IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.3881 of 2021 and
WMP.Nos.4441 & 4442 of 2021

V.Balasubramanyam ...Petitioner

Vs.

1.The Institute of Chartered Accountants of India,
Rep. By its Secretary,
3rd Floor Annexe Building,
ICAI Bhavan, Indraprastha Marg,
PB.No.7100,
New Delhi 110 002

2.The Assistant Secretary,
Disciplinary Committee,
The Institute of Chartered Accountants of India,
2nd and 3rd Floor, ICAI Bhawan,
52, 53 & 54, Maharishi Valmiki Marg,
Near Karkarduma Court Complex,
Vishwas Nagar Extension, Shahdara,
New Delhi 110 032 ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari call for the records and quash the Disciplinary Proceedings in pursuance of PR / 230 / 14 - DD / 305 / 14 - DC / 651 / 17, PR -132 / 14 - DD / 203 / 14 - DC / 764 / 2018 & PR / 120 / 15 - DD / 08 / 16 - DC / 993 / 19 clubbed together as one proceeding vide notes of hearing dated 11.12.2020 pending on the file of second respondent.

For Petitioner : Mr.R.Vijayaraghaven

For Respondents
For R1 & 2 : Ms.Antara Balaji
for Mr.Rajesh Ramanathan

ORDER

This writ petition has been filed challenging the disciplinary proceedings in pursuance of PR / 230 / 14 - DD / 305 / 14 - DC / 651 / 17, PR -132 / 14 - DD / 203 / 14 - DC / 764 / 2018 & PR / 120 / 15 - DD / 08 / 16 - DC / 993 / 19 clubbed together as one proceeding vide notes of hearing dated 11.12.2020 pending on the file of second respondent.

2. It is seen that a similar issue was already dealt with by this Court in a writ petition in WP.No.13169 of 2020, wherein this Court held as follows:

> *"4. Under the provisions of Chartered Accountants Act, the Disciplinary Committee before commencing enquiry proceedings has to take decision as to whether there is any prima facie case is made out*

by the complainant and in the event of no such prima facie case, the complaint will be rejected in limine. If the allegations raised against the Chartered Accountants warrant further action, then alone enquiry will be conducted.

5. This being the scope of the Chartered Accountants Act, the prima facie opinion formed by the Disciplinary Committee is under challenge in the present writ petition. Such an opinion would not provide a cause for instituting the writ proceedings and it is premature to challenge the same. Since the petitioner will be provided with an opportunity to defend his case during the course of enquiry by the Disciplinary Committee, all the documents will be provided to the petitioner for the purpose of submitting his defence and to participate in the process of enquiry.

6. Such writ petitions challenging the prima facie opinion are filed in order to escape from the clutches of disciplinary proceedings and such attempts cannot be entertained by this Court. All the grounds raised in the present writ petition may be raised before the Disciplinary Committee by availing the opportunities to be provided by the Disciplinary Committee for the *petitioner to defend his case.*

7. The writ against such prima facie opinion formed by the first respondent is not entertainable under Article 226 of the Constitution of India. Such opinions are entertainable only if it is issued by an Incompetent Authority having no jurisdiction or tainted with the allegation of mala fides. However, in the present case, for the purpose of conducting the enquiry, no such grounds are established and therefore, the petitioner is bound to participate in the process of enquiry.

8. Therefore, the petitioner is at liberty to participate in the process of enquiry to be conducted by the Disciplinary Committee by following the procedures and by affording opportunity to the writ petitioner. The said exercise is directed to be completed as expeditiously as possible.

9. With the above liberty, the present writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

3. In view of the above order passed by this Court, the petitioner is at liberty to participate in the process of enquiry to be

conducted by the disciplinary committee.

4. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

12.06.2024

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To
1.Secretary,
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G.K.ILANTHIRAIYAN, J.

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