

Gitalaxmi

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHARTERED ACCOUNTANTS REFERENCE NO. 3 OF 2021**

**The Institute of Chartered Accountants
of India,**
Indraprastha Marg, New Delhi.

... PETITIONER

~ VERSUS ~

Manakchand Laxman Baheti,
728/B, Harihar Apartments, Sadashiv Peth,
Kumbekar Road, Pune – 411 030.

... RESPONDENT

APPEARANCES

FOR THE PETITIONER **Mr. Prerak Choudhary, with Ms.
Anisha Balse.**

FOR THE RESPONDENT **None present.**

**CORAM : K. R. Shriram &
Dr. Neela Gokhale, JJ.**

RESERVED ON : 18th October 2023

PRONOUNCED ON : 25th October 2023

JUDGEMENT (Per Dr. Neela Gokhale, J.):

1. This is a reference made by Petitioner-The Institute of Chartered Accountants of India under the provisions of Section 21(v) of the Chartered Accountants Act, 1949 (pre-amended as

applicable to the present case) against Respondent, viz., the Chartered Accountant concerned. The Institute received a complaint dated 28th July 2006 from the Superintendent of Police, CBI, Bank Securities and Fraud Cell, Mumbai (“**Complainant**”) informing the Institute that Respondent had assisted various companies in availing credit facilities of huge amounts from various banks by issuing false documents certifying valuation of work undertaken and completed by the accused companies. Complainant also alleged that Respondent had also certified the sales registers and list of supply bills of the accused companies without verifying facts and figures to facilitate loans being sanctioned to the said companies.

2. The Institute called upon Respondent to send his response and by a written statement dated 9th July 2007, Respondent defended himself by referring to the complaint as frivolous, without offering any documentary evidence and even went on to refer to the complaint as being premature on the ground that criminal complaints against the main accused were yet pending before the Criminal Court. He also asserted that the certificates were issued by him after due checking of relevant records and obtaining necessary explanations and verification. Complainant rebutted the written statement by its own rejoinder dated 27th July 2007 and Respondent once again submitted his additional comments on the rejoinder. The Council of the Institute (“**Council**”), *prima facie*, found Respondent guilty of professional misconduct and accordingly referred the case to Disciplinary Committee (“**Committee**”) constituted under the Chartered Accountants Act, 1949 (“**the Act**”).

3. The Committee held various meetings on 7th October 2008, 25th November 2008, 13th June 2009 and 16th July 2009 for the purpose of enquiry. After hearing the parties, recording evidence and on perusal of the documents produced before the Committee, the Committee gave its report on 3rd February 2010 holding Respondent guilty of professional misconduct under Clauses (7) and (8) of Part-I of the Second Schedule to the Act read with Sections 21 and 22 of the Act. The Council considered the report at its 297th meeting held between 4th to 6th August 2010 at New Delhi. The Council on the basis of the contents of report and also the oral submissions made by the Counsel of Respondent, referred the matter back to the Committee for further enquiry on specific issues. The issues flagged by the Council were generally to reconsider the documentary evidence including working papers of Respondent, examining employees of the accused banks as well as the basis on which Respondent had satisfied himself about the existence and the valuation of assets as mentioned in the certificates issued by him and alleged to be false.

4. The Committee once again convened hearings on 22nd April 2013 and 7th May 2013. Respondent presented himself but sought more time on the first date. On the second date of hearing, Respondent conveyed through e-mail his inability to attend the hearing on the pretext that it was time consuming and that he did not wish to waste money and effort and cause inconvenience to himself and his witnesses. The Committee then concluded the hearing and submitted its further report dated 10th January 2015 to the Council reiterating its earlier findings. Respondent was given the copy of Committee Report and was requested to send his

written representation to the Council or to appear in person or through a duly authorized representative. His authorized representative CA, Mr. Sashikant Barve appeared on behalf of Respondent and filed written representations dated 10th March 2016. He also made oral submissions. The Council after hearing Mr. Barve and considering the report of Committee held Respondent guilty of professional misconduct falling within the meaning of Clauses 7 and 8 of Part-I of Second Schedule read with Sections 21 and 22 of the Act. Accordingly, the Council decided to recommend to the High Court that Respondent be reprimanded. Hence, the present Reference arises for our consideration.

5. Mr. Prerak Choudhary, learned Counsel appeared for Petitioner but Respondent failed to appear, despite service, and put forth any representation. Mr. Choudhary took us through successive reports of the Committee as well as the deposition of Respondent. He also took us through the written statement, written representation of Respondent before the Council as well as the decision of Council.

6. The Institute of Chartered Accountants of India is a statutory body created by an Act of Parliament that is 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. Section 22-A provides for filing of an appeal by a member against imposition of penalty. The Act was amended on 8th August 2006 by Act 9 of 2006. However, since the alleged misconduct relates to the period prior to the amendment, we are concerned with the unamended Section 21, which is 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 is of the 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 sub-sections.

(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 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 subsection (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;.....”*

7. 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 sub-section (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.”

8. It is clear from the above provisions that the stipulated procedure required the Committee report to contain a statement of allegations, the defense entered by the delinquent Chartered

Accountant, the recorded evidence and the conclusions of Committee. The Council is to apply its mind to the report of Committee and is empowered to conclude regarding the guilt of its member or otherwise. It appears from the reports of Committee that the working papers of Respondent revealed nothing of substance pertaining to the basis of material on which the certificates were issued by him. The certificates simply stated that the certificates were issued on the specific request of the firm. On being asked to produce documents regarding statements of expenditure incurred by the accused firms, invoices/vouchers for purchase of plant and machinery for civil work and land development etc., Respondent was unable to produce any document. On another issue flagged by the Council pertaining to examining employees of the banks, the Committee had summoned as many as 11 witnesses. Respondent had also given names of 11 persons whom he wanted to cross-examine before the Committee. However, none of the witnesses appeared before the Committee. Thirdly, the Committee also enquired from Respondent as to how he had satisfied himself about the existence and valuation of assets as mentioned in the certificates issued by him, but apart from his working papers which also did not contain any basis for arriving at any satisfaction, Respondent failed to establish any cogent justification for the same.

9. It is interesting to note that statements of two partners of accused firm clearly indicated that they were working with one company called M/s. Dinesh Agro Products Limited during the period 1999-2000 and were made partners in another firm called M/s. Mahalaxmi Farms by taking their signatures on forms for

opening bank accounts. They were also asked to sign documents for the purpose of availing credit facilities from the Central Bank of India in the name of M/s. Mahalaxmi Farms, which firm was never in existence by furnishing a false address. Another witness viz. Mr. Jitendra Shinde stated that he was shown as a partner of another accused firm M/s. Gauri Enterprises and all documents of availing credit facilities were signed by him and for doing this he was given a flat worth of Rs. 5,00,000/-. He also stated that the partners of the accused firm had also purchased second hand machinery and temporary sheds were shown to bank officials which were then removed and disposed after approval of loan. He further stated that factory premises were also erected to show to the bank officials which were demolished immediately thereafter. All these statements amongst others, recorded in the Committee report do, *prima facie*, indicate that there was a possible fraud played on the banks in order to avail credit facilities. However, from the limited evidence available, we do not find any overt act of commission or omission on the part of Respondent in defrauding the banks. We hasten to add, this view of ours is restricted only to this reference.

10. The Committee has recorded its findings on the basis of the inability of Respondent to provide any material on the basis of which he satisfied himself as to the genuineness of accused firms and the valuation of their properties sufficient enough to justify issuing as many as 11 certificates used by the accused firms to avail credit facilities. The Committee has also recorded its view that Respondent failed to perform due diligence before issuing certificate and he was unable to co-relate any document/papers with the certification/valuation done by him. The Committee thus held

Respondent guilty of professional misconduct on the basis of issuance of a large number of certificates at regular intervals, issued as and when asked for by his clients and most importantly in the absence of any papers to indicate due diligence employed by him. The most indicting is a statement of Respondent himself recorded as his evidence pleading guilty of committing the indiscretion as alleged by Complainant. His statement to the Committee reads thus,

“Respondent:

Sir, during 1999 to 2003, I was having family problem. Since I have already pleaded guilty therefore under the circumstances according to me under some kind of stress on that particular point in time I have committed this misconduct. Therefore, I may be pardoned.”

11. Mr. Choudhary thus points out that the Committee found Respondent guilty of misconduct on his own admission of guilt and also on other lapses such as working papers and other evidence not indicating satisfaction of Respondent regarding verification of valuation of assets of the accused companies and communicated as such to the Council in its report. The Council upon considering the report and the representation of Respondent, referred the matter to this Court recommending that Respondent be reprimanded. Thus we find that there is no irregularity nor illegality in the procedure followed by the Committee and Council, as laid down in the Act and Rules.

12. It is true that the employees of the banks were not available for cross-examination by Respondent. Respondent had absented

himself at the final hearing of the Committee. Respondent has relied on the absence of witnesses for cross-examination and has contested the finding of Committee at the same time admitting omissions committed by him and his failure to comply with the due diligence, which he ought to have done while issuing the certificates. On perusal of the committee report and the deposition of Respondent himself, we have no hesitation in accepting that Respondent has been found guilty of certain degree of negligence amounting to misconduct justifying some action against him. Certifying to facts which Respondent failed to verify from relevant documents and failing to record reasons justifying the basis of verification and certification is totally unprofessional and negligent amounting to misconduct.

13. Mr. Choudhary also relies on a decision of the Delhi High Court in the matter of *Council of the Institute of Chartered Accountants of India v. Dayal Singh F.C.A. and Another*¹ to buttress his submission that there has to be some degree of integrity and probity which is expected of a Chartered Accountant who is regularly concerned with financial transactions and on the basis of whose recommendations and certificates financial institutions such as banks disburse loans or enter into other financial transactions. We have gone through the said decision and are persuaded to agree with the view of the Delhi High Court.

14. Refusing to accept the recommendation of Council will be deleterious to the maintenance of discipline or the professional

1. 2007(96) DRJ 763(DB).

conduct on the part of members of a professional institute or association. It is true that the discipline sought to be maintained has its own rigours, nonetheless, maintenance of discipline or professional or other conduct of members of the institute is salutary and paramount to maintain public confidence in the members of institute and to inculcate a sense of discipline and excellence in the performance of functions as member of the institute or any association. In this case, Respondent was completely aware that accused companies were seeking specific verification and certification from a chartered accountant to complete the documentation required by Banks to sanction credit facilities to them. Thus he was naturally aware that issuing such certificates in the absence of proper valuation was a fraud on the Banks as such public and financial institutions rely upon certificates of professionals as part of its due diligence. Hence a contrary view would easily defeat the purpose of the Act and the object behind regulatory measures envisaged in Section 21 of the Act.

15. In these circumstances, we are satisfied that the view of Council is correct and we are inclined to accept the recommendation of the Council as prayed. Respondent is thus reprimanded in accordance with Section 21(6)(b) of the Act. There will be no order as to costs.

(Dr. Neela Gokhale, J.)

(K. R. Shriram, J.)

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