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

CHARTERED ACCOUNTANT REFERENCE NO. 2 OF 2004

The Institute of Chartered Accountants
of India

I.P. Marg, New Delhi.

....Petitioner

V/s.

Sudhir M. Desai, ACA,
29/14D, Zaoba-Wadi, Thakurdwar,
Mumbai – 400 002.

...Respondent

Ms. Priyanka Kothari a/w Ms. Nikita Vardhan and Ms. Aishwaryajeeta
Tawde i/b Kanga & Co. for Petitioner.

None for Respondent.

CORAM : K.R. SHRIRAM &

NEELA GOKHALE, JJ.

DATED : 11th OCTOBER 2023

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

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 the complaint dated 16th December 1996 received from one Jaya Ganesan which complaint was treated as information, the Council of the Institute of Chartered Accountants of India (the Council) constituted a Disciplinary Committee to submit report after following due process of law. The complaint contained following charges against respondent.

1.1 The Respondent using his position as Chartered Accountant induced the Complainant to give a loan of Rs.90,000/-. The Respondent had promised to return the loan in a year's time. But after repaying only Rs.30,000/-, the Respondent had not paid any

amount. The Respondent had issued to the Complainant 4 bogus cheques, which bounced.

1.2 The cheques were issued in the name of 'Sai Investment' his business establishment. The Respondent has been running the aforesaid business without the permission of the Institute.

1.3 The Respondent had threatened the Complainant of physically harming her, if she were to visit his residence.

Respondent was a Chartered Accountant in practice and a member of petitioner, The Institute of Chartered Accountants of India (Institute).

3. The council, after considering the complaint, defence of respondent and rejoinder of complainant, prima facie, felt that respondent was guilty of professional misconduct and/or other misconduct and referred the matter to the Disciplinary Committee constituted under the Act for enquiry.

4. The Disciplinary Committee after conducting an enquiry has opined that respondent was guilty of professional misconduct under Clause (11) of Part I of the First Schedule of the Act which provides that “*a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage*” but has recommended that a lenient view be taken in the matter of Second Part falling under “Other Misconduct” within the meaning of Section 22 read with Section 21 of the Act looking at the extremely co-operative and submissive attitude of respondent.

5. As regards the third charge framed above, the complainant itself withdrew the same. As regards the first charge, admittedly the cheques given were dishonoured but respondent has later paid the entire amount. In the complaint that complainant had lodged in the Court of Metropolitan Magistrate, 28th Court, Esplanade, Mumbai respondent has been held guilty and ordered to pay a fine of Rs.2,000/- and in default to suffer simple imprisonment for 15 days. The fine of Rs.2,000/- also has been paid.

6. That would leave us to consider only the second charge of carrying of business without permission of the institute. Respondent, as appears from the report of the Disciplinary Committee, had pleaded before the court saying that he was in great financial and personal problems including strained relations with his parents. He has also stated that he had suffered losses. Respondent has also admitted that he was carrying on business in the name and style of “Sai Investment” and has also accepted that he ought to have taken prior permission, which he has not. Having considered the Disciplinary Committee report as well as the report of the Council, in view of what is recorded in the Disciplinary Committee report itself that respondent was very co-operative and submissive and had gone through severe financial losses and had too many personal problems, in our view a lenient view should be taken. In fact, on the question of “Other Misconduct” the Disciplinary Committee itself has recommended a lenient view should be taken.

Notwithstanding this recommendations, the Council has taken a view that respondent was guilty of professional misconduct and recommended that his name be removed for a period three months.

7. We find that in the minutes of the Council meeting it is recorded that none of the signatories to the Disciplinary Committee report participated at the time of consideration of their report. The Council, in its findings, has not given any reason why the name of respondent should be removed from the Register of Members for a period of three months. There are no discussions or independent considerations. It has not recorded any findings.

8. 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 1996, 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 is prima facie of opinion that a 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.”*

9. 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.”

10. 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 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

¹ [2021] 131 taxmann.com 103

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.

11. As regards the charge of carrying on business without permission, i.e., professional misconduct within the meaning of Clause (11) of Part I of the First Schedule, the Council states that it has decided that an opportunity of hearing be given to him before passing any orders. There is

nothing to indicate any further hearing happened or any decision has been taken. Therefore, we will proceed on the basis that there is no recommendation as regards this charge. With regard to “Other Misconduct” the Council has recommended removal of respondent’s name from the Register of Members for a period of three months. This is notwithstanding the recommendation of the Disciplinary Committee that a lenient view be taken. Moreover, there are no discussions or reasons as regards the recommendations for removal for a period of three months or why the recommendations of the Disciplinary Committee was not acceptable. Therefore, we are not inclined to accept the recommendations in respect of “Other Misconduct”.

12. The complaint against respondent was lodged in 1996 primarily for non return of the loan taken. The loan amount has been repaid way back in 1998. In our view, the fact that the pendency of this Reference itself as well as the process of Disciplinary proceedings instituted by the institute itself would be like the proverbial Damocles sword hanging over the head of respondent for over 27 years. In view thereof in our considered opinion there is no need to take any further action against respondent. We therefore direct the proceedings be filed by the Institute.

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

(NEELA GOKHALE, J.)

(K.R. SHRIRAM, J.)