IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19672 of 2020
and
W.M.P.No.24311 of 2020

CA.Devarajan K.E. ... Petitioner

Vs.

1. Board of Discipline,
The Institute of Chartered Accountants of India,
ICAI Bhawan, Indrprastha Marge,
New Delhi 110 002.

2. Direvctor (Discipline),
The Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marge,
New Delhi 110 002.

3. Ms.M.Roopa, IPS,
Superintendent of Police,
Central Bureau of Investigation,
Anti - Corruption Branch,
Haddows Road, Chennai 600 006. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in passing the impugned order in File No.PR-206/14-DD/222/2014/BOD/326/2017 dated 06/01/2020 and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant a reasonable opportunity to the petitioner.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.Rajesh Ramanathan (for R1 & R2);
No Appearance (for R3).

ORDER

The writ on hand has been instituted questioning the validity of the order dated 06.01.2020, issued by the Institute of Chartered Accountants of India, under Section 21 of the Chartered Accountants Act, 1949.

2. The petitioner is a practising Chartered Accountant and the third respondent / Superintendent of Police, CBI, filed a complaint against the writ petitioner, alleging professional misconduct. Pursuant to the complaint, action was initiated against the writ petitioner. Admittedly, the writ petitioner had not participated in the process of inquiry by availing the opportunities provided to him to defend his case. Contrarily, he remained absent and the counsel representing the writ petitioner had also not represented the case of the petitioner. Thus, the Board of Revenue proceeded with the inquiry and issued the impugned order in proceeding dated 06.01.2020, under Section 21(A)(3) of the Chartered Accountants

Act, 1949 : *"(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:-*

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may thinks fit which may extend to rupees one lakh"

3. Admittedly the Board of Discipline has not passed final orders under Section 21(A) of Chartered Accountants Act, 1949. The order impugned dated 06.01.2020 itself would reveal that the petitioner is at liberty to send his written submission / representation, if any, on the findings of the Board within a period of seven days. The said order is under challenge in the writ proceedings.

4. Learned counsel for the petitioner Mr.R.Sivaraman would submit that the petitioner is entitled for an opportunity to defend his case. Though

the petitioner had not participated during the earlier hearings nor by his engaged counsel represented him, further opportunity had not been granted and therefore, the matter is to be remitted back for reconsideration.

5. The learned counsel for the Institute of Chartered Accountants of India would oppose the said contention by stating that the order under challenge is not a final order and further opportunity as contemplated under Section 21(A)(3) has been afforded. Instead of utilising the opportunity by submitting a written submission, the petitioner has chosen to file the present writ petition and thus, the writ petition is premature and liable to be rejected.

6. Perusal of the order impugned would be sufficient to form an opinion that an opportunity granted to the petitioner under the impugned order is to be availed of but in stead, the petitioner filed a writ petition probably with an apprehension that there is likelihood of imposition of punishment by the respondent. However, no such writ is entertainable against such notice issued providing opportunity unless it is issued by an incompetent authority having no jurisdiction or tainted with the allegations on mala fides. None of the grounds for the relief as sought for is

established in the present writ proceedings. Thus, the petitioner ought to have availed of the opportunity by submitting a written submission / representation, in order to defend his case.

7. In view of the facts and circumstances, the petitioner is at liberty to submit a written submission / representation along with the documents, if any, within a period of 10 days from today and on receipt of any such representation or written submission along with the documents, the first respondent Board of Discipline, shall consider the merits and the records made available and pass final orders by following the procedures as contemplated under the Act and Rules. The said exercise is directed to be completed within a period of eight (8) weeks from the date of expiry of the period of 10 days from today.

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

24.01.2024

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

To

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Haddows Road, Chennai 600 006.

S.M.SUBRAMANIAM. J.,

(sha)

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