IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANT REFERENCE NO.5 OF 2011

Council of the Institute of
Chartered Accountants of India ….Petitioner

V/s.
Rajiv Khandelwal …Respondent

Mr. A.K. Saxena a/w Mr. Gautam S. Mehta for Petitioner.
Mr. Jeet Kamdar i/b Mr. Atul K. Jasani for Respondent.

CORAM : K.R. SHRIRAM &
NEELA GOKHALE, JJ.
DATED : 11th OCTOBER 2023

P.C. :

1. This is a reference case under Section 21(5) of the Chartered Accountants Act, 1949 (the Act) which was in force at the relevant time.

2. Pursuant to a letter dated 9th April 2002 received from the then Department of Company Affairs containing certain allegations reportedly arising out of inspection under Section 209(A) of the Companies Act, 1956 (the Companies Act) in respect of N.H. Securities Ltd., the matter was treated by the Council of the Institute of Chartered Accountants of India (the Council) as "information" under Section 21 of the Act. The specific charge against respondent, a partner of Falod and Khandelwal, Chartered Accountants, who were the statutory auditors of N.H. Securities Ltd., as per the information, was that the Audited Accounts of N.H. Securities Ltd. for

years 1997-98 and 1998-99 did not disclose the purchase and sales of shares and securities made and the opening and closing stock giving break up of shares and securities traded in by the company and also indicating the quantities thereof as required under Section 211 read with Schedule VI, Part II 3(ii)(2) of the Companies Act in case of a trading company. Respondent - Rajiv Khandelwal was the concerned partner of the audit firm M/s. Falod and Khandelwal, had not qualified the reports. It was only this charge that respondent was called upon by the Council to answer under Regulations 12 (7) read with Regulations 13 of the Chartered Accountants Regulations, 1988.

3. Based on this information, as the Council was prima facie satisfied that there was alleged misconduct under Clauses (7), (8) and (9) of Part I of the Second Schedule to the Act, the Disciplinary Committee was constituted under Section 21 of the Act. Three members, viz., one Mr.T.N.Manoharan, (Vice President of the Institute of Chartered Accountants of India) (the Institute), Mr. Manoj Fadnis and one Mr. G. Ramaswamy were the members who formed the Disciplinary Committee. The Disciplinary Committee framed 10 charges as under :

SR. NO.	CHARGE NO.	DETAILS
1.	1	Non-compliance with Section 211 read with Schedule VI, Part II 3(ii)(2) of the Companies Act, referred to in the “information”.
2.	2 and 4	Regarding non-disclosure of the interest by the Directors under Section 299 and non-production for approval of the Registers maintained under Section 301 of the Companies Act, 1956 for approval of the Board.
3.	3	Regarding Auditors Remuneration not fixed by the Board of Directors.
4.	5	Regarding Non reporting on the alleged violation of Section 77.
5.	6	Regarding violations of the SEBI Guidelines.
6.	7	Regarding violations of Section 383 A of the Act.
7.	8	Regarding violations of Section 307 of the Act.
8.	9	Regarding non production of the Minutes Book of Board of Directors and of shareholders meeting prior to the specified dates.
9.	10	Regarding payment of the remuneration to directors without the approval of the Board.

4. The Disciplinary Committee itself concluded that respondent was not held guilty of Charge Nos.1, 3 and 5 to 10 but guilty of professional misconduct only with respect to Charge Nos. 2 and 4. Based on this report of the Disciplinary Committee, the Council decided to recommend to the High Court that the name of respondent be removed from the Register of Members for a period of one year.

5. The Disciplinary Committee has expressed a view that respondent was guilty of misconduct with respect of Charge Nos. 2 and 4

falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule of the Act. Clauses (7) and (8) of Part I of the Second Schedule provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he - (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.

6. The first point which comes to our mind is that the information which the institute received/complaint that the institute received was only with respect to non-compliance of Section 211 read with Schedule VI Part II 3(ii)(2) of the Companies Act which is the first charge. The Disciplinary Committee has not found respondent guilty of that charge itself. Though the Department of Company Affairs did not raise any grievance, upon going through further documents received from the Ministry further charges have been framed. In our view, as the remaining charges did not form part of the information/complaint received from the Ministry of Corporate affairs, there is nothing to indicate how the scope of inquiry could be expanded to include those charges. Respondent was also called upon to reply under Regulations 12 (7) read with Regulations 13 only with regard to the first charge. Therefore, in our view, the entire complaint should have been closed. Instead the Disciplinary Committee has exceeded the brief and proceeded to

frame 9 more charges. The Disciplinary Committee, we have to note has been appointed only to look into the information received and could not have gone beyond the scope of their appointment.

7. Moreover, if we consider discussion in the Disciplinary Committee report on charges no. 2 and 4 as noted above, it says in the opening Paragraph No.10.1 (and that is the entire basis) as under :

> *10.1 The charge against the Respondent is that the inspection conducted by the Ministry of Company Affairs revealed that none of the Directors of the Company had disclosed their interest in other companies as the same was not available from the minutes books of the Board of Directors, which was not in conformity of the Section 299 of the Companies Act, 1956. It was also observed that in none of the Board meetings contract register to be maintained under Section 301 of the Act was produced for approval of the Board. The Respondent as auditor of the Company had failed to report upon such non compliance.*

8. The information or the complaint dated 9th April 2002 made by the Ministry of Company Affairs was restricted only to inspection under Section 209(A) of the Companies Act and does not refer to any breach of Section 299 or Section 301 of the Companies Act.

9. In any event if we proceed on the basis that the Disciplinary Committee was justified in framing these additional charges no. 2 and 4, it appears to be only a difference of opinion between respondent and the members of the Disciplinary Committee. Respondent's case was even if there was any violation of Section 299 of the Companies Act, it may be only procedural violation by the Directors of the Company and is not required to be reported by the auditor under Section 227(3) or 277(4A) of the

Companies Act. As regards the alleged breach of Section 301 of the Act, it is alleged that in none of the board meetings contract register to be maintained under Section 301 of the Act was produced for approval of the Board which is in violation of Section 301 of the Act. Respondent was not member of the Board but in any case he has reported in the audit report as under :

> *"In our opinion <u>and according to the information and explanations given to us the</u> transactions of purchase and sale of shares and securities made in pursuance of contracts or arrangements entered in the register maintained under section 301 of the Companies Act, 1956 and aggregating during the year Rs.50,000 or more in respect of each party have been made at prices which are reasonable having regard to prevailing market prices for such shares and securities."*
>
> (emphasis supplied)

Therefore, respondent has formed an opinion on the basis of information and explanation that was received by him from the company, i.e., his client.

10. In the report of the Disciplinary Committee, the Committee has alleged that respondent was "grossly" negligent in conduct of his professional duties and has failed to obtain sufficient information to warrant the expression of an opinion. The report does not explain why respondent was "grossly" negligent and why he was not just negligent assuming he was. The report also does not explain what according to them was further information that respondent should have taken to form his opinion. It is a professional matter where one professional may form an opinion after receiving certain information where as another professional may ask for further details to form an opinion.

11. Coming to the recommendations by the Council, in the extract of the minutes of meeting annexed to the reference, it states none of the members of the Disciplinary Committee participated. Mr. T.N. Manoharan was no longer a member of the Council and the other two members Mr.Manoj Fadnis and Mr. G. Ramaswamy were not present at the time of consideration of the report. The Council as it appears from its findings dated 6th November 2008, has accepted the report of the Disciplinary Committee as it was submitted. The Council states because respondent was unable to substantiate from his working papers as to how he satisfied himself while carrying out the audit that the Directors had disclosed their interest in other companies, the Council decided to accept the report of the Disciplinary Committee and hold respondent guilty of professional misconduct within the meaning of Clauses (7) and (8) of the Part I of the Second Schedule read with Section 21 and 22 of the Act. The Council states that therefore it has decided to recommend to the High Court that the name of respondent be removed from the Register of Members for a period of one year.

12. There is nothing to indicate that why it recommended one year and not a lesser period or a larger period or permanently etc. There are no discussions and reasons. There is nothing to indicate from the report what went through the mind of the members to recommend one year and not any other period or why not hold “not guilty”.

13. The Institute of Chartered Accountants of India is a statutory body created by an Act of Parliament, i.e., The Chartered Accountants Act, 1949. In accordance with Section 9 of the Act, the management of the affairs of the Institute are vested in the Central Council. The Council performs its function through three different standing committees constituted under Section 17 of the Act and various other committees. One of the standing committees of the Institute is the Disciplinary Committee. The function of the Institute is to regulate the provisions of the Act and it is also empowered to take action against its members for any misconduct as contemplated in the Act and relevant regulations framed thereunder. Section 21 of the Act prescribes the procedure to be followed with regard to an inquiry relating to the misconduct of the members of the Institute. The Act was amended on 08.08.2006 by Act 9 of 2006. However, since the alleged misconduct relates to the year 2002, we are concerned with the unamended Section 21 which reads as under :

> *"21. Procedure in inquiries relating to misconduct of members of Institute:*
> *"(1) Where on receipt of information by, or of a complaint made to it, the Council if prima facie of opinion that an 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 subsections.*

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, 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 Subsection (4), it shall forward the case to the High Court with its recommendations thereon
(6) On receipt of any case under subsection (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) xxx xxx xxx
(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, 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."

14. Regulation 13 of the Chartered Accountants Regulations, 1964 ("Regulation") provides for the procedure of an inquiry before the Disciplinary Committee. Regulations 14 and 15 which are relevant for the purpose of this case are as under:

"14. Report of the Disciplinary Committee
(1) The Disciplinary committee shall submit its report to the Council.

(2) The Council shall consider the report of the Disciplinary Committee and if, in its opinion, a further enquiry is necessary, shall cause such further enquiry to be made whereupon a further report shall be submitted by the Disciplinary Committee.

(3) The Council shall, on the consideration of the report and the further report, if any, record its findings.

(4) If the finding is that there is no case for passing one of the orders specified in clauses (a) or (b) of sub section (4) of section, the complainant and the respondent shall be informed accordingly.

15. Procedure in a hearing before the Council.

(1) If the Council, in view of its findings, is of opinion that there is a case for passing one of the orders specified in clauses (a) or (b) of subsection (4) of Section 21, is shall—

(a) furnish to the respondent a copy of the report of the Disciplinary Committee and a copy of its findings: and
(b) give him a notice indicating the order proposed to be passed against him and calling upon him to appear before it on a specified date or if he does not wish to be heard in person, to send within a specified time, such representation in writing as he may wish to make against the proposed order.

(2) The scope of the hearing or of the representation in writing, as the case may be, shall be restricted to the order proposed to be passed.

(3) The Council shall, after hearing the respondent, if he appears in person, or after considering the representation, if any, made by him, pass such orders as it may think fit.

(4) The orders passed by the Council shall be communicated to the complainant and the respondent."

15. As held in ***D.K. Agrawal vs. Council of the Institute of Chartered Accountants of India***[1] report of the Disciplinary Committee will only contain a statement of the allegations, the defence entered by the members, the recorded evidence and the conclusions expressed by the Disciplinary

1 [2021] 131 taxmann.com 103

Committee. The conclusions of the Disciplinary Committee are tentative and the same are not recorded as findings. It is only the Council which is empowered to find out whether the member is guilty of misconduct. The Council has to determine that a member is guilty of misconduct and the task of recording of the findings has been specifically assigned to the Council. After recording a finding that a member is guilty of misconduct, the Act moves forward to the final stage of penalisation. The penalty which follows is so harsh that it may result in the removal from the Register of Members for a substantial number of years. The removal of his name from the Register deprives a member of the right to a certificate of practice. The findings by the Council constitutes the foundation for the penalty imposed by the Council on him. As held in *D.K. Agrawal* (supra) the power exercised by the Council under Section 21 is quasi judicial in nature. Perusal of the recommendations of the Council shows that there is no discussion. It only reproduces the report of the Disciplinary Committee and straight away holds respondent guilty and states the penalty to be imposed. The Council has failed to give its own independent findings. The recommendations made by the Council is not supported by independent reasons. The recommendations, in our opinion, have been made mechanically by the Council. Recording of reasons is a principle of natural justice and every judicial/quasi judicial order must be supported by reasons to be recorded in writing. It ensures transparency and fairness in the decision making process. The person who is adversely affected wants to know as to why his submissions have not been accepted. Giving of reasons ensures that a hearing is not rendered as a meaningless charade. Unless an adjudicatory body is required to give reasons and make findings of fact indicating the evidence upon which it relied, there is no way of knowing whether the concerned body genuinely applied itself to and evaluated the arguments and the evidence advanced at the hearing. Giving reasons is all the more necessary because it gives satisfaction to the party against whom a decision is taken. It is a well known principle that justice should not only be done but should also be seen to be done. An unreasoned decision may be just, but it may not appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of fairness and justice.

16. In the circumstances, we do not agree with the recommendations of the Council. The proceedings be filed by the Institute.

17. Reference disposed. There shall be no order as to costs.

(NEELA GOKHALE, J.) **(K.R. SHRIRAM, J.)**