* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th NOVEMBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 6682/2021**

HEMA GUSAIN ..... Petitioner

Through: Mr. Alakh Alok Srivastava, Mr. Chandan Kumar Singh, Advocates

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND OTHERS ..... Respondents

Through: Mr. Febin M. Varghese, Mr. Samuel David, Advocates for R-1/ICAI
Mr. Aman Vashisht, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks to challenge the Order dated 30.03.2021, passed by the Respondent No.1, closing the complaint of the Petitioner herein against Respondent No.2 herein. The Petitioner has also prayed for a direction to the Respondent No.1 to re-open her complaint and conduct a disciplinary enquiry against the Respondent No.2 in terms of the Chartered Accountants Act, 1949 and the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases), Rules 2007.

2. The facts, in brief, leading to the present Petition are as under:

a) It is stated that on 03.04.2017 the Petitioner herein was appointed as Secretary (Designate) by Respondent No.3, which is a registered Society under the Societies Registration Act, 1860. It is stated that the Petitioner was to act as Secretary (Designate) with effect from 01.04.2017 to 31.08.2017 and was to be subsequently appointed as Secretary, IIC, with effect from 01.09.2017.

b) It is stated that on 23.06.2017, Mr. Soli Sorabjee, the then President of the Respondent No.3/Society stepped down and one Mr. N. N. Vohra was appointed as the President of the Respondent No.3/Society.

c) It is alleged that due to personal differences with the Petitioner herein, in the meeting of the Board of Trustees dated 21.07.2017, Mr. N. N. Vohra brought in the agenda of keeping the appointment of the Petitioner herein as Secretary of the Respondent No.3/Society in abeyance. It is further stated that the Petitioner was accused of financial irregularities in the processing/award of contracts by the Purchase and Maintenance Department and also of granting improper membership of the Respondent No.3/Society.

d) It is stated that in order to carry out a special audit of the allotment of Regular Membership and Short Term Associate Memberships (STAMs) during the period 01.10.2014 to 30.04.2017, Respondent No. 2/Firm was appointed by the Respondent No.3/Society.

e) It is stated that Respondent No.2 appointed one Mr. Vijay Lalla, who was the partner of Respondent No.2/Firm, to conduct the said Audit based on the information provided by the Respondent No.3/IIC.

f) Special Audit Report dated 08.09.2017 was released by Respondent No.2/Firm wherein it was disclosed that the allotment of membership was done in a highly irregular manner and in certain cases even without taking proper approvals of the sanctioning authority. It is further stated in the Report that Rules laid down by the Board of Trustees in relation to the ceiling placed on maximum number of STAM members at any given point of time have been violated while allotting membership. While the Audit report highlights certain irregularities in the allotment of Regular Membership and STAM by Respondent No.3/IIC however, no specific individual has been named in the said report.

g) It is stated that on the basis of the Audit Report, Respondent No.3/IIC suspended the Petitioner herein on 08.10.2017. On 09.10.2017, the Petitioner herein resigned from the service.

h) It is stated that the matter of alleged irregularity in allotment of Regular Membership and STAM by Respondent No.3/IIC was referred to Justice (Retd.) B. N. Srikrishna for his legal opinion and in his Report dated 25.02.2019, Justice (Retd.) B. N. Srikrishna has held that there is no substantial irregularity in allotment of Regular Membership and STAM by Respondent No.3/IIC and any suspicion raised by the person conducting the Audit may be the suspicion of the person conducting the Audit and it does not have any standing in law.

i) It is stated that being aggrieved by the alleged fabricated Audit Report of Respondent No.2, the Petitioner herein filed a complaint against Respondent No.2 before the Comptroller and Auditor General of India (CAG). It is stated that vide e-mail dated 13.08.2020, the Respondent No.1 took cognizance of the complaint filed by the Petitioner and directed the Respondent No.2 to submit a written statement of the Chartered Accountants who were involved in the said Audit.

j) The Petitioner also filed a Civil Suit, being CS (OS) No.251/2020 on 07.09.2020, against Respondent No.3/IIC on the ground of her illegal termination and thereby seeking damages and compensation for the same. The said Civil Suit is coming up for hearing on 31.08.2023 for admission/denial and marking of exhibits.

k) It is stated that *vide* Order dated 30.03.2021, passed by the Respondent No.1, the Petitioner herein was informed that since Mr. Vijay Kumar Lalla, who conducted the Special Audit of Respondent No.3/IIC, has passed away, the complaint of the Petitioner has become infructuous and the same, therefore, stands closed.

l) The Petitioner has, thereafter, approached this Court by filing the present Writ Petition.

3. It is stated by the learned Counsel for the Petitioner that the Impugned Order dated 30.03.2021 is liable to be quashed and set aside as the same is violative of Section 26 of the Indian Partnership Act, 1932, which provides that a firm is liable for any wrongful acts of its partner. Learned Counsel for

the Petitioner thereafter draws the attention of this Court to proviso of Rule 8 (2) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases), Rules, 2007, which provides that if no member, whether erstwhile or present, owns responsibility for allegations made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations, and all the members who were partners or employees of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint. He, therefore, states that in view of the said Rule in the absence of any member of a firm taking responsibility for the allegations, the firm as a whole and its members are responsible for answering the allegations as contained in the complaint. He further states that in view of the abovementioned rule it is the duty of the remaining members of the Respondent No.2/Firm answer the allegations. He states that the Respondent No.2/Firm is required to answer the allegations as contained in the complaint. He further states that upon coming to know about the demise of Mr. Vijay Kumar Lalla, who conducted the Special Audit of Respondent No.3/IIC, the Respondent No.1/ICAI should have asked the existing members of the Respondent No.2/firm to answer the allegations contained in the complaint. He further states that a perusal of the letter dated 16.08.2017 issued by the Respondent No.3/IIC to the Respondent No.2/firm reveals that it was the Respondent No.2/firm which was appointed to conduct the audit and not any individual and, therefore, it is the duty of the Respondent No.2/Firm to answer the allegations and it cannot shirk away its responsibility on the ground that the person who conducted the Audit has passed away.

4. *Per contra*, learned Counsel for Respondent No.1/ICAI, states that there is no infirmity in the impugned order. He relies on Section 2 (b) of the Chartered Accountants Act, 1949 which defines a Chartered Accountant as member of the Institute. He also relies on Section 3 of the Chartered Accountants Act, 1949 which states that all persons who have their names borne on the Register maintained by Respondent No.1/ICAI are to constitute a body corporate and all such persons are to be known as members of the Institute. He further states that disciplinary Proceedings can only be initiated against members of the Institute and firms, as defined under section 2(ca) of the Chartered Accountants Act, 1949, are not members of the Institute. He further states that the Act does not contemplate or provide for disciplinary proceedings against firms but only against members whose name are borne in the Register of members and, therefore, the contention of the Petitioner that disciplinary proceedings can continue against Respondent No.2/Firm even after the death of Mr. Vijay Kumar Lalla, who conducted the Special Audit of Respondent No.3/ICC, cannot be accepted. Learned Counsel for Respondent No.1/ICAI also submits that the reliance placed by the learned Counsel for the Petitioner on Rule 8(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to contend that disciplinary proceedings can be initiated against Chartered Accountant firms, holds no water as the said Rules provide for the procedure to conduct disciplinary proceedings. He further relies on Durgawati Dubey vs. State of UP & Ors., **2018 SCC OnLine All 1827,** to contend that disciplinary proceedings cannot continue after the death of the concerned person and, therefore, the decision of

Respondent No.1/ICAI in closing the complaint of the Petitioner is correct and no interference is required by this Court.

5. It is stated by the learned Counsel for Respondent No.2 that on 18.11.2017, Mr. Vijay Lalla, who was the partner in Respondent No.2/Firm and who conducted the Special Audit of Respondent No.3/IIC, passed away and the factum of his death was informed to the Respondent No.1/ICAI *vide* letter dated 30.12.2017. He further states that the name of Mr. Vijay Lalla was removed from the list of partnership firms by Respondent No.1 on 19.11.2017. He states that nearly three years later, the Petitioner filed a complaint before the CAG seeking blacklisting of Respondent No.2 and making the Audit Report dated 08.09.2017 null and void. He states that in view of the fact that the name of Mr. Vijay Lalla has been removed from the list of partnership firms by Respondent No.1, the decision of Respondent No.1/ICAI in closing the complaint, does not require any interference from this Court.

6. Heard the Counsels and perused the material on record.

7. At this juncture it is imperative to reproduce Section 2(b), Section 2(ca), Section 3, Sections 21A(3) and 21B(3) of the Chartered Accountants Act, 1949 and the same reads as under:

> *" 2(b) "chartered accountant" means a person who is a member of the Institute*
>
> *****
>
> *2(ca) "firm" shall have the meaning assigned to it in Section 4 of the Indian Partnership Act, 1932 (9 of 1932), and includes—*
>
> *(i) the limited liability partnership as defined in clause (n) of sub-section (1) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or*

(ii) the sole proprietorship,

registered with the Institute;

*****

3. Incorporation of the Institute.—(1) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the Institute of Chartered Accountants of India, and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall by its name sue or be sued.

*****

21A(3) The Board of Discipline shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.

*****

21B(3) The Disciplinary Committee shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days, which may further

> *be extended by another twenty-one days in exceptional circumstances, for reasons to be recorded in writing."*

8. A perusal of the abovementioned Sections would show that Section 2 (b) of the Chartered Accountants Act, 1949 defines a Chartered Accountant as a member of the Institute and as per Section 3 of the Chartered Accountants Act, 1949 all persons who have their name borne on the Register maintained by Respondent No.1/ICAI are to constitute a body corporate and all such persons are to be known as members of the Institute. In view of the above, the contention of the learned Counsel for the Petitioner that since the complaint was filed against the Respondent No.2/Firm, the death of Mr. Vijay Kumar Lalla would not come in the way of the complaint and the same ought not to have been closed as having become infructuous, cannot be accepted. Further, as defined under Section 2(ca) of the Chartered Accountants Act, 1949, firms are not members of the ICAI and disciplinary Proceedings can only be initiated against the members of the ICAI and as per Sections 21A(3) and 21B(3) of the Act if a member is found guilty of professional misconduct he/she may either be reprimanded, his name be removed from the register of members or be imposed with fine. Therefore, it can be said that the Act does not contemplate or provide for disciplinary proceedings against firms but only against members whose name are borne in the Register of members and, therefore, the contention of the Petitioner that disciplinary proceedings can continue against Respondent No.2/Firm even after the death of Mr. Vijay Kumar Lalla, who conducted the Special Audit of Respondent No.3/ICC, cannot be accepted.

9. It is well settled that disciplinary proceedings are in personam and the same would become infructuous on the death of the member. In the absence

of any provision in law, partner of a firm cannot be held liable for any misconduct committed by another partner of the firm. In Gita Bhattacharjee & Ors. vs. South Bengal State Transport Corporation & Ors. **1999 SCC OnLine Cal 121**, the Division Bench of the Calcutta High Court has held as under:

> "5. .... *It was further stated in the said Para. 5 of the supplementary affidavit that the appellant/writ-petitioner expired on 1 July, 1996 and upon his death the legal heirs have been substituted in place and stead of the appellant/writ-petitioner. These statements have not been denied by the respondents by filing any reply. Therefore, the respondents accepted that during the lifetime of the writ-petitioner, the respondents did not proceed with the chargesheet, dated 17 January, 1992. In fact, while the learned advocate for the respondents was addressing us we wanted to know from the learned advocate whether the respondents proceeded with the chargesheet, dated 17 January, 1992. The learned advocate for the respondents very fairly submitted that the respondents did not proceed with the said chargesheet, dated 17 January, 1992. Thus, it is apparent that though after the issuance of the chargesheet, dated 17 January, 1992, the writ-petitioner Ajit Kumar lived for about four years, yet the respondents did not proceed with the said chargesheet, dated 17 January, 1992, though the Appeal Court permitted the respondents to proceed with the departmental proceeding in connection with the said chargesheet, dated 17 January, 1992. Therefore, by their own action the respondents had given a go-bye to or abandoned the said chargesheet, dated 17 January, 1992.* ***That apart, a disciplinary proceeding against an employee is an action in personam. Due to the death of the employee such disciplinary proceeding initiated by the respondents by virtue of the chargesheet, dated 17 January, 1992, becomes***

> ***infructuous*** *due to the expiry of the writ-petitioner Ajit Kumar on 1 July, 1996. It may be mentioned herein that the charges contained in the chargesheet, dated 17 January, 1992, are nothing but the repetation of the charges earlier levelled against the writ-petitioner which was the subject-matter of the writ proceedings and also the subject-matter of this appeal."*
>
> (emphasis supplied)

10. The reliance placed by the learned Counsel for the Petitioner on Rule 8(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to contend that disciplinary proceedings can be initiated against Chartered Accountant firms. Rule 8 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 reads as under:

> "*8. Procedure to be followed by Director on a complaint*
>
> *(1) The Director or an officer or officers authorized by the Director, within sixty days of the receipt of a complaint under rule 3, shall, −*
>
> > *(a) if the complaint is against an individual member, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that member at his professional address;*
> >
> > *(b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the Institute, with a*

notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members:

Provided that while disclosing the name or names of the member or members, the firm shall also send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Director had been duly received by him, her or them.

Explanation − A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.

***(2) A member whose name is disclosed by the firm shall be responsible for answering the complaint, provided such a member was associated, either as partner or employee, with the firm, against which the complaint has been filed, at the time of occurrence of the alleged misconduct**:*

Provided that if no member, whether erstwhile or present, of the firm, own responsibility for the allegation or allegations made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations and, as such, all the members who were partners or employees of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.

(3) A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent) shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, a written statement in his defence.

(4) On receipt of the written statement, if any, the Director may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, his rejoinder on the written statement.

(5) On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate:

Provided that if no reply is sent by the respondent within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Director shall presume that the respondent or the complainant, as the case may be, have nothing further to state and take further action as provided under this Chapter."

11. A perusal of the above rules shows that that Rule 8 provides for the procedure to be followed by the Director on receiving a complaint. Under Rule 8(1)(b) of the Rules, Director of the Institute has to send a copy of the complaint to the firm calling upon the firm to disclose the name or names of the member or members concerned. In terms of the said Rules, on receiving

the complaint of the Petitioner the Respondent No.1/ICAI *vide* letter dated 17.08.2020 called upon Respondent No.2 firm to disclose the name of the member answerable to the complaint and Respondent No.2 by its letter dated 27.08.2020 informed Respondent No.1/ICAI that the Audit in question was carried by CA Vijay Kumar Lalla who passed away on 18.11.2017. In terms of Rule 8(2) a member whose name is disclosed by the firm shall be responsible for answering the complaint. Name of CA Vijay Kumar Lalla was disclosed by the Respondent No.2/Firm. CA Vijay Kumar Lalla was associated as a partner with the Respondent No.2/Firm at the time of occurrence of the alleged misconduct. It is not the case of the Petitioner that no one has owned the responsibility for the allegations made against the firm and therefore, in absence of such responsibility the disciplinary proceedings can be initiated against Chartered Accountant firm. In the present case, the Respondent No.2/Firm has disclosed the name of CA Vijay Kumar Lalla, who conducted the Audit of Respondent No.3/IIC. The complaint was filed by the Petitioner after three years of the report of Audit and by the time the said CA Vijay Kumar Lalla had passed away. It is well settled that disciplinary proceedings cannot continue after the death of the concerned person. In Durgawati Dubey vs. State of UP & Ors., **2018 SCC OnLine All 1827,** a co-ordinate Bench of the Allahabad High Court has held as under:

> "*12. Apart from that I have also seen the judgments of this Court as well as other High Courts occupying the field. In the case of Smt. Rajeshwari Devi v. State of U.P., 2011 (2) ADJ 643 decided on 07.01.2011, the Court has held that* ***as soon so as a person dies, he breaks all his connection with the worldly affairs, therefore, no disciplinary proceeding can be initiated against him......*** " (emphasis supplied)

12. In view of the above, it cannot be said that the Respondent No.2/Firm has whittled away from its responsibility and the Respondent No.1/ICAI is at fault for closing the complaint of the Petitioner. Therefore, this Court is of the opinion that the decision of Respondent No.1/ICAI in closing the complaint of the Petitioner does not require any interference by this Court.

13. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

NOVEMBER 29, 2023
Rahul