AD-12
Ct No.09
06.02.2024
TN

WPA No. 20724 of 2023

Joydeep Roy
Vs.
The Institute of Chartered Accountants India
and others

Mr. Debasish Ghosh,
Mr. Binayak Gupta
.... for the petitioner

Mr. Rajib Ray,
Ms. Oishanee Ghosh
.... for the respondent nos.1 to 3

**1.** The petitioner is a Chartered Accountant who has been debarred for two years and other penalty imposed by the Institute of Chartered Accountants, the respondent herein. Challenging such debarment, the present writ petition has been preferred.

**2.** The petitioner argues that although the petitioner was given a hearing in the disciplinary proceeding, the petitioner was not given any right of cross-examination.

**3.** Learned counsel for the petitioner places reliance on the proviso to Clause 18(11) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to highlight that the same stipulates that the Committee may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

**4.** By placing specific reliance on the same, it is contended that the same envisages that there is an inbuilt right of the petitioner to cross-examine which ought to have been granted to the petitioner even if the petitioner did not specifically ask for the same.

**5.** Learned counsel for the petitioner, in support of such proposition, cites an unreported Division Bench judgment of this court in the matter of *Ajay Saraogi vs. Union of India*, where the Division Bench observed *inter alia* that right of cross-examination has been recognized by judicial pronouncements noted therein in the proceedings under the FERA which results in an adjudication imposing consequences. The appellant therein was held to be said to be prejudiced for not having been granted the right of cross-examination inasmuch as the appellant lost the opportunity to establish the truthfulness of the statement made by one Mr. Nirmal Kumar Karmakar and the veracity of the documents seized from him which were the grounds on which the appellant had been found guilty of contravention of the provisions of FERA.

**6.** It is next contended by learned counsel for the petitioner that the petitioner cited several judgments before the authorities which do not find reflection in either the decision of the Disciplinary Committee or the final order, whereby the petitioner was debarred.

**7.** Learned counsel for the petitioner contends, by placing reliance on another Division Bench judgment of this court reported at *2016 (332) E.L.T. 470 (Cal)* in the matter of *Artee Overseas Pvt. Ltd. vs. Union of India,* that the authority was under an obligation to consider the cited judgments and to discuss as to why the ratio of those judgments was not applicable to the facts and circumstances before him.

**8.** Hence, the court was of the opinion that there was violation of the principles of natural justice in which case alternative remedy was no bar.

**9.** Applying the same ratio in the present case, it is argued that the non-consideration of the petitioner's judgments itself furnishes sufficient ground to vitiate the action of the respondents.

**10.** Thirdly, learned counsel for the petitioner argues that the statement of one Vaddi Mahesh was relied on by the respondents for indicting the petitioner. The statement of the said person was primarily on the signature on Form-15CA whereas the petitioner had signed Form-15CB, which was also the consistent case in the disciplinary proceedings. Hence, such deviation and variation between the statement of the said Vaddi Mahesh, who was allegedly helped by the petitioner unlawfully, and the form which the petitioner actually signed, is also a vitiating factor of the impugned decision.

**11.** Learned counsel for the petitioner next argues that the hearing was given to the petitioner by video conferencing which is in contravention of Rule 21 of the Rules referred to above. Rule 21 is the residuary provision of the Rules which provides that matters relating to the procedure of investigation, conduct of cases etc. in respect of which no express provision has been made in the Rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be binding. The said provision, it is argued, has not been complied with in the present case, although there is no provision of hearings being held by video-conferencing in the Rules.

**12.** Learned counsel for the petitioner also points out that the order inflicting penalty on the petitioner is a non-speaking one and ought to be set aside.

**13.** Lastly, it is argued that the principles of Article 14 of the Constitution of India have been violated inasmuch as the other accused persons for the same set of transactions, standing on similar footing and in the same factual premise as the petitioner, have been meted out lesser punishments than the petitioner for undisclosed reasons.

**14.** Such difference in attitude towards the petitioner itself is also another ground, it is argued, for setting aside the impugned decision of the authorities.

**15.** Learned counsel appearing for the Institute of Chartered Accountants controverts the arguments made by the petitioner. Insofar as the right of cross-examination is concerned, learned counsel painstakingly takes the court through the entire proceedings where at each stage, hearing was given to the petitioner. It is pointed out that the petitioner was also asked to give a list of witnesses which was not done by the petitioner. The petitioner never claimed any right to cross-examine any of the witnesses for which the petitioner cannot now blame the authorities.

**16.** The mere non-reflection of the cited judgments of the petitioner in the impugned order or decision of the Disciplinary Committee *ipso facto* does not vitiate the said decision, it is argued.

**17.** Learned counsel for the Institute of Chartered Accountants next places reliance on the Disciplinary Committee's decision with regard to the two other accused persons alleged to be on similar footing as the petitioner, which have also been annexed to the writ petition, and in particular places excerpts from the said orders as find place in page-316 and page-322 of the writ petition.

**18.** In case of one such person, it was observed that after certifying some documents, the said accused had doubted the whole transaction and asked for the whole downloading procedure but the client company refused to do so. Thus, he stopped certification but he was too late by that time. Further, the accused, in the said case, had submitted that the incident took place due to immaturity and lack of experience at the inception of his career and suppression of fact by the client/company.

**19.** In the other case, the accused had stated that he had lodged a police complaint before the Officer-in-Charge, Lake Town Police Station, Kolkata vide GDE No. 89 dated February 02, 2018 against the fraudulent use of his letterhead, signature and stamp pad.

**20.** On the contrary, the present petitioner, when asked, had disclosed that he had never made any such complaint before the police or the IT authorities who were the complainants.

**21.** As such, it is submitted that there were several distinguishing features between the circumstances of the petitioner and the other co-accused which led to difference in the punishment meted out to them respectively.

**22.** Learned counsel appearing for the Institute of Chartered Accountants places reliance on an unreported Division Bench judgment of the Andhra Pradesh High Court in the matter of *The Institute of Chartered Accountants of India vs. Shri Mukhesh Gang*. In the said judgment, the Division Bench had observed that there is no specific procedure prescribed to be followed by the Disciplinary Committee to record its finding. The strict rules of evidence under the Indian Evidence Act and the elaborate procedure prescribed under the Code of Civil Procedure or the Criminal Procedure Code are not applicable to the proceedings before the Disciplinary Committee of the Institute except for a few provisions of the Code of Civil Procedure as stipulated under Section 21(8) of the Act. It was observed that in the said case, as in the present case, the respondent did not complain about the non-compliance of any mandatory provision which caused him prejudice either before the Council or the Disciplinary Committee, but for the first time before the court such contention was urged. The said contention was turned down by the Division Bench. Learned counsel for the Institute seeks a reiteration of the same proposition in the present case as well.

**23.** By relying on a different part of the said judgment, learned counsel for the Institute points out that the standard of proof required to establish a charge in a disciplinary proceeding is on preponderance of probabilities and cannot be equated with the standard of proof in a criminal prosecution, wherein a charge is required to be proved beyond reasonable doubt. It is argued by the Institute that in the present case as well, the same standard has been duly followed by the respondent-authorities.

**24.** Insofar as the Rule regarding video conferencing is concerned, learned counsel places reliance on the latest Notification of the Institute of Chartered Accountants which has amended the Rules and brought in Explanation – 2 to Rule

18(6), which provides that for the purposes of the Rule, appearance also includes appearances through video conference, modalities for which may be as formulated by the Institute from time to time. Thus, the argument on video-conferencing without any provision is not tenable.

**25.** That apart, it is pointed out by learned counsel for the Institute from several annexures to the writ petition that ample option was given to the petitioner to disclose as to whether he was agreeable to participate in the proceeding physically or by video conferencing and, if so, the location from which he wanted to so participate. Having accepted the same and participated fully, the petitioner cannot now resile from such position, it is argued.

**26.** Thus, on a composite consideration of the facts of the case, it is argued, the petitioner is not entitled to any order from the writ court.

**27.** In his penultimate argument, learned counsel for the Institute places reliance on Section 21B(C) of the Chartered Accountants Act, 1949 (for short "the 1949 Act") which contemplates a hearing, according to learned counsel, for the purpose of sentencing only and not an elaborate argument on merits of the offence.

**28.** Lastly, Section 22G of the said Act, it is argued, specifically provides for an appeal. Having not availed of the said express provision, the petitioner has failed to make out any case of interference under Article 226 of the Constitution of India either. Therefore, the present writ petition ought to be dismissed.

**29.** Taking first things first, the petitioner has vociferously argued that no right of cross-examination has been given to the petitioner by the respondent-authorities. For such purpose, specific reliance has been placed by the petitioner on Rule 18(11), proviso.

**30.** Let us now scrutinize the said provision. Rule 18 provides for procedure to be followed by the Committee. Sub-Rule (1) provides in general terms that the Committee shall be guided by the principles of natural justice and shall follow the procedure in dealing with all cases before it as laid down in the said Chapter.

**31.** The procedure continues and in Sub-Rule (11), it has been provided that on the date so fixed (for the appearance of witnesses), the Committee shall proceed to take all such evidence "as may be produced by the Director", including oral examination of witnesses and production of documents. Importantly, the proviso says that the Committee "may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined" or recall any witness for further cross-examination.

**32.** Hence, the proviso by itself does not contemplate a right to be conferred on the parties to cross-examine but merely contemplates that the Committee may permit the cross-examination of any witness to be deferred until any other witness has been examined. The said power cannot be equated with a mandate to permit cross-examination.

**33.** Even without going into the said proviso, if we proceed on the premise that under the principles of natural justice in general the petitioner has a right of cross-examination, even before a civil court, the said right has to be specifically asserted. It is not for the Committee or the authorities to spoon-feed the petitioner by compelling him to cross-examine any witness. In the event the petitioner sought to cross-examine a witness and the same was refused by the Committee, it might have afforded a cause of action for the present writ petition. However, in the present case, not only did the petitioner not ask for cross-examination, he even chose not to produce any witness of his own, despite having been given such opportunity.

**34.** Having not pointed out any such discrepancy on such count or objected throughout the proceedings, it does not now lie in the mouth of the petitioner to come up in the writ petition and allege for the first time that he was not permitted to cross-examine. Thus, the said ground of challenge has also to be turned down.

**35.** The petitioner has also harped on the video conferencing not being sanctioned by the Central Government which, of course, has been negated by citation of the recent Amendment of October 29, 2018 which incorporates video conferencing within the contemplation of appearances. In any event, the records show that ample opportunity was given to the petitioner not only to choose between physical appearance and video conferencing but also to determine the location from which he wanted to participate. Having fully participated and waiting for the outcome, the petitioner cannot now resile from that position after having been held guilty and challenge the veracity of the mode of hearing.

**36.** The next contention of the petitioner is violation of Article 14 of the Constitution of India. The charter of the writ court is not to substitute its own views for the decision of the authorities, even if possible on the facts of the case, but to scrutinize as to whether there was any patent perversity or arbitrariness or unreasonableness in the decision-making process of the authorities. The authorities, that is, the Institute of Chartered Accountants, has put forward sufficient reasonable grounds to distinguish between the punishment meted out to the petitioner and the other co-accused persons on the basis of the explanations furnished by them respectively.

**37.** The writ court ought not to interfere merely because another view might have been possible in the circumstances of the case. As rightly pointed out by learned counsel for the Institute on the strength of the Division Bench judgment of the Andhra Pradesh High Court, the standard of proof in a disciplinary proceeding, akin to civil cases, is preponderance of probabilities, unlike proof beyond reasonable doubt as in a criminal case. Going by such standards, the respondent-authorities cannot be faulted on discussing in detail the circumstances of each of the cases of the petitioner and the others and having come to a reasonable conclusion on such count.

**38.** Hence, even if the petitioner's case is accepted, that availability of an alternative remedy by way of an appeal under Section 22G of the 1949 Act is not an absolute bar, the tests for interference under Article 226 are not met herein. As to the impugned order being non-speaking, the communication of the punishment need not have been on the same footing, insofar as detailed and reasoned judgments are concerned, as a civil court's judgment. In any event, the petitioner has been given sufficient opportunity of representation and hearing at every conceivable stage, be it at the opinion formation stage or in the disciplinary proceedings or at the time of awarding sentence.

**39.** Having availed of such opportunities fully, the petitioner cannot take the flimsy pretext that ample opportunity was not given to the petitioner. The disciplinary proceeding order was the pith of the issue. The same was sufficiently detailed and was ultimately reflected in the sentencing of the petitioner. Thus, no irrationality can be attributed to the respondents on such count as well.

**40.** As to the arguments regarding over-reliance of the respondents on Form-15CB, which is allegedly contrary to the statement of Vaddi Mahesh, who was the beneficiary of the alleged acts of the petitioner and stated about Form-

15CA, the said reliance was not the sole determinant of the outcome of the respondents' decision against the petitioner. As quite rightly pointed out by learned counsel for the Institute, there were several other factors which cumulatively contributed to corroborate each other for the purpose of ultimately indicting the petitioner.

**41.** The last component of the argument of the petitioner which remains to be decided is whether the non-consideration of the judgments cited by the petitioner itself can be a vitiating factor.

**42.** A careful consideration of the Division Bench judgment cited by the petitioner in such context shows that the said writ petition had arisen from an order where the trial court had dismissed the writ petition on the ground that the writ petitioner had an efficacious alternative remedy.

**43.** While considering the same, it was held that the Additional Commissioner of Customs was under an obligation to consider the judgment and to disclose as to why the ratio of the judgment is not applicable to the facts and circumstances before him.

**44.** In the said circumstances, it was observed that there had been violation of principles of natural justice and in such case, alternative remedy was no bar.

**45.** The entire context of the consideration, thus, was whether the writ court had jurisdiction to interfere in the matter in view of availability of an efficacious alternative remedy.

**46.** The learned Single Judge had refused to do so, which was overturned by the Division Bench on the premise that there was violation of natural justice, since the judgments cited were not considered. However, in the absence of any further facts in the said case, the two-paragraph judgment cannot be taken to be a blanket ratio for the proposition that in each case where the judgments cited are not reflected in the decision-making process, such non-reflection *ipso facto* vitiates the entire decision-making process.

**47.** In the present case, in view of the above discussions, it is seen that ample opportunities were given to the petitioner and all points urged by the petitioner were duly considered by the respondent-authorities both at the Disciplinary Committee stage and on sentencing.

**48.** The mere non-mention of the particular judgments in the said decision on similar footing as the civil court's order, or as in the order of an Additional Commissioner of Customs, which is a *quasi-judicial* authority having certain statutory powers, cannot itself be equated.

**49.** In the present case, as discussed above, all components of natural justice were adequately complied with by the respondent-authorities and it would be utter injustice if the entire process undergone before the forums below are set aside merely on the technical ground that the judgments cited by the petitioner were not discussed by the authorities,.

**50.** In such view of the matter, the petitioner's contentions cannot be accepted on any of the arguments advanced by the petitioner.

**51.** Accordingly, WPA No. 20724 of 2023 is dismissed on contest, thereby affirming the decisions impugned herein.

**52.** There will be no order as to costs.

**53.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)