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

CHARTERED ACCOUNTANT REFERENCE NO. 8 OF 2009

Institute of Chartered Accountant of India, Indraprastha Marg, New Delhi. } **…Petitioner**

Versus

Shri Nitin D. Desai
Chartered Accountant,
Sanchay, 25 Somwar Peth,
Near Saraswat Colony,
Pune – 411001 } **…Respondent**

Mr. A.K. Saxena, Advocate along with Mr. Gautam S. Mehta, Advocate for petitioner.

CORAM : DHIRAJ SINGH THAKUR AND VALMIKI SA MENEZES, JJ.

RESERVED ON : 07.12.2022.

PRONOUNCED ON : 10.02.2023.

JUDGMENT : PER (Valmiki Sa Menezes,J)

This is a reference made to this Court under Section 21(5) of the Chartered Accountants Act, 1949 (for short 'the Act') by the Institute of Chartered Accountants of India, New Delhi, (for short 'the Institute') for necessary orders to be passed in terms of Sub-Section 6 of Section 21 thereof.

(2) It is the case of the petitioner that it received a complaint dated 11.01.1999 from one Santosh Kumar Surajbhan Goel from Pune alleging that the respondent Shri Nitin D. Desai, a Chartered Accountant registered with the Institute, had written a letter to members of the Poona Club Ltd., soliciting their clientele in the guise of canvassing for votes during the said club's Executive Committee elections.

It was the complainant's allegation that the respondent, under the guise of soliciting votes for his candidature to the post of Officer Bearer of the Executive Committee of the said club, had represented to members of that club that he was a proprietor of M/s. D.S. Desai and Company Limited, claiming that his firm has rendered dedicated services to several corporate clients whose names were stated in the said letter ; that the respondent had, by the said letter, actually solicited clients from amongst the members of the club, not only by advertising the names of companies claimed by him to be his client, but also claiming that the firm of which he purported to be the proprietor, had saved the club substantial tax by using his expertise with the income tax department. This, the complainant alleges, was a misconduct committed by the respondent in terms of the provisions of the Act.

(3) The Institute, on receiving the complaint forwarded a copy of the complaint to the respondent under cover of its letter dated 06.05.1999, requesting the respondent to file his written statement/reply to the complaint, which the respondent filed before the petitioner on 20.01.2000. A rejoinder to the written statement came to be filed before the petitioner, by the complainant on 10.03.2000.

In his reply, the respondent has admitted to issuing letters to various members of the club but has denied that the contents of his letter amounted to soliciting clients, amongst members of the club. The respondent claims that the complaint was filed only due to rivalry between the respondent and the complainant, as the complainant had also offered his candidature to the Executive Committee of the club. It was further the defence of the respondent that the various statements set out by him in his letter were only to solicit votes from members of the club, and were necessitated by the fact that there were two persons by the name of “Nitin Desai”, contesting that election and he was desirous of clarifying his identity to the members of the club.

(4) On considering the contents of the complaint, the written statement and the rejoinder, the petitioner, in terms of Regulation 12 (11) of the Chartered Accountants Regulations, 1988, in its meeting held in September 2003, arrived at a *prima facie* opinion that the respondent was guilty of profession and other misconduct and referred the case to the Disciplinary Committee constituted under the provisions of Section 21(1) of the Act, for conducting an inquiry into the complaint and submitting a Report.

(5) The Disciplinary Committee issued notice to the complainant and to the respondent, and commenced hearing/enquiry into the complaint from 20.03.2014 and concluded the inquiry on 02.02.2005. During the course of the inquiry, both the complainant and respondent recorded their statements and were cross-examined. The inquiry culminated in the Disciplinary Committee submitting its Report dated 02.02.2005 to the petitioner – Institute, holding the complainant, guilty of misconduct, more specifically for the breach of Clause (6) of Part I of the First Schedule of the Code of Ethics applicable to the Chartered Accounts, under the scheme of the Act. The Disciplinary Committee was also of the opinion as recorded in its findings, that the respondent was also in breach of Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, which prohibits advertising of professional services of a member and also restrains a member from using any designation or expression, other than that of a Chartered Accountant in documents through which the professional achievements of the member would come to the notice of the public. It held that those the respondent ; on his letterhead had stated he was the proprietor of M/s.D.S. Desai and Company, the actual proprietor was his late father, and on his demise, his mother, Mrs.Shalini D. Desai was the Proprietor ; and not the respondent. It held that the respondent had giving false information to the public that he was the proprietor of the firm M/s.D.S. Desai and Company, and trying to mislead the members of the club of this fact, thus being guilty of “other misconduct” under Section 22 read with Section 21 of the Act.

(6) The Report of a Disciplinary Committee was then sent to the complainant and to the respondent, calling upon them by letter dated 24.07.2006, to send their written representations on the findings arrived at the Disciplinary Committee and on its assessment of the evidence led during the inquiry. The Institute also informed the complainant and the respondent by its notice dated 25.07.2006, that the Report of the Disciplinary Committee with its findings would be tabled at the meeting of the Executive Committee of the Institute to be held on 02.08.2006, calling upon them to attend the meeting and placed their written briefs on before the Committee who will afford them a hearing on the matter. The meeting of the Council that the Institute of the Chartered Accountants adjourned the hearing on the Report of the Disciplinary Committee and an action to be taken against the respondent, to several dates from 31.07.2006 until 01.05.2007. During this period, the respondent sought an adjournment on five occasions. Ultimately on 19.07.2007, the Council heard the complainant. The respondent did not appear on that date.

The Council deliberated upon the submissions made by the complainant, considered the report of the Disciplinary Committee, the evidence recorded by it and its findings and decided to accept the report of the Disciplinary Committee. The Council held the respondent guilty of professional misconduct falling within the meaning of Clause (6) & (7) of Part I of the First Schedule of the Chartered Accountants Act, 1949 and guilty of “other misconduct” under Section 22 read with Section 21 of the Act.

On considering the material before it, the Council decided to take action against the respondent and to recommend to the High Court that the respondent be reprimanded. Hence, a reference to this Court.

(7) We take note of the fact that the Act has been amended by the Chartered Accountants (Amendment) Act, 2006, whereby various provisions of the Act would be amended and the new provisions inserted with respect to the mechanism for taking disciplinary action for misconduct under the Act. The Amendments are brought into effect from 17.11.2006. We further take note that under Section 21(D) of the Amendment Act, on complaints/disciplinary proceedings pending before the Council, or where any inquiry was initiated by the Disciplinary Committee or, any reference made or any appeal was filed to the High Court prior to commencement of the Amendment Act of 2006, the same shall continue to be governed by the provisions of the Act as if the Act had not been amended by the Chartered Accountants (Amendment) Act, 2006.

The present complaint relates to the period prior to the Amendment of the Act and is being dealt with under the provisions of the Act as its stood in its unamended firm.

(8) We have considered the relevant provisions of Section 21 of the said Act, which reads as under:

> *"**Section 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 any 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 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.

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8……..

(9) In terms of the provisions of Section 21 of the Act and in terms of Regulations framed thereunder, we find that the Council has acted in accordance with the procedure laid down under the scheme of the unamended provisions of the Act. The Council has considered the contents of the complaint and the written statement of the respondent and has come to a *prima facie* opinion that the respondent had committed an act of misconduct, as laid down in Sub-

Section (1) of Section 21. On coming to a *prima facie* opinion of professional misconduct, the Council has referred the case to the Disciplinary Committee, which, after holding an inquiry in terms of Sub-Section (1) of Section 21 and after recording evidence of the complainant and the respondent, has, on consideration of the material before it, arrived at findings in his report holding the respondent guilty of the misconducts stated therein.

(10) After receipt of the Report from the Disciplinary Committee, we have noted from the record that the Council, on consideration of the report, the record of the disciplinary proceedings and after giving the complainant and respondent and opportunity being heard has accepted the findings, recorded by the Disciplinary Committee. The Council, on deliberation over the findings arrived at in the report, and accepted the same, has held the respondent guilty of professional misconduct falling within Clause (6) and (7) of Part I of the First Schedule of the Chartered Accountants Act, 1949, and guilty of "other misconduct" under Section 22 read with Section 21 of the Act. On holding the respondent guilty of the aforementioned misconducts, the Council has resolved to recommend to this Court the punishment of the reprimand of the respondent, under Clause (a) of Sub-Section (4) of Section 21 of the Act.

(11) We have considered the submissions of the learned counsel Shri A.K. Saxena, for the applicant/petitioner's counsel. The respondent and the complainant in the matter, though served on two occasions, have not put in appearance. Shri Saxena, appearing for the petitioner has taken us through the record of the disciplinary proceedings and the complaint, the written statement of the respondent and the letter written by the respondent to members of the Poona Club Limited, through which the Respondent claims he solicited votes while standing for election.

On considering the record, we are of the opinion that the Disciplinary Committee has followed the procedure laid down under the Act and the Regulations framed thereunder. It has adhered to the principles of natural justice while conducting the inquiry; the complainant and the respondent were both afforded an opportunity of given their statements and cross-examined each other. The Disciplinary Committee had thereafter considered the evidence of the parties and after deliberating over the contents of the letter written by the respondent soliciting votes of members of the club, has arrived at findings of guilt which are entirely based upon the evidence before it. The findings do not suffered from any perversity or non consideration of the record before the Disciplinary Committee.

(12) On going through the minutes of the meeting of the Council wherein it considered the record of the Disciplinary proceedings and the findings arrived at by the Disciplinary Committee in its Report, we are of the opinion that the Council has afforded both parties an opportunity of being heard and presenting their **version** before the Council in its meeting held on 19.02.2007. We further find that the Council has accepted the findings of the Disciplinary Committee and there is no error in the procedure followed by the Council.

(13) We are therefore of the opinion that the order of the reprimand of the respondent will serve the ends of justice and will be proportionate to the acts of misconduct of which the respondent has been held guilty.

(14) The application referred under Sub-Section (6) of Section 21 of the said Act is disposed of and answered in the above terms.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**

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