (2004(4) Maharashtra Law Journal 891)***
- iii. ***Council of the Institute of Chartered Accountants of India vs. Shri Gurvinder Singh & Anr. (2019(1) SCALE 43)***

11. She, therefore, contends that there is no infirmity with the impugned orders and prays that the appeal be dismissed.



12. Having considered the submissions of learned counsel for the parties and perused the records, we find that the appellant has, in the present appeal, sought to raise a number of grounds to assail the findings of BoD holding him guilty of ‘other misconduct’ under the Act, which grounds had also been raised both before the learned Single Judge as also the Appellate Authority. It, however, emerges that since the Appellate Authority while disposing the appeal preferred by the appellant on 17.01.2012, observed that he had not assailed the order of the BoD on merits and therefore, there was no requirement to examine the aspect as to whether the appellant’s conduct amounted to misconduct under the Act, the learned Single Judge has also declined to examine the appellant’s challenge to the BoD’s order dated 22.11.2011 holding him guilty of “*other misconduct*” under the Act.

13. The appellant has vehemently denied that he had ever given up his challenge before us on merits to the order passed by the BoD before the Appellate Authority. In support of this plea, the appellant has contended that soon after the passing of the order by the Appellate Authority before whom he had appeared in person, he had filed a review petition urging that he remained under a *bona fide* belief that the demand draft furnished by him in order to bring an amicable resolution to the matter would be kept in the custody of respondent no.1 to await the appearance of the complainant/respondent no.4. He has, therefore, prayed that his challenge to the BoD’s order be considered on merits.

14. In order to appreciate this plea of the appellant for consideration of his challenge to the BoD’s findings on merits, which prayer was rejected by the Appellate Authority on 27.10.2012, it would be apposite to note the



following averments made by the appellant in his review petition.

“9.5 The petitioner/appellant states that the statutory first appeal has to be heard on merits and he raised very many ground to assail the order of the Board of Discipline, those grounds could not be prosecuted by the appellant under a bona fide belief that all those merits can be agitated at the time of final hearing of the appeal.

9.6 The petitioner/appellant states that he came forward to deposit the amount of Rs.5, 00,000 only to show his bona fide and to get an order of stay of the operation of the order of the Board of Discipline.

9.7 The petitioner states that on 9/6/2012, he appeared before the Hon'ble Appellate Authority with a D.D.No. 096694 dated 7th June 2012 for Rs.5,00,000 in favour of JJ Mohan, the complainant. The complainant did not appear before the Hon'ble Appellate Authority and this petitioner was of the bona fide belief that the matter will be adjourned and the DD will be deposited in the account of the appeal.

9.8 The Petitioner/ Appellant states that even though he is not liable to pay the sum of Rs.5,00,000 to the complainant, he came forward to pay the amount to the complainant with a fond hope to give quietus to the dispute and also to get rid of from the legal proceedings.

9.9 The Petitioner/Appellant that the case of the complainant is that the petitioner issued cheques which were dishonoured resulting in the filing of criminal proceedings. The three criminal complaints are pending and there is no pronouncement by the competent court that the petitioner has committed any criminal offence punishable u/s 138 of the NI Act. All the three cheques amount to a sum of Rs.3,00,000 only

9.10 The petitioner states that this Hon'ble Appellate Authority was pleased to direct this petitioner to bring a D.D for a sum of Rs.5, 00.000, so that all the proceedings pending between the parties will be compromised and closed. In that view only, the Hon'ble Appellate Authority directed notice to the complainant to appear before the Hon'ble Appellate Authority, to appraise the view of the complainant in this regard.

9.11 The complainant cleverly absented himself and this Hon'ble Appellate Authority with the fond belief that the complainant would withdraw all the cases filed against the petitioner/appellant in case of receipt of the D.D, had directed accordingly. Throughout the enquiry before the Board of Discipline, the complainant maintained that his only interest is to recover the principal amount and he is not claiming any interest on the amount advanced by him. In that same view only, the Petitioner/appellant also came forward to settle such amount as



ordered by this Hon'ble Appellant Authority, for granting the stay on 7/2/2012.

9.12 The petitioner states that he had complied with the conditional order passed by this Hon'ble Appellate Authority to show his bona fide. The Hon'ble Appellate Authority also in appreciation of the bona fide of the petitioner, was pleased to modify the order of the Board of Discipline from that of removal of the petitioner/appellant's name for 3 months, converted it to reprimand the petitioner/appellant and retained the fine amount imposed by the Board of Discipline.

9.13 The Hon'ble Appellant Authority, on 9/6/2012 i.e. before passing the Judgment in the appeal on 17/7/2012, had directed the Registry to forward the D.D to the complainant for his acceptance towards the settlement of the issue.

9.14 The petitioner/appellant states that even after the receipt of the sum of Rs.5,00,000 the complainant did not come forward to withdraw the criminal complaint and further wanted to proceed with the criminal complaint and also filed another proceeding by issuing insolvency notice, concealing the fact of receipt of Rs.5,00,000.

9.15 The petitioner/appellant states that the subsequent events are to be taken note of by the Hon'ble Appellate Authority for reviewing their order dated 17/7/2012. The petitioner for the reasons stated above, humbly prays this Hon'ble Appellate Authority to pass a revised order by reviewing the order dated 17/7/2012."

15. Reference may also be made to the following grounds urged by the appellant in his review petition:

"1. The Hon'ble Appellate Authority, with a bona fide view of settling the dispute, between the complainant and this petitioner/appellant, directed this petitioner to pay a sum of Rs.5 Lakhs towards full and final settlement of all the disputes that existed between the parties. But the complainant, without appreciating the efforts taken by this Hon'ble Appellate Authority, received the amount without fulfilling his expected obligations.

2. The subsequent conduct of the complainant, makes this petitioner to approach this Hon'ble Appellate Authority, to review its order taking note of the subsequent events, which expose the ill intention of the complainant.

xxx xxx xxx

5. This petitioner, could not pursue his appeal on merits as this Hon'ble Appellate Authority, expressed its opinion of advising this petitioner to



settle this issue once for all. On that advice, this petitioner came forward to pay a sum of Rs.5 Lakhs towards the full and final settlement of all the liabilities.”

16. From a perusal of the aforesaid, what emerges is that the appellant had raised substantial grounds before the Appellate Authority to assail the findings of the BoD, which grounds he appears to have not pursued at the time of hearing before the Appellate Authority, where he had appeared in person. No doubt, the order passed by the Appellate Authority on 17.07.2012, records that the appellant had not assailed the findings of the guilt on merits, but taking into account that the appellant had soon thereafter, preferred a review petition seeking rehearing of appeal on merits, which request was rejected by the Appellate Authority on the ground of maintainability, we are of the view that looking at the cascading effect which the findings of guilt against him are likely to have on his professional career, the appellant deserves to be granted an opportunity to be heard on merits on his challenge to the findings of the BoD holding him guilty of “*other misconduct*” under the Act. We can also not lose sight of the fact that the appellant already stands acquitted in the proceedings initiated against him under Section 138 of Negotiable Instruments Act.

17. We also find that even though the learned Single Judge had rejected the appellant’s writ petition, he had also observed that the appellant may have been able to persuade the Appellate Authority that he was innocent. In this regard, it would be apposite to refer to the following observations of the learned Single Judge as contained in para no.11 of the impugned order dated 20.11.2014:

“11. In the aforesaid circumstances, this court is not persuaded to



*accept that there is any ground to review the impugned order as it is clear that the petitioner had not pressed his challenge regarding the findings of the Board of Discipline. As Observed above, it is apparent that the petitioner followed this course to put a quietus to his disputes with the complainant. **It is also quite possible that the petitioner may have been able to persuade the Appellate Authority that the case being set up by the complainant was not honest.** However, the petitioner having adopted the course that he did, it is now no longer open for the petitioner to assail the decision of the Appellate Authority in these proceedings.”*

(emphasis supplied)

18. We have also perused the decisions relied upon by the learned senior counsel for the respondent no.1, but are of the view that none of these decisions lay down any such broad proposition as is sought to be urged by the respondent no.1 that dishonour of cheques issued by a Chartered Accountant would in every case amount to “*other misconduct*” under the Act. In our view, the question, whether dishonour of cheques issued by a Chartered Account would fall within the ambit of the term “*other misconduct*” as envisaged as under the Act would have to be examined on a case to case basis by taking into account the facts and circumstances of each case. In this regard, reference may be made to the following observations of the Apex Court in *Institute of Chartered Accountants of India v. H.S. Ghia*: 2004 (4) MhLj 891:

*“6. Thus it could be seen that the word "**misconduct**" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of*



established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

(emphasis supplied)

19. Thus, it is evident that the dishonor of the cheques issued by the appellant had to be considered in the light of his explanation that though he had taken a loan from respondent no.4, he had already returned the loan amount to him in cash. In order to appreciate as to whether the BoD before coming to a conclusion that the appellant was guilty of misconduct, had duly examined all the facts and circumstances, it would be apposite to refer to the relevant extracts of the BoD's order dated 22.11.2011. The same reads as under:

“12.1 The Board noted that firstly, the Respondent was not able to bring on record any documentary and/or circumstantial evidence to prove that he had actually paid the - . money to the Complainant.

12.2 The Pronotes were executed on the letter head of the Respondent as a Chartered Accountant. The same had given an assurance to the Complainant that since the Respondent belonged to a respected profession, he would honour his commitment. Meaning thereby, the Complainant had



extended the loan to the Respondent as he was a Chartered Accountant.

12.3 It is on record that the Respondent had taken the loan and he had failed to repay the same;

12.4 As regard the contention of the Respondent to defer the adjudication of this complaint till the disposal of the court cases, it may be stated that the proceedings before the Hon'ble Court and proceedings before the Board of Discipline are entirely different and separate in terms of objective and the standard of proof required to be relied upon for the two sets of proceeding. While the Hon'ble Court of law would be looking into the facts/evidences to find out the truth of the matter concerned, the hearing by the Board of Discipline is aimed at enquiring into the professional and/or 'other misconduct', if any by the members of the Institute. Therefore, this contention of the Respondent is rejected.

13 In this matter the Respondent had failed to maintain the faith bestowed by the Society on the Chartered Accountants and the said conduct of the Respondent is unbecoming of a Chartered Accountant."

20. From a bare perusal of the aforesaid findings of the BoD, it clearly emerges that the BoD has failed to accord any reason as to how the mere act of dishonor of cheques issued by the appellant would amount to misconduct. Further, even though the appellant had filed a detailed appeal assailing these findings of the BoD, neither the Appellate Authority nor the learned Single Judge examined his challenge on merits. We are, therefore, of the considered opinion that the appellant deserves a chance to press his challenge to the findings of guilt rendered by the BoD.



21. In these circumstances, the findings of BoD regarding the appellant being guilty of “*other misconduct*” *prima facie* appears to have been arrived at without properly appreciating the context in which the cheques issued by the appellant were dishonoured. Having said so, we are, however, of the view that instead of this Court examining the appellant’s challenge to the BoD’s order dated 22.11.2011 on merits, it would be appropriate that the matter is remanded back to the Appellate Authority for reconsideration of his appeal on merits. However, taking into account that the appeal was originally filed by the appellant about thirteen years ago, we grant him an opportunity to file a supplementary appeal within a period of four weeks, which will be placed before the Appellate Authority of respondent no.1 for being decided within a period of two months from the date of receipt of the appeal by passing a reasoned and speaking order. Needless to state that while deciding the appeal afresh, principles of natural justice will be followed and the appellant will, as per rules, be permitted to take the assistance of a counsel during the hearing before the Appellate Authority.

22. For the aforesaid reasons, we allow the present appeal and set aside the impugned orders passed by the learned Single Judge as also the order passed by the Appellate Authority and remand the matter back to the Appellate Authority for reconsideration of the appellant’s original appeal alongwith the supplementary appeal, for which purpose the appellant is being granted four weeks time. As directed hereinabove, the appeal will be decided by the Appellate Authority by passing a reasoned and speaking order within a period of eight weeks from the date of receipt of the supplementary appeal. We, however, make it clear that the observations



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made hereinabove are only *prima facie* in nature and will not in any manner influence the Appellate Authority, which is expected to examine the appellant's grievance as per law by taking into account all relevant facts and circumstances.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

JANUARY 29, 2025/Ab