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.8536 of 2015

V.Venkata Siva Kumar ... Petitioner

Vs.

1.Union of India,
Ministry of Corporate Affairs,
Represented by its Secretary,
A Wing, Shashtri Bhavan,
Rajendra Prasad Road,
New Delhi – 110 001.

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

3.Shri Shashi Kant Sharma,
Comptroller and Auditor General of India,
9, Deen Dayal Upadhyay Marg,
New Delhi – 110 124.

4.Mr.Rajkumar Adukia,
Central Council Member,
501, Bldg., No.3, Meridien Apartments,

Veera Desai Road,
Andheri (West),
Mumbai – 400 058.

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

6.Mr.Ved Jain, Past President of ICAI,
47, Babar Road,
Bengali Market,
New Delhi – 110 001.

7.Shah Jaydeep Narendra, Past President of ICAI,
Laxmi Sadan, Plot No.214,
Ram Nagar,
Nagpur – 440 010. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to cause a Special Audit of the financial statement of the second respondent by an independent body like Comptroller and Auditor General of India for the period 2011 to 2015 as per the provisions of Section 18(5), (5a) and (5b) of Chartered Accountants Act, 1949 narrated in Para 3 and make suggestions for improving the transparency and accountability in the operations of the second respondent.

For Petitioner : Mr.V.Venkata Siva Kumar
[Party-in-Person]

For Respondent-1 : Mr.P.G.Santhosh Kumar,
Senior Panel Counsel.

For Respondent-2 : Mr.R.Sankara Narayanan,
Additional Solicitor General of India,
Assisted by Mr.S.Diwakar.

For Respondent-3 : Mr.T.Ravikumar,
Standing Counsel.

For Respondents-4 to 7 : No Appearance

O R D E R

The writ on hand has been instituted to direct the first respondent to cause a Special Audit of the financial statement of the second respondent by an independent body like Comptroller and Auditor General of India for the period 2011 to 2015 as per the provisions of Section 18(5), (5a) and (5b) of Chartered Accountants Act, 1949 narrated in Para 3 and make suggestions for improving the transparency and accountability in the operations of the second respondent.

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 there are certain financial irregularities being committed by the Chartered Accountant Institute and the petitioner raised several objections regarding the financial irregularities committed. Since no action has been taken against the persons responsible for such financial irregularities, the petitioner is constrained to move the present writ petition for appointing an Independent Agency for conducting Special Audit.

4. The learned Additional Solicitor General of India appearing on behalf of the Chartered Accountant Institute brought to the notice of this Court that Chartered Accountants Act, 1949 itself contemplates for a Special Audit in the event of raising an objection and therefore, the

petitioner has to approach the Competent Forum under the Act for the purpose of redressal of his grievances.

5. The learned Standing Counsel appearing on behalf of the Controller and Auditor General of India made a submission that the Controller and Auditor General has no role to play in respect of the Audit or Special Audit or otherwise with reference to the Chartered Accountants of India, since it is an Autonomous Institute constituted under the Act of Parliament.

6. Section 17 of the Chartered Accountants Act, 1949, contemplates 'Committees of the Council'. Sub Section (3) to Section 17 reads as under:-

> *"(3) Each of the Standing Committees shall consist of the President and the Vice-President ex officio, and minimum of three and maximum of five members to be elected by the Council from amongst its members."*

7. Section 18 of the Chartered Accountants Act, 1949 denotes 'Finances of the Council'. Accordingly, there shall be established a fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.

8. Section 18(5) of the Chartered Accountants Act, 1949 stipulates that “the annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a Chartered Accountant in practice to be appointed annually by the Council.”

9. Second Proviso to Section 18(5) of the Chartered Accountants Act, 1949 reads as under:-

> *“Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a Special Audit to be conducted.”*

10. The Proviso Clause contemplates that if any irregularity or

falsehood is brought to the notice of the Council, then the Council may itself cause a Special Audit to be conducted.

11. In the present case, the petitioner-in-person states that no such Special Audit as contemplated was conducted and the serious objections raised by the petitioner were not looked into by the Council. In this regard, many other ordinary members raised their respective objections, which were also not considered by the Council. When several members are raising such objections with reference to the Audit conducted, then the Council ought to have considered the same objectively and order for Special Audit to be conducted in order to develop transparency and trust in the matter of dealing with the finance of the Institute.

12. No doubt, Special Audit is to be conducted only in the event of falsehood or irregularity or illegality. In the present case, the petitioner raises several objections with reference to the financial aspects and he states that other members also raised similar objections for conducting Special Audit.

13. In view of the facts and circumstances, the petitioner is at liberty to submit his detailed objections or otherwise, to the Central Council of Institute of Chartered Accountants of India, within a period of four weeks from the date of receipt of a copy of this order. In the event of submitting any such objection by the petitioner or by any other member of the Institute, the Central Council of the Institute of Chartered Accountants of India shall consider the objections and if there is any irregularity, doubt, falsehood or otherwise, then conduct Special Audit into the allegations or otherwise raised and thereafter communicate the result to the petitioner, within a period of three months from the date of submission of the objections by the petitioner.

14. With the abovesaid liberty, the present writ petition stands dismissed. However, there shall be no order as to costs.

17-04-2023

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

1.The Secretary,
Union of India,
Ministry of Corporate Affairs,
A Wing, Shashtri Bhavan,
Rajendra Prasad Road,
New Delhi – 110 001.

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

S.M.SUBRAMANIAM, J.

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