IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-02-2024

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.13169 of 2020
And
WMP No.16572 of 2020

Jani Basha K. .. Petitioner

-vs-

1.The Director (Discipline),
The Institute of Chartered Accountants of India,
ICAI Bhawan,
Indraprastha Marg,
New Delhi-110 002.

2.The Superintendent of Police,
Central Bureau of Investigation,
No.36, Bellary Road,
Second Floor,
Ganga Nagar,
Bangalore-560 032. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the prima facie opinion of the first respondent dated 26.07.2019 in the file No.PR/G/227/17/DD-267/17 and quash the same as illegal.

For Petitioner	:	Mr.Varun Ranganathan for Mr.K.Ravi
For Respondent-1	:	Mr.S.Diwakar
For Respondent-2	:	No Appearance

O R D E R

The present writ petition has been filed to quash the prima facie opinion formed by the first respondent in proceedings dated 26.07.2010.

2. The petitioner states that the complaint dated 04.09.2017 was filed against the petitioner before the first respondent by the second respondent-Superintendent of Police, CBI. The copy of the complaint was

forwarded to the petitioner and the petitioner further states in the affidavit filed in support of the present writ petition that necessary documents were not furnished. In the absence of any such documents, the petitioner may not be in a position to defend his case.

3. Such a statement made by the petitioner in the affidavit filed in support of the present writ petition became unnecessary in view of the fact that the Disciplinary Committee has given only prima facie opinion for the purpose conducting an enquiry based on the complaint and the enquiry is yet to commence.

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.

09-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

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S.M.SUBRAMANIAM, J.

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