IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-04-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.5035 of 2013
And
MP No.1 of 2013

V.Venkata Siva Kumar,
Chartered Accountant,
No.10/11, Dr.Subbaraya Nagar,
Main Road,
Chennai-600 024. ... Petitioner

Vs.

1.Institute of Chartered Accountants of India,
Represented by its Secretary,
P.O.Box No.7100-I.P.Marg,
New Delhi – 110 002.

2.CA.Shah Jaydeep Narendra, President,
Institute of Chartered Accountants of India,
P.O.Box No.7100-I.P.Marg,
New Delhi – 110 002.

3.CA.Agarwal Subodh Kumar, Vice President,
Institute of Chartered Accountants of India,
P.O.Box No.7100-I.P.Marg,
New Delhi – 110 002.

4.CA Rajendra Kumar, P.Central Council Member
and Member of Finance Committee,
Triveni Apartments, Flat No.407, 158A,
Beracha Road, Kellys,
Chennai-600 010.

5.CA.R.Bhupathy, Past President, ICAI,
First Floor, No.7, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034.

6.CA.Mr.Vedjain, Past President, ICAI,
P.O.Box No.7100-I.P.Marg,
New Delhi – 110 002.

7.CA.S.Santhana Krishnan,
24, Unnamalai Ammal Street,
T.Nagar,
Chennai-600 017.

8.The Director,
Central Bureau of Investigation,
New Delhi.

9.The Central Vigilance Commission,
New Delhi.

10.The Joint Director,
Central Bureau of Investigation,
Chennai.
[R-8 to R-10 suo motu impleaded as per order
of the Court dated 30.10.2013 in WP
No.5085 of 2013] ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Central Bureau of

Investigation or the Central Vigilance Commission or any such Independent Enquiry Committee to investigate and unravel the irregularities, conspiracy and criminal breach of trust, if any, by respondents 2 to 7 and report the same to this Court for further action.

For Petitioner	: Mr.V.Venkata Siva Kumar [Party-in-Person]
For Respondent-1	: Mr.R.Sankara Narayanan, Additional Solicitor General of India, Assisted by Mr.S.Diwakar.
For Respondent-5	: Mr.Vijaya Mehanath for M/s.Anand Abdul and Vinodh Associates.
For Respondents-2 to 4, 6 to 10	: No Appearance

ORDER

The writ on hand has been instituted to direct the Central Bureau of Investigation or the Central Vigilance Commission or any such Independent Enquiry Committee to investigate and unravel the irregularities, conspiracy and criminal breach of trust, if any, by respondents 2 to 7 and report the same to this Court for further action.

2. The petitioner states that he is the Chartered Accountant and Lawyer by qualification, practising as Chartered Accountant during the relevant point of time. When the present writ petition was filed, the petitioner has been the member of the Institute of Chartered Accountants of India for more than 25 years. He is an active member of the profession, Senior Faculty/Professor in the areas of Accountancy, Costing, Finance Management and Constitutional Law of India for students pursuing Promotional Courses like CA, LLB and ACS.

3. The grievance of the writ petitioner is that certain irregularities occurred while taking a decision for developing Research and Study Centre and in this regard, the Chartered Accountants of India have taken certain serious decisions without following the procedures, which resulted in financial loss to the Institute during the relevant point of time.

4. The petitioner raises several allegations against the then President of the Institute and further states that he acted for personal gains and the decisions taken by him were non-transparent, which resulted in financial loss to the Institute.

5. The Council Members at large have raised their objections and allegations and those objections were not considered by the Institute nor a proper enquiry or investigation was conducted and therefore, the petitioner is constrained to move the present writ petition.

6. Perusal of the affidavit filed in support of the present writ petition reveals that the petitioner raises several serious allegations against the then President and the manner in which the decisions are taken by the Institute at the instance of the President of the Institute.

7. The Power of Judicial Review under Article 226 of the Constitution of India is to ensure that the processes through which a decision taken by the Competent Authorities is in accordance with the Statutes and the Rules in force, but not the decision itself. Thus the High Court cannot conduct a Roving Enquiry into the allegations raised by the petitioner, which is to be done by the Competent Forum/Authority with reference to the documents and evidences available on record, including oral evidences. Hence, serious allegations as per the writ petitioner warrants

appropriate action through the Competent Forum or the Authority to investigate the matter.

8. The learned Additional Solicitor General of India appearing on behalf of the Institute of Chartered Accountants of India (ICAI) raised objection by stating that an enquiry was conducted into the allegations raised by the petitioner by constituting appropriate Committee with reference to the Regulations in force and the amount paid by way of advance for purchase of land was also recovered by the Institute and thus there is no financial loss.

9. That apart, the decisions taken by the Institute were also gone into and the Committee constituted, submitted a report stating that there is no financial loss to the Institute and accordingly, further actions were dropped.

10. The petitioner-in-person drew the attention of this Court with reference to the interim order passed by this Court in WP No.34174 of 2012 dated 18.07.2013, wherein in paragraphs-3, 4 and 6, the following

observations are made:-

"3. When the injunction application is taken up today, the learned counsel for the respondents once again made a request to adjourn the matter on 24th July 2013. It is now evident from the submission made by the learned counsel for the respondents that the intention is to drag on the proceedings and conduct the meeting without following the mandatory Regulations.

4. The petitioner only wanted the Regulations to be followed in the matter of conduct of meeting. Regulation No.150 provides that a member of the region shall be entitled to move any resolution for the consideration of the meeting of the members subject to the condition that the draft resolutions is received by the Secretary of the Regional Council atleast 28 days before the date of meeting. The Chairman was given the discretion to admit a resolution even at a shorter notice of seven days. The resolutions sent by the petitioner were all rejected on earlier occasion without notice to him. The petitioner only wanted his resolutions to be circulated to the members and wish that a meaningful discussion would be held in respect of the affairs of the *organisation.*

6. The first respondent is a statutory body. The Southern India Regional Council was constituted by an Act of Parliament. Regulation No.150 very clearly provided for circulation of draft resolutions. The petitioner has produced the draft resolutions forwarded by him to the first respondent. In spite of Regulations No.150, the respondents are not prepared to entertain the resolution submitted by the petitioner. The attitude of the first respondent is unreasonable. In view of the adamant attitude taken by the respondents and their decision not to entertain any resolution moved by the petitioner, I am inclined to pass an interim order."

11. The petitioner-in-person made a submission that even during the hearing of the present writ petition, this Court made certain observations regarding the irregularities. However, the writ petition filed in WP 34174 of 2012 was disposed of.

12. As far as the interim orders are concerned, this Court is of an opinion that even in case, prima facie, case has been established by the

petitioner, the law must be set in motion for the purpose of conducting proper investigation in the manner known to law. The High Court cannot conduct an elaborate enquiry into the allegations, which all are more technical and more-so, it requires adjudication of documents and evidences. The petitioner raises several omissions and commissions committed by the Chartered Accountant Institute, more specifically by the then President of the Institute.

13. The relief sought for in the present writ petition to direct the Central Bureau of Investigation or the Central Vigilance Commission to investigate the matter cannot be granted by this Court. However, the petitioner, if at all, is confident about the irregularities and having materials on record to establish the allegations, he is at liberty to register a case before the Competent Authority, including the Central Vigilance Commission or the Jurisdictional Police or otherwise. In the event of not registering the complaint by the Jurisdictional Police or the Competent Authority, the petitioner is at liberty to approach the Competent Criminal Court of Law by way of private complaint for the purpose of establishing his case.

14. In the event of registering any such complaint by the petitioner before the Competent Authority, CBI Jurisdictional Police or private complaint to the Criminal Court of Law, such Authorities shall look into the issues without reference to the limitation, since the writ petition is pending before this Court from the year 2013 onwards. In the event of filing any such complaint by the petitioner, the respondents or the Authorities concerned, shall defend their case in the manner known to law and by availing the opportunities to be provided by such Authorities. All such allegations are to be considered with reference to the documents and evidences available on record and also the documents produced by the petitioner.

15. With the abovesaid liberty, the present writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

17-04-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

1.The Central Vigilance Commission,
New Delhi.

2.The Joint Director,
Central Bureau of Investigation,
Chennai.

S.M.SUBRAMANIAM, J.

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