IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.1663 of 2023

1. The Institute of Chartered Accountants of India,
   Rep. by it's the President,
   ICAI Bhawan, Indraprastha Marg,
   New Delhi - 110 002.
   also at:
   ICAI Bhawan,
   Nungambakkam High Road, Thousand Lights West,
   Thousand Lights, Chennai - 600 006.

2. Assistant Secretary,
   Disciplinary Directorate,
   The Institute of Chartered Accountants of India,
   ICAI Bhawan, Indraprastha Marg,
   New Delhi - 110 002. .. Appellants

Versus

N.Sethuraman .. Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent to set aside the judgment, dated 21.04.2022 passed by this Court in W.P.No.12251 of 2019 by allowing this Writ Appeal with costs.

For Appellants : Mr.Rajesh Ramanathan

For Respondent : Mr.J.Sivanandaraaj,
Senior Counsel
Assisted by M/s.Ridhima Sharma

JUDGMENT
(Judgment delivered by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Writ Appeal is directed against the order of the learned Single Judge, dated 21.04.2022 in W.P.No.12251 of 2019. The writ petitioner, a Chartered Accountant, had challenged the order of the second respondent, dated 05.09.2014, by which, disciplinary proceedings were initiated against him by the appellant, namely, the *Institute of Chartered Accountants of India*.

2. The brief facts are that the writ petitioner, was a partner in a firm namely, *Fraser & Ross* and he retired from the firm with effect from 31.03.2002. While so, State Bank of India conducted a forensic audit in respect of its non-performing assets (NPA) and it came to light that a Company known as *First Leasing Company of India Limited* had projected an erroneous picture of itself by inflating its income and assets since 1998 and had obtained excess financial assistance to the tune of Rs.1,300 crores over and above to the sum which it was otherwise eligible. The audit report

revealed negligence on the part of the firm namely, *Fraser & Ross* and therefore, they forwarded it to the respondents for taking appropriate disciplinary action along with a complaint.

3. A copy of the said complaint was forwarded to the petitioner on 15.04.2014 and his explanation was sought for by the appellant. The petitioner submitted his explanation requiring the copies of the annexures mentioned in the audit report for submitting his detailed reply. The petitioner also requested dropping of further proceedings by pleading that he retired from the profession in the year 2002 and also his advanced age. However, the said request was rejected by an order, dated 19.06.2015 and again he was called upon to submit his written statement of defence within a period of 21 days therefrom. The petitioner, on 07.09.2015, submitted his explanation to the charges against him.

4. It was the primary contention of the writ petitioner that unless he goes through the documents which were furnished to him at the relevant time, he would not be in a position to submit his explanation as to whether the fudging of figures by the said company could have been avoided by him

or whether the different facts and figures were furnished to him. As a professional, he was supposed to maintain the files and papers for a period of seven years and therefore, at this distance point of time, he is handicapped on account of the delay.

5. Thereafter, the matter was in cold storage and on 14.02.2019, the appellant confirmed it's preliminary findings and decided to proceed further in the enquiry. It is at this stage, the petitioner filed the Writ Petition challenging the initiation of the proceedings.

6. The Writ Petition was resisted by the respondents stating that there was no delay in initiating the disciplinary proceedings as the delinquency came into light only after the forensic audit report which was forwarded by the public sector Bank. It is the petitioner who has been praying for documents and other things and only in the year 2015, he finally submitted his explanation and thereafter, the matter has been proceeded in the year 2019. Therefore, there was no delay. All the documents including the various annexures to the Forensic Report were furnished to the petitioner.

7. The Learned Single Judge after considering the case of the parties, allowed the Writ Petition by holding that in view of huge delay in initiation and conduct of proceedings and in view of non-supply of the documents relied upon by the appellants, the disciplinary proceedings stood vitiated.

8. *Mr.R.S.Rajesh Ramanathan*, learned Counsel for the appellant would submit that the finding of the learned Single Judge that the petitioner was handicapped due to non-supply of certain documents relied upon in the preliminary satisfaction for the enquiry, is erroneous inasmuch as from the very explanation submitted by the writ petitioner himself, it would be clear that he got all the annexures from the other Auditor namely, *K.N.Ramasubramanian* and he had relied upon various portions of the said annexures in his explanation. He would further submit that when the documents were duly furnished, the delay has been categorically explained before the learned Single Judge that even though the incident happened prior to the year 2002, the misconduct / negligence of the writ petitioner was revealed only by the conduct of the forensic audit by the State Bank of India and when it is forwarded in the year 2014, immediately, proceedings were initiated and there is no delay whatsoever in initiating the proceedings.

9. *Mr.Rajesh Ramanathan*, would further submit that appellant is not responsible for the delay in conduct of the enquiry, as, only by September, 2015, the explanation was submitted by the writ petitioner. The further delay of three years should not be taken as fatal. In support of his submission, the learned Counsel relied upon the judgment of the High Court of Telangana and Andhra Pradesh in ***The Institute of Chartered Accountants of India Vs. Mukesh Gang***[1], more-fully, relying upon paragraph No.147 of the judgment.

10. Per *contra*, *Mr.J.Sivanandaraaj*, learned Senior Counsel appearing on behalf of the writ petitioner would submit that presently, the respondent is 87 years of age. The other partner, against whom, the disciplinary proceedings were initiated also has since passed away. The writ petitioner retired from the firm in the year 2002. He was expected to maintain the files in his office only for a period of seven years and the alleged delinquency is of the period 2000 - 2002 and there is an unexplained and inordinate delay of 12 years in initiation of the disciplinary proceedings. There is a further delay of 5 years in conduct of the disciplinary

1 MANU/AP/0809/2016

proceedings. Only when the appellants sought to continue the disciplinary proceedings belatedly in the year 2019, the Writ Petition was filed. As such, the learned Single Judge rightly quashed the proceedings.

11. In support of his submissions, the learned Senior Counsel relied upon the judgment of a learned Single Judge of the High Court of Delhi in ***Wholesale Trading Services P. Ltd., Vs. Institute of Chartered Accountants of India and Ors.***[2], more specifically relying upon paragraph No.18 of the said judgment.

12. We have considered rival submissions made on either side and perused the material records of the case. In matters of disciplinary proceedings: (i) if there is an inordinate and unexplained delay in initiation of the disciplinary proceedings; (ii) if there is an undue delay in conduct of the disciplinary proceedings; (iii) if the delay results in prejudice to the delinquent employee disabling him from mustering such evidence at his command to persuade the disciplinary authority to come to the conclusion that he is not guilty of the delinquency complained; (iv) or if by the huge efflux of time he is not in a position to marshal the facts by remembering the

2 2019 SCC OnLine Del 9543

details and particulars in respect of the charge, especially in matters where the nature of charge is such that it would require the recollection of those day-to-day details, then the same is a ground for interfering in the disciplinary proceedings. The basis is that the delinquent should have a fair opportunity to defend himself in the disciplinary proceedings. Useful reference in this regard can be made to the Judgments of the Supreme Court of India in ***State of Punjab and Ors. Vs. Chaman Lal Goyal***[3] (delay in initiation) and ***State of Madhya Pradesh Vs. Bani Singh and Anr.***[4] (delay in conduct).

13. With this position in mind, if the case on hand is considered, even though there is a plausible explanation for the initiation of the proceedings by the respondents in the year 2014 as the delinquency itself had come to light only after the forensic audit, the delay in conduct of the enquiry after the writ petitioner submitted his explanation in the year 2015 and till the decision on the preliminary findings in the year 2019, by itself is more than three years which is unexplained. Given context of the case in which the delinquency complained is of the year 1998-2002, such delay of more than

3 (1995) 2 SCC 570
4 1990 Supp (1) SCC 738

three years is inordinate. The writ petitioner is 87 years of age. The delinquency complained is about the negligence while handling the accounts of the Company. The same would require remembering of particulars which the Company has furnished and it relates to day-to-day working of the Chartered Accountant firm, by which, the accounts have been dealt with. In view of the huge efflux of time of more than 17 years (more precisely 12 years for initiation and another 5 years for further proceedings), the writ petitioner would not be in a position to muster all the materials in his support nor marshal the facts so as to effectively defend himself. Therefore, any enquiry conducted at this stage will not be a fair opportunity to the writ petitioner.

14. In view thereof, no exception whatsoever can be taken to the conclusions of the learned Single Judge that the enquiry cannot be proceeded with. Accordingly, this Writ Appeal is devoid of merits and is dismissed. There will be no order as to costs. Consequently, C.M.P.No.14813 of 2023 is closed.

(S.V.G., CJ.) (D.B.C., J.)

12.10.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

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