



C.R.P.No.3045 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.08.2023

DELIVERED ON: 12..09..2023

CORAM :

The Hon'ble Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3045 of 2019

T.Ramesh

.... Petitioner

VS

1. The Board of Discipline,
Constituted under ICAI Act,
Represented by its Deputy Secretary
Mr.CA.Amit Threja,
ICAI Bhawan, Post Box No.7100,
Indraprastha Marg, New Delhi-110 002.

2.CA.Anil Kumar Lunawath(M.No.213782)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order dated 12.12.2018 in Ref No.PR-20/2014-DD/146/2014-BOD/259/2017 on the file of the Board of Discipline constituted under Section 21A of the Chartered Accountants Act, 1949.



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For Petitioner : Mr.Nithyaesh
For M/s Nithyaesh and Vaibhav

For respondents : Mr.J.Harikrishna
For R.1
Mr.M.Sricharan Rangarajan
Senior Counsel for
Mr.S.Anandakumar
For R.2

ORDER

This Civil Revision Petition arises against an order passed in Ref No.PR-20/2014-DD/146/2014-BOD/259/2017 dated 12.12.2018 by the Board of Discipline constituted under Section 21A of the Chartered Accountants Act, 1949.

2. The revision petitioner before me had lodged a complaint against the second respondent before the first respondent. The civil revision petitioner alleged that the second respondent had committed acts of professional misconduct. He filed a complaint under Form-I with the first respondent. The first respondent had been constituted under Section 21 of the Chartered Accountants Act, 1949. The complaint was dismissed exonerating the second



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respondent from the charges. Aggrieved by the same, the present Civil Revision Petition has been filed.

3. When the matter came up for final hearing before me, I had raised a doubt as to how the revision is maintainable since the Board of Discipline constituted under Section 21A of the Chartered Accountants Act, 1949 is not a Court or Tribunal within Article 227 of Constitution of India. The power of the High Court under Article 226 of Constitution of India covers the entire gamut of State, persons, authority, Court and Tribunals. Insofar as the jurisdiction under Article 227 of the Constitution of India is concerned, it is revisional in nature and is exercised over “all courts and tribunals”. The Board of Discipline not being a Court and this need not retain us for the moment.

4. Mr.Nithyaesh would submit that the Board of Discipline is a "Tribunal" as it has been created under Chartered Accountants Act, 1949 and therefore, susceptible to the jurisdiction of this Court under Article 227 of Constitution of India. He would bring to my attention a judgment rendered by this Court as early as 1964 reported in **Union of India vs R.N.Rajam Iyer.**



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(1964) 77 Law Weekly 207

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5. A careful reading of the judgment would show that during the relevant time, the High Court had the power to revise an order passed by the Council under Section 22 A of the Chartered Accountants Act, 1949. The said power is not available as on today. Therefore, this judgment is not helpful for deciding the issue.

6. Mr.Nithyaesh would then refer to the judgment in ***L.Dakshinamoorthy vs Bar Council of Tamil Nadu 1998 (II) CTC 592*** to state that the High Court has the power of revision under Article 227 of Constitution of India with respect to the notices issued by professional bodies.

7. I have gone through the judgment in detail. In the said judgment, there is no discussion whether a petition under Article 227 of the Constitution of India is maintainable or not against a disciplinary proceeding/body/Committee. It looks like the objection as regards maintainability was never raised before the learned Judge and therefore, had



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not been gone into by him.

8. He would then cite the case of ***Surya Dev Rai vs Ram Chander Rai and others (2003) 6 SCC 675*** to state that the power of the High Court under Articles 226 and 227 is in addition to the revisional power conferred on it.

9. I have to state that the judgment of ***Surya Dev Rai vs Ram Chander Rai and others (2003) 6 SCC 675*** was partly overruled in the case of ***Radhey Shyam vs Chhabi Nath. (2015) 5 SCC 423***. It was overruled insofar as the position of law that the High Court can exercise its extraordinary jurisdiction under Article 226 of Constitution of India to interfere with judicial orders passed by a competent court of jurisdiction, in which, all parties are private individuals. However, the position of law with respect to the distinction between the powers under Articles 226 and 227 of the Constitution of India stood affirmed in ***Radhey Shyam's case***.

10. A reading of the case of ***Radhey Shyam vs Chhabi Nath. (2015) 5 SCC 423*** would lead us to a conclusion that all Courts and Tribunals which are



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functioning in the territorial jurisdiction of this Court are subordinate to it. The control and working of the Subordinate Court while exercising their statutory appellate or revisional authority are subject to the jurisdiction of the Court under Article 227 of the Constitution of India. Despite the curtailment of the power of this Court to revise an order pursuant to the amendment to Section 115 of Code of Civil Procedure under Act 46 of 1999, the power of this Court to exercise superintendence and control over courts and tribunals and exercise revisional jurisdiction continues to be recognised by virtue of Article 227 of Constitution of India. Being a Constitutional Court, the power is inherent, as it were.

11. Mr.Nithyaesh would cite another judgment in the case of ***State of Gujarat and another vs Gujarat Revenue Tribunal Bar Association and another (2012) 10 SCC 353.***

12. A reading of Paragraph-16 of the judgment shows that in order to constitute a Tribunal, it must discharge judicial functions. The decision so made should affect the rights and liabilities of the parties. The material part of



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judicial function is enquiry and investigation of the facts. The Supreme Court categorically held that a Tribunal need not necessarily be a "Court" even if it is being presided over by a Judicial Officer. In our case, as would be seen later, the first respondent does not exercise judicial powers nor does it decide the rights and liabilities of parties to a "lis".

13. Mr.Nithyaesh, then turns to a judgment of a Constitution Bench of the Supreme Court in the case of *Associated Cement Companies Ltd vs P.N.Sharma and Another AIR 1965 SC 1595*. On the basis of this judgment, he will argue that the first respondent is a Tribunal.

14. The controversy that arose before the Supreme Court in that case was whether the State of Punjab, while exercising its appellate jurisdiction under Rule 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules 1952, is a "Tribunal" within the meaning of Article 136(1) of the Constitution.

15. Mr.Nithyaesh is right in comparing Article 227 of the Constitution



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of India with Article 136. Insofar as the power of the High Court and the Supreme Court, Article 136 is plenary power and it can be exercised over any "Court" or "Tribunal". The words "Court or Tribunal" occur both under Article 136 and Article 227 of Constitution of India. The said judgment has laid down the test to determine as to whether a body is a Tribunal.

16. The test for a body becoming a Tribunal is that (i) there should be a *lis*, (ii) the State transfers its judicial powers and (iii) its functions include **adjudicating** special matters and disputes between parties before the said body.

17. The test is to check whether a particular Tribunal decides a *lis* between contesting parties. A *lis*, as defined in the case of ***Namit Sharma vs Union of India (2013) 1 SCC 745***, is a piece of litigation, controversy or dispute. I am alive that the position of law laid down in the case of ***Namit Sharma vs Union of India*** was overruled on another point, but this test has remained undisturbed. As per Wharton's Legal Dictionary, a *lis* means a suit, action, controversy or dispute.



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18. I have to see whether a complaint given to a professional body amounts to a *lis*. It is no doubt initiated through a statutory form, but, I am of the opinion that rights and responsibilities of the parties are not being decided here.

19. An **adjudication** implies that there is a *lis* before the Court of Tribunal and the Tribunal decides the same after hearing both the parties. The mere fact that the parties are heard does not make a body - a Tribunal. Principles of natural justice have grown to such an extent that even without a body being a Tribunal, it has been called upon to comply with the principles of natural justice. The basis of this principle is attributed to the Act of the Almighty. God did not punish Adam, banishing him from Paradise, without hearing him. If principles of natural justice applies to Almighty, all the more it applies to his frail creatures. Therefore, the test is not whether the parties are heard and examined, but, whether there is a transfer of judicial power from the State to a body and that body is clothed with the power of adjudication of a *lis*.



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20. It is here I can usefully refer to the judgment of a Constitutional Bench in the case of ***Bar Council of Maharashtra vs M.V.Dabholkar and others (1975) 2 SCC 702***. A seven Judge Constitution Bench heard the matter. A.N.Ray, C.J., wrote the majority judgment. In paragraph 25 of the judgment, it is held as follows:

“25. In finding out the meaning of the words "person aggrieved by an order made by the disciplinary committee of the Bar Council of India", two features are to be kept in the fore-front. First, there is no lis in proceedings before the disciplinary committee. When the disciplinary committee exercises the power to reprimand the advocate, or suspend the advocate from practice or remove the name of the advocate, the committee does not decide a suit between the parties. The Bar Council in placing a matter before the disciplinary committee does not act as prosecutor in a criminal case. A complainant who prefers a complaint against an advocate is not like a plaintiff in a civil suit. The complaint is examined by the Bar Council in order to find out whether there is any reason to believe that any advocate has been guilty of misconduct. The Bar Council may act on its own initiative on information which has come to its notice in



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the course of its duties. Second, there is no party to the disciplinary proceedings. It is because the Bar Council, the Attorney-General, the Advocate-General, as the case may be, all act in protecting the interests of advocates, the interests of the public. In so acting there is no conflict between the advocate and another person. The reason is that it is professional conduct, professional etiquette, professional ethics, professional morality, which are to be upheld, transgression of which results in reprimanding the advocate of suspending him from practice or removing his name from the roll. “

21. A reading of this judgment makes it clear that a complainant who lodges a complaint with the disciplinary authority is not akin to a plaintiff in the suit. The Board of Discipline, while examining the complaint, only finds out whether it has any reason to believe that the alleged delinquent Chartered Accountant is guilty of misconduct. The Chartered Accountants Act can be compared with the Advocates Act of 1961. The investigation by Board of Discipline can be at the instance of a person who feels pained at the treatment he received from Chartered Accountant or by any other party including a third party. The Board of Discipline can also get the information suo-motu and start



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investigation into the conduct of the Chartered Accountant. Such a suo-motu investigation is not permitted for a Tribunal to do unless and until it is so empowered by the statute creating it.

22. In fine, the Body to be a Tribunal should be

- (i) constituted for the exercise of the judicial functions, which has been transferred to it, by the State;
- (ii) it requires a *lis*;
- (iii) Two or more contesting parties
and
- (iv) adjudication of the *lis* before it.

23. If any one of the above conditions fails, the Body cannot be treated as a Tribunal. In case on hand, a professional misconduct not being a *lis*, the Board of Discipline cannot be held to be a Tribunal within the meaning of Article 227 of the Constitution of India. Consequently, it is not amenable to my revisional jurisdiction. Therefore, the Civil Revision Petition is dismissed as not maintainable.



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24. At this stage, Mr.Nithyaesh requested that this proceeding may be converted into one of a writ proceeding under Article 226 of the Constitution of India. Acceding to his request, liberty is granted to the civil revision petitioner to file a writ petition under Article 226 of the Constitution of India. If such a writ petition is filed, the period during which, this Civil Revision Petition was prosecuted shall not be held against the petitioner on the ground of laches.

25. The Civil Revision Petition is dismissed as not maintainable. No costs.

12.09.2023

Index : Yes/No

Internet : Yes/No

sr

To

The Board of Discipline,
Constituted under ICAI Act,
Represented by its Deputy Secretary
Mr.CA.Amit Threja,
ICAI Bhawan, Post Box No.7100,
Indraprastha Marg, New Delhi-110 002.



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V.LAKSHMINARAYANAN,J.,

SR

Pre-Delivery Order in
CRP No. 3045 of 2019

12.09.2023



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C.R.P.No.3045 of 2019

Pre-delivery Common Order in CRP No.3045 of 2019

To

The Hon'ble Mr.Justice **V.LAKSHMINARAYANAN**

Most respectfully submitted

S.Revathi
Prl.Pvt.Secy to Hon'ble Judges