IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.3854 & 5309 of 2003

Mr.N.Sivasubramanian ... Petitioner in both W.Ps.

Vs.

1.The Insurance Regulatory Development Authority,
Rep. by its Chairman,
3rd floor, Pansrama BHavanam,
Hyderbad.

2. The Institute of Chartered Accountants of India,
Rep.by its President,
Post Box No.7100,
Indra Pratha Marg,
New Delhi. ...Respondents in WP.3854 of 2003.

1. The Institute of Chartered Accountants of India,
Rep.by its President,
Post Box No.7100,
Indra Pratha Marg,
New Delhi.

2. The Council,

Rep by its Members,
The Institute of Chartered Accountants of India,
Post Box 7100,
Indra Prastha Marg,
New Delhi-2.

3. The Disciplinary Committee,
Rep by its Members,
The Institute of Chartered Accountants of India,
Post Box 7100,
Indra Prastha Marg,
New Delhi.2. ...Respondents in WP.5309 of 2003.

Prayer in W.P.No.3854 of 2003:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in No.IRDA/CAE/1124 dated 1.11.2002 and quash the same consequently direct the first respondent to remove the petitioner's name from the list of persons held guilty of professional misconduct that it has issued and circulated, in so far as the petitioner is concerned.

Prayer in W.P.No.5309 of 2003 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records to quash the disciplinary proceedings No.25-CA(10)/97 against the petitioner culminating in the impugned letter of the First respondent dated 23.04.2002.

For Petitioner in all W.Ps. : Mr.J.Sivananda Raaj,

Senior Counsel for
Mr.A.S.Bhargavnath

For Respondents in
W.P.No.3854/2003 :
(for R1) : Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates
(for R2) : Mr.M.Arun Kumar for
M/s.Sampath Kumar & Associates

Respondents in
W.P.No.5309/2003 :
(for R1 to R3) : Mr.M.Arun Kumar for
M/s.Sampath Kumar & Associates

COMMON ORDER

The petition in W.P.No.5039 of 2003 has been filed to quash the disciplinary proceedings No.25-CA(10)/97 dated 23.04.2002. W.P.No.3854 of 2003 has been filed challenging the order passed by the first respondent in proceeding dated 1.11.2002 and to direct the respondents to remove the petitioner's name from the list of persons held guilty of professional misconduct which has been issued and circulated.

2.The petitioner states that he has practised as a Chartered Accountant for 26 years. The petitioner was a partner in the firm Price Waterhouse from 1991 till March 2002. The petitioner was in charge of handling audits and taxation for several multinational companies.

3.In December 2002, the respondent issued the impugned letter dated 01.11.2002, titled "Empanelment of auditors for statutory audit of insurance companies" in which the first respondent has said the following:

> "*With reference to the above subject, we are herewith enclosing list of 73 members of ICA (along with their membership number and other particulars) who have been held guilty of misconduct by the Council of the Institute of Chartered Accountants of India during the last financial year i.e. From 1st April 2001 to 31st March 2002.*
> *You are hereby informed not to appoint such firms as statutory auditors whose partner's name is appearing in the above-referred list of 73 members*
> *You are further required to insist upon the statutory auditors to obtain a certificate from the Institute of Chartered Accountants of India that the firm or any of the partners of the firm are not having any disciplinary case pending against them. A copy of such letter is required to be sent to us.*"

4.The names of 73 persons were listed in the above letter. The name of the petitioner was found in Serial No.38 of the list. The petitioner issued a legal notice dated 10.12.2002 to the first respondent on the ground that the disciplinary proceedings initiated against the petitioner was pending during the relevant point of time when the impugned letter was issued. No final order has been passed and therefore, the letter dated 01.12.2012 is pre-conceived causing aspiration on the image of the petitioner and therefore, it is to be set aside.

5.Admittedly, a disciplinary proceedings were initiated against the writ petitioner on the ground that the petitioner's firm “Price Waterhouse” placed an advertisement in the “Deccan Herald” Newspaper, in the appointments section, calling for the tax professionals to join the firm.

6.The petitioner states that the firm was looking for tax professionals who were experienced, dynamic and talented for the purpose of handling international work from clients abroad and therefore, the advertisement was issued. Consequent to the advertisement, various tax professionals responded and the firm went ahead with the recruitment of suitable candidates. After a lapse of 2 years, the firm received the letter dated 09.04.1996 from the Secretary of the first respondent Institute stating that the advertisements placed in the Newspaper, on 17.10.1994 by the firm, amounted to solicitation of professional work in violation of Clause

(6) of Part 1 to the First schedule of the Chartered Accountant Act 1949 and also amounted to advertisement of professional attainments in violation of Clause (7) of Part 1 of the First Schedule of the Chartered Accountant Act 1949.

7.In the context of the facts in a nutshell as narrated above, the learned counsel for the petitioner mainly contended that disciplinary proceedings were initiated against the petitioner for the alleged misconduct. The petitioner was defending his case before the competent authorities. Initiation of disciplinary proceedings itself per se untenable in view of the fact that mere advertisement for recruitment of candidates by the firm cannot be construed as misconduct. The allegations set out in the disciplinary proceedings are beyond the scope of the conduct rules and therefore, the disciplinary proceedings itself is liable to be set aside.

8.The learned counsel for the petitioner drew the attention of this Court with reference to the code of conduct and reiterated that advertisements for recruiting staff members in one's own office is not a misconduct. The petitioner has just stated about his firm in the advertisement published in "Deccan Herald" Newspaper and they have never solicited any person for professional gains.

9.The first Schedule to the Chartered Accountants Act, 1949 also permits advertising professional attainments or services. Therefore, the advertisements given by the petitioner, pertains to professional attainment and cannot be construed as misconduct. Therefore, the initiation of disciplinary proceedings *per se* is in violation of the provisions of the Chartered Accountant Act, 1949 and the provisions of the Code of Conduct.

10.The petitioner has raised several other grounds on merits with reference to the Charges framed in the disciplinary proceedings. Mainly, the charge was framed on the ground that the petitioner firm gave an advertisement in "Deccan Herald" Newspaper, more specifically published that:

> *" Price Waterhouse is a leading international firm of chartered accountants, business advisers, tax experts and management consultants. We have a long established reputation for providing top quality services to clients in every business sector and in every major economy around*

the world. ...”

11.The petitioner states that the above advertisement would not attract the purview of the code of conduct and therefore, the erroneous initiation of the disciplinary proceedings have to be set aside.

12.The learned counsel appearing for the respondent raised an objection by stating that disciplinary proceedings are concluded and the enquiry report was also submitted. Pursuant to the enquiry report, the Institute of Chartered Accountants issued the impugned letter dated 23.04.2002 providing opportunity to the writ petitioner to submit his explanations regarding the quantum of punishment to be imposed. The petitioner was found guilty of professional misconduct within the meaning of Clause (7) of Part 1 of the First Schedule, of the Chartered Accountant Act 1949, read with Sections 21 and 22 of the said Act. Therefore, the counsel has decided that an opportunity of hearing under Section 21(4) of the Chartered Accountant Act 1949, is to be afforded to the writ petitioner before passing final orders. Therefore, no final order has been passed in the disciplinary proceedings. The writ petition is premature and the petitioner is expected to submit his explanation on the show cause letter issued by the institute. Therefore, the writ petition is to be rejected.

13.Regarding the letter issued to the Insurance Regulatory Development Authority, it is contended that the disciplinary proceedings are initiated against the petitioner and the authorities found that the petitioner is guilty of professional misconduct within the meaning of Clause (7) of Part 1 of the First Schedule of Chartered Accountant Act 1949, and therefore, they have communicated the list of Chartered Accountants, who all are tainted and such an action is the duty of the Chartered Accountants institute in the public interest. It is for the clients to engage Chartered Accountants but it is the duty of the institute to inform the authorities regarding the orders passed by the Institute against the Chartered Accountants in the disciplinary matters.

14.Considering the arguments, this Court has to consider the opinion that various grounds raised by the petitioner on merits cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

15. The power of judicial review of the High Court under Article 226

of the Constitution of India is to ensure that the processes through which the decision taken by the competent authority is in consonance with the statute and rules in force, but not the decision itself. Thus, the scope of judicial review need not be extended for the purpose of adjudication of disputed issues between the parties, more specifically in disciplinary matters. Such an interference would cause prejudice to either of the parties. Roving enquiry in this regard would derail the disciplinary proceedings and result in restraining the powers of the disciplinary authorities in dealing with the disciplinary proceedings which is not desirable.

16.The institute of Chartered Accountants of India is a statutory body, governed by the provisions of the Chartered Accountants Act, 1949, its regulations and the code of conduct. Based on the advertisements published by the petitioners in the News Paper "Deccan Herald", disciplinary proceedings are initiated and opportunities were afforded to the petitioner to defend his case. The petitioner also participated in the process of enquiry and the disciplinary authority, based on the report, finally arrived at a conclusion that the petitioner is guilty of professional misconduct within the meaning of the Clause (7) of Part 1 of the First Schedule of the Chartered Accountants Act, 1949 read with Sections 21 and 22 of the said Act. On arriving at a provisional conclusion, the institute issued the proceedings dated 23.04.2002 providing an opportunity of hearing to the petitioner contemplated under Section 21(4) of the Chartered Accountants Act, 1949. Instead of availing the said opportunity by submitting objections/ explanations, the petitioner has chosen to file the present writ petition and in view of the interim order granted in the present writ petition, the institute is unable to pass final orders for the past several years.

17.Pertinently the writ petition was filed in the year 2002 and by virtue of an interim order, the disciplinary proceedings are kept pending for the past about 21 years. The grounds raised by the petitioner as well as the arguments raised on merits regarding the issues deserve no merit consideration, since all such explanations and objections are to be considered by the respondents at the time of passing final orders and by considering the further explanations, which would have been given by the petitioner pursuant to the notice dated 23.04.2002. The information given to the petitioner under Section 21 of the Chartered Accountants Act, 1949 clearly states that the petitioner is found guilty of professional misconduct. The institute has given further opportunity to the petitioner to submit his explanation. That being the factum, the petitioner is expected to avail the opportunity provided under the provisions of the Act. When the disciplinary proceedings are not concluded and the second respondent institute is in the process of considering the issues on merits, High Court cannot adjudicate the issues on merits, which would cause prejudice to either of the parties. Any finding on merits in the present writ petition would affect the case of either of the parties and therefore, this Court is not inclined to adjudicate the issues on merits.

18.Regarding the letter issued to the Insurance Regulatory Development Authority, the institute has sent the letter on 01.11.2002 after arriving at a conclusion that the petitioner is guilty of professional misconduct. Based on the information issued against the writ petitioner under Section 21 of the Chartered Accountants Act in letter dated 29.04.2002, the institute issued the letter dated 01.11.2002 to the Insurance Regulatory Development Authority, listing out the persons, who all are found guilty of misconduct or otherwise. It is the duty mandated on the public institutes like that of the Chartered Accountants of India, to protect the interest of public. The names of the Chartered Accountants, who are facing disciplinary proceedings, and are found guilty of professional misconduct, have to be intimated to the Government and statutory authorities, enabling them to take a decision as to whether or not these persons can be engaged for the purpose of availing their services. Such a communication cannot be construed as defaming the members of the institute. Such letters are issued by the institutes in the interest of the public, which is mandatory under the provisions of the Chartered Accountant Act. It is left open to the client to engage the Chartered Accountants. However, the institute is duty bound to inform about the disciplinary proceedings taken or the punishments suffered, or about the members, who all are found guilty of professional misconduct.

19.Therefore, this Court do not find any infirmity in respect of the letter issued. The power to remove a member from the institute provides an implied power to suspend a member or to inform about the departmental disciplinary proceedings. Such inherent powers conferred on the authorities competent under the Chartered Accountant Act is of public importance and therefore, the letter intimating the guilt of professional misconduct of any member of the institute cannot be found fault with and such actions are within the parameters of the Act and the rules in force.

20.This Court is not inclined to adjudicate the issues on merit, since the disciplinary proceedings are yet to be concluded. Intermittent interventions in the disciplinary proceedings are not desirable, unless the actions are initiated by an incompetent authorities having jurisdiction or an allegation of mala fide is raised. Though the petitioner has raised certain allegations of mala fides, the petitioner has not impleaded the authorities in person against whom the said allegations are raised. In the absence of impleading the authorities in their personal capacity, such broad allegations cannot be considered by the High Court in a writ proceedings.

21.In respect of the grounds raised on merits, the petitioner had already defended his case and the institute is yet to pass final orders in the disciplinary proceedings and therefore, any finding on merits in the present writ petition would cause prejudice to the interest of either of the parties and therefore it is not desirable.

22.In view of the facts and circumstances, the petitioner is permitted to submit his explanations to the defendants along with the documents, if any, in response to the notice dated 23.04.2002, issued under Section 21 of the Chartered Accountants Act, 1949, within a period of 2 weeks from the date of receipt of a copy of this order. On receipt of the explanation, if any, from the petitioner, the respondents are directed to consider the explanations on merits and in accordance with law and pass final orders by following the procedures as contemplated within a period of 6 weeks thereafter. If at all, the petitioner is aggrieved from and out of the final orders to be passed by the respondents, he has got right of appeal and the said appeal remedy is to be exhausted in accordance with the provisions of the Act.

23.With these directions, both the writ petitions are disposed of. No costs.

(sha) 12.06.2023
Index : Yes
Speaking Order
Neutral Citation : Yes

To

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3rd floor, Pansrama BHavanam,
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S.M.SUBRAMANIAM. J.,

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