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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 14<sup>th</sup> March, 2023*

+ **W.P.(C) 1887/2023 and CM APPL. 7190/2023, 12064/2023**

**VIJAYKANT JAGANNATH KULKARNI** ..... Petitioner

Through: Mr. Apoorv Kurup, Advocate with  
 Ms. Ranu Purohit, Mr. Rohit Anil  
 Rathi and Ms. Aditi Dani, Advocates  
 (M: 8447971163).

versus

**DISCIPLINARY COMMITTEE THE ICAI AND  
 ORS**

..... Respondents

Through: Mr. Febin Mathew Varghese,  
 Advocate for R-1 (M: 9953418874).

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition raises a challenge to the impugned order passed by the Disciplinary Committee of the Institute of Chartered Accountants of India ( hereinafter 'ICAI') dated 6th January, 2023 followed by the notice dated 10th January, 2023 issued by the Disciplinary Directorate. It also seeks to challenge the notice dated 5th May, 2014 issued by the Disciplinary Directorate, ICAI, opinion dated 17th March, 2017 formed by the Director (Discipline), ICAI as also the notice dated 5th June, 2017 issued by the Disciplinary Directorate ICAI, all of which culminated into the impugned order dated 6th January, 2023.
3. The brief background of this case is that the Petitioner-Mr. Vijaykant Jagannath Kulkarni is a Chartered Accountant and partner of the firm M/s V.J. Kulkarni & Associates ( hereinafter 'Petitioner- Firm') which was the statutory auditor of the New India Co-operative Bank Limited (hereinafter

'said Bank' ) for the financial year 2010-2011. The Reserve Bank of India (hereinafter 'RBI') carried out an inspection of the financial records of the said Bank for the year ended 31st March 2011 and the same resulted in a communication from the RBI dated 27th November, 2013 to the Petitioner-Firm stating that the Petitioner-Firm would be debarred from conducting any audit assignments of banks for a period of two years. A communication was also simultaneously addressed to the President ICAI seeking appropriate action against the Petitioner-Firm alleging serious shortcomings observed in the statutory audit of the bank.

4. The ICAI, in May 2014, informed the Petitioner-Firm about RBI's letter, and conveyed that it was to be treated as 'information' and all required documents were sought. The proceedings continued over several years. On 17th March, 2017, the Director Discipline, ICAI submitted a *prima facie* opinion to the Disciplinary Committee stating that the Petitioner/Petitioner-Firm was guilty of professional misconduct falling within the meaning of Clauses (6),(7) and (9) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949. The Petitioner was then informed by the Disciplinary Directorate that the Disciplinary Committee concurred with the *prima facie* opinion given by the Director (Discipline) and the Petitioner was called upon to file its written statement/defence.

5. The Petitioner was permitted to file its defence and a hearing was also granted on 5th August, 2022. On 6th January, 2023, the impugned order was passed by the Disciplinary Committee *qua* the Petitioner which reads as -

*"5.1 The Committee noted that Counsel for the Respondent basically argued on the basis of legal framework and accounting provisions applicable to a Multi-state Co-operative Bank. He further argued on*

provisions of Section 62 and 63 of the Multi-State Co-operative Societies Act, 2002, mentioning that there is no distinction between 'above the line' or 'below the line' for a Multi-State Co-operative Bank and hence there is no prohibition on inter-se transfer of balances from one type of reserve to another, directly without routing through the Profit & Loss account.

5.2 The Committee noted that the Respondent/ his Counsel had mainly argued as per formats prescribed for the Balance Sheet and the Profit & Loss account, and that there is no separate provision for appropriation of the profits. The Committee noted that although the prescribed formats require to show the final balances on face of the Financial Statement, yet it does not prohibit appropriation of profits. Further, section 62 only defines net profit that can be distributed by way of bonus or dividend among the members. It does not mean that there is no distinction between 'above the line' and 'below the line' in the formats prescribed for a Multi-State Co-operative Bank.

5.3 The Committee also noted that the Respondent in his submissions given at prima-facie stage had mentioned (Point no. 6a on Page B-24 of Prima facie opinion) that Master Circular UBD BPD (PCB) MC. No. 12/16.20.000/2010-11 dated July 01 2010 is addressed to only all "Scheduled Commercial Banks" and not to "Scheduled Co-operative Banks". The Committee noted that Master Circular UBD BPD (PCB) MC. No. 12/16.20.000/2010-11 dated July 01, 2010 on Master Circular on Investments by Primary (Urban) Co-operative Banks is applicable in extant case because Section 56 (cciiia) of the Banking Regulation Act, 1949 primary Co-operative bank also.

5.4 The Committee noted Paragraph 17 of said circular lays down provisions relating to the creation and utilization of Investment Fluctuation reserve which states as follows:

*17.1 Banks should build up Investment Fluctuation (IFR) out of realized gains on sale of investment, and subject to available net profit of a minimum of 5 per cent of the investment portfolio by March, 2008. This minimum requirement should be computed with reference to investments in two categories, viz., Held for trading (HFT) and Available for sale (AFS). It will not be necessary to include investment under 'Held to Maturity' category for the purpose. However, Banks are free to build up a higher percentage of IFR up to 10 per cent of the portfolio depending on the size and composition of their portfolio, with the approval of their Board of Directors".*

*17.2 Banks should transfer maximum amount of the gains realized on sale of investment on securities to the IFR. Transfer to IFR shall be as an appropriation to Statutory Reserve.*

*17.5 Transfer from IFR to the Profit & Loss Account to meet depreciation requirement on investments would be a "below the line".....*

*...CONCLUSION*

*7. In view of the above findings stated in the above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent GUILTY of Professional Misconduct falling within the meaning of Items (6) (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on both charges."*

6. The said order was passed by the Disciplinary Committee consisting of four members. A notice dated 10th January 2023, was then issued by the Disciplinary Directorate, ICAI calling upon the Petitioner and giving him an opportunity of being heard in terms of Section 21B of the Chartered Accountants Act, 1949 and the relevant Rules.

7. On the last date of hearing, a submission was made by Mr. Kurup, Id. counsel appearing for the Petitioner that there are discrepancies in the RBI

report which has been placed on record. There are two versions of the report and it is unclear as to which report has been considered by the ICAI's Disciplinary Committee. Accordingly, the following order dated 7th February 2023 was passed:-

*“3. Ld. counsel for the ICAI has appeared and accepted notice. It is his submission that at this stage, the writ petition would not be maintainable inasmuch as the ICAI would be now be proceeding in accordance with Section 21B of the Chartered Accountants Act, 1949 (hereinafter ‘Act’) and the final action would be taken under Section 21B(5). The Petitioner would be entitled to file an appeal against the said decision to the Authority under Section 22G of the Act.*

*4. On the other hand, Mr. Apoorv Kurup, ld. Counsel appearing for the Petitioner points out that the RBI inspection report which is the basis of the action taken against the Petitioner itself consists of several discrepancies. For example, he highlights the fact that the net profit amounts in the first version of RBI's inspection report at page 126 of the petition and in the second version of the RBI's inspection report at page 274 of the petition are different. Also, the BDDR for loans entry in the said versions of the report which is at pages 118 and 266 of the petition are completely different. There is overwriting in the second version of the report. Mr. Kurup, ld. Counsel further submits that the Petitioner raised this as a ground in the hearing, however, the same has not been considered. Since the entire issue has arisen in view of the report and the dates of different parts of the second version of the report are also different, the matter deserves to be looked into.*

*5. Ld. counsel for the ICAI submits that a hearing would be granted to the Petitioner prior to any action being taken in terms of Section 21B(5) and the discrepancies can be pointed out at that stage by the*

*Petitioner or in appeal under section 21G.*

*6. After having perused the final finding of the Disciplinary Committee holding the Petitioner guilty, the Court is of the opinion that the fulcrum of the case being the inspection report of the RBI, there ought to be some clarity as to which version of the report led to the finding of guilty against the Petitioner.*

*7. In view thereof, let ld. counsel for the ICAI take instructions and revert on the next date of hearing.”*

8. Today, the ld. Counsel for ICAI clarifies that the RBI report which has been taken into consideration by ICAI is the one bearing the date of 29th September, 2014 with a covering letter along with the report which is filed at pages 246 onwards. In the said document the seal of the RBI is placed at the bottom right corner of each of the pages. It is submitted that this report has been considered in the findings arrived at by the Disciplinary Committee.

9. Mr. Kurup, ld. Counsel on the other hand submits that the Petitioner has now received a notice fixing the date of hearing under Section 21 for 16th March, 2023. Further, the Petitioner also contends that if the stand of the RBI is that the second report at page 246 is considered then there are various discrepancies even in the said report which go to the root of the matter.

10. Various submissions have also been made on some of the issues on merits, as well.

11. However, this Court is considering the stand of the Petitioner in writ jurisdiction under Article 226. Admittedly, the order passed by the ICAI's Disciplinary Committee is an appealable order under Section 22G of the Chartered Accountants Act 1949. The submission of Petitioner's counsel is

that the Petitioner would only be able to challenge the final order by which the punishment is imposed and there is no remedy prior to that which is provided to the Petitioner, challenging the impugned order.

12. It is Mr. Kurup's submission that considering that the Petitioner is a Chartered Accountant and a professional, the sentencing is likely to affect his professional standing and thus the writ ought to be entertained even on the merits of the findings arrived at by the Disciplinary Committee.

13. On the other hand, Id. Counsel for the ICAI submits that the Disciplinary Committee's report is followed by the order passed under Section 21B(5). The main report as also the final order of punishment, would be assailable under Section 22G. All the submissions being made on merits would also be considered by the Appellate Authority under Section 22G.

14. In any case, he submits that irrespective of whichever version of the RBI report is considered, the findings of the Disciplinary Committee are on a matter of principle as to the manner in which certain reserves which ought to be maintained by the Bank were not maintained and this fact has been overlooked by Petitioner, who was the statutory auditor.

15. This submission is countered by the Id. Counsel for the Petitioner who submits that the movement of funds within the Banks is not the prerogative of the Petitioner but is a decision taken by the said Bank for which the Petitioner cannot be held responsible. Further, the Petitioner is not found lacking in his conduct in any way.

16. Heard Id. Counsel for the parties. Section 22G of the Chartered Accountants Act, 1949 reads :-

**"22G. Appeal to Authority**

*(1) Any member of the Institute[or a firm] aggrieved by any order of the Board of Discipline or the Disciplinary Committee [imposing on such member or firm] any of the penalties referred to in [sub-section (5) or sub-section (6) of Section 21A or sub-section (5) or sub-section (6) of Section 21B, as the case may be, may], within ninety days from the date on which the order is [communicated to such member or firm], prefer an appeal to the Authority:*

*Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days:*

*Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.*

*(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under [sub-section (5) or sub-section (6) of Section 21A or sub-section (5) or sub-section (6) of Section 21B] and may –*

*(a) confirm, modify or set aside the order;*

*(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;*

*(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or*

*(d) pass such other order as the Authority thinks fit:*

*Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.]*

*[(3) No order or act or proceeding of the Authority shall be called in question in any manner, on the ground merely of any defect in the constitution of, or a casual vacancy or absence of one or two members, of*

*the Authority.*

*Explanation 1-For the purposes of this Chapter,-*

*(A) "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry;*

*(B) a "firm" registered with the Institute shall also be held liable for misconduct of a member who was its partner or owner on the date of the alleged misconduct, although he has ceased to be such partner or owner, at the time of the inquiry.*

*Explanation 2- No action taken under the provisions of this Chapter shall bar a Central Government Department or a State Government or any statutory authority or regulatory body to take action against a member or a firm registered with the Institute under any other law for the time being in force.]”*

17. The Disciplinary Committee has at this stage passed an order holding the Petitioner guilty of professional misconduct. However, the final decision as to what action needs to be taken against the Petitioner is yet to be determined by the Disciplinary Committee. Under Section 21B(5), the Disciplinary Committee is to afford a proper hearing to the Petitioner and only thereafter proceed to take action. Such an order under Section 21B(5) is clearly appealable to the Authority. The clarification as to which of the RBI reports has been considered, has been made by the ICAI today. Any submissions in respect of the merits of the matter would have to be clearly considered by the Appellate Authority and not by this Court in writ jurisdiction.

18. Considering the long delay that has taken place in this matter from 2013 onwards till date, in the unique facts and circumstances of this case, the following directions are issued:-

- i) The Petitioner shall appear before the Disciplinary Committee and make his submissions in respect of the action under Section 21B(5).
  - ii) A final order passed by the Disciplinary Committee shall be communicated to the Petitioner.
  - iii) The Petitioner would be entitled to approach the Appellate Authority under Section 22G both in respect of the order dated 6th January, 2023 and the final order to be passed by the Disciplinary Committee. For a period of eight weeks, the final order that may be passed would not be given effect to in order to enable the Petitioner to approach the Appellate Authority under Section 22G.
19. The Appellate Authority shall then proceed in accordance with law including in respect of consideration of interim protection, if any.
20. All the contentions of the parties are left open to be agitated before the Appellate Authority. The Petitioner is permitted to file his reply *qua* the hearing on action under Section 21B(5) within a week. The hearing on 16th March 2023 shall be cancelled and a new date of hearing be now communicated to the Petitioner. The hearing may take place either physically or virtually depending upon the convenience of the Disciplinary Committee Members and the Petitioner.
21. This Court has not examined the merits of the matter.
22. With these above observations, the present petition with all pending applications, if any, is disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**MARCH 14, 2023**

*mr/rp*