WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM:

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

W.P.No.14207 of 2022 and
WMP.No.13441 of 2022

B.V.Venkhatesan ... Petitioner

Vs.

1.Disciplinary Committee Bench III
2021-22 Constituted U/s 21 B of Chartered Accountant Act 1949
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan PO Box No.7100
Indrarastha Marg
New Delhi 110 002

2.Supdt of Police,
CBI, BS & FC Bangalore
No.36, Bellary Road, 2nd Floor
Ganga Nagar,
Bangalore 560 032 ... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records made in Ref.No.PR/G/280/17/DD/270/17/DC/1343/2020 dated 08.02.2022 on the file of the first respondent and quash the same.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Petitioner : Mr.S.Ramachandran

For Respondents
For R1 : Mr.S.Diwakar
for Mr.Rajesh Ramanathan

For R2 : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 08.02.2022 thereby found that the petitioner is guilty of professional and other misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 r/w Section 22 of the said Act.

2. The company called M/s Pavai Alloys and Steels Private Limited obtained several credit facilities from Indian Bank, Tiruchengode Branch for the years ending 31.03.2009 and 31.03.2010 were signed by the petitioner as Chartered Accountant. These balance sheets are alleged to have contained inverted figures. The company had used balance sheets

https://www.mhc.tn.gov.in/judis

WEB COPY

along with other documents and obtained higher credit facility from the bank. Thereafter, the company failed to repay the loan. Therefore on the complaint lodged by the Bank, the second respondent had registered a case in RC.No.6(E)/2016/CBI/BS&FC/BLR 23.02.2016 against Managing Director of the said company for the offence punishable under Section 120(b) r/w 420, 468 and 471 of IPC.

2.1 After completion of investigation, charge sheet has been laid and the same has been taken cognizance by the trial court. All the Directors along with Managing Director entered into a criminal conspiracy to cheat the Indian Bank in the matter of availing credit facilities from the bank by way of submitting false / forged financial statements and in pursuance to the said criminal conspiracy, the accused induced and cheated the Indian Bank to sanction them ineligible higher credit facilities from 2008 to 2014 to the extent of Rs.38.75 crores. Thereafter, the company failed to repay the said amount. During the investigation, further revealed that the accused had an intention to cheat and defraud the Indian Bank for the purpose of availing higher /

https://www.mhc.tn.gov.in/judis

WEB COPY

enhanced credit facilities from the Bank, submitted false audited balance sheets for the financial year ending 31.03.2008 to 31.03.2013 in Indian bank by inflating the key financial indicators which are considered for fixing the drawer power and based on the said inflated financials, the company had availed higher credit facilities which is otherwise was not eligible. Further, the company also did not repay the said loans resulting in wrongful loss to the bank. In pursuant to the criminal case and the petitioner being chartered accountant, who had signed balance sheets for years ending 31.03.2009 and 31.03.2010, complaint was lodged under form No.I as required under the Chartered Accountant Act and Rules. The first respondent conducted enquiry and concluded that the petitioner is found guilty.

3. The petitioner raised grounds that the first respondent has no jurisdiction to conduct any enquiry. The first respondent has not been constituted in accordance with the statutory requirements under Section 21(B) of the Chartered Accountants Act. It must contain 5 persons. However, it consisted only the Presiding Officer, Member and another

https://www.mhc.tn.gov.in/judis

WEB COPY

Member who is also a chartered accountant. Therefore, it is not in accordance with Section 21(B). Further, the complaint itself is not maintainable and it is not in accordance with the requirements of Chartered Accountants (Procedure of Investigation of Professional and other misconduct and conduct of cases) Rules, 2007.

4. On perusal of the counter filed by the first respondent also revealed that the disciplinary committee is formed in pursuance of Section 21(B) of the Act r/w Rule 16 of the said Rules. Accordingly, Committee shall be three members, out of which atleast one shall be a member nominated by the Central Government. In case, the Chartered accountant does not appear during the hearing, the first respondent may proceed with the matter ex-parte and after considering the written statements and documents filed by both sides, proceed to pass order. During the enquiry, the petitioner was given enough opportunities to put forth his case. Now after due enquiry, the first respondent has passed its findings as the petitioner is found guilty of professional and other misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item

https://www.mhc.tn.gov.in/judis

WEB COPY

(2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 r/w Section 22 of the said Act. The first respondent is yet to award punishment. Even before passing the order of punishment, the petitioner approached this Court on technical grounds. Now it is also clarified and as such, the first respondent is at liberty to pass order of punishment. That apart, the Chartered Accountant Act, 1949 non only governs the proceedings to be conducted in matters of discipline, but also provides for appeals against orders passed by either the Board of Discipline or the Disciplinary Committee, as the case may be, under Section 22G thereof. As per the said provision, the aggrieved person may prefer an appeal within 90 days from the date of receipt of the order and the appellate authority has been conferred with the power to confirm, modify or set aside the order, impose, reduce, set aside any penalty imposed under the impugned order. Therefore, the petitioner has an efficacious alternative remedy, that too in the form of statutory appeal. Therefore, the writ petition is devoid of merits and liable to b e dismissed.

5. Accordingly, this writ petition is dismissed. However, the

https://www.mhc.tn.gov.in/judis

WEB COPY

first respondent is directed to pass final order on punishment against the petitioner forthwith. Thereafter, if the petitioner is aggrieved over the punishment imposed by the first respondent, the petitioner is at liberty to file an appeal in accordance with law, if so advised. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

01.04.2024

Neutral citation: Yes:No
Index: Yes/No
Speaking/Non-speaking order
lok

https://www.mhc.tn.gov.in/judis

WEB COPY

G.K.ILANTHIRAIYAN, J.

lok

To
1.Disciplinary Committee Bench III
2021-22 Constituted U/s 21 B of Chartered Accountant Act 1949
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan PO Box No.7100
Indrarastha Marg
New Delhi 110 002
2.Supdt of Police,
CBI, BS & FC Bangalore
No.36, Bellary Road, 2nd Floor
Ganga Nagar,
Bangalore 560 032

W.P.No.14207 of 2022

01.04.2024