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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3365/2021, CM APPL. 10233/2021 & CM APPL. 65055/2024

CA. MUNISH MEHTA .....Petitioner

Through: Mr. Vineet Hans, Ms. Sanjela Gupta, Advocates

versus

BOARD OF DISCIPLINE OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA .....Respondent

Through: Ms. Pooja M. Saigal, Senior Advocate with Ms. Kaveri Rawal, Mr. Jatin Dua, Mr. Simrat Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **05.12.2024**

1. The Petitioner, a Chartered Accountant by profession, is facing proceedings before the Respondent - Board of Discipline[1] of the Institute of Chartered Accountants of India[2]. The Petitioner states that on 12th December, 2020, he filed written arguments before the Respondent, along with a written request to cross examine the Complainant and persons alleged to be witnesses. However, on 11th February, 2021, the Petitioner was surprised when the arguments were concluded in the said proceedings without deciding the Petitioner's request for cross-examination.

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[1] "BOD"
[2] "ICAI"

2. In light of the above, the instant proceedings have been filed seeking the following reliefs:

> *"a. To set aside the proceedings against the Petitioner, and in the alternative;*
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> *b. direct and restrain Respondent from passing final order in the aforesaid proceedings;*
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> *(i) without providing complete original documents/evidence that are in power and possession of the Complainant and are referred or relied upon by the Complainant and/or are required for effective disposal of the aforesaid complaint; and*
>
> *(ii) without affording an opportunity to the Petitioner to cross examine the Complainant viz. Mr. Vinod K. Kala as well as Ms. Navneet Kaur, Ms. Srishti Bali and Ms. Shubhmagla Kala.*
>
> *c. Any such further orders as this Hon'ble Court may deem fit & proper in the facts & circumstances of the present case may also be passed in favour of the Petitioner and against Respondent."*

3. Counsel for the Petitioner, states on instructions that he has confined his submissions to the alternate reliefs stated prayer 'b' noted above.

4. The thrust of the Petitioner's argument is that he ought to have been afforded an opportunity to cross examine the complainant, Mr. Vinod K Kala, as well as Ms. Navneet Kaur, Ms. Srishti Bali and Ms. Shubhmagla Kala, for proper adjudication of the matter.

5. On the other hand, Ms. Pooja M. Saigal, Senior Counsel for the Respondent submits that, in fact, the Petitioner's request for cross-examining 3 witnesses was agitated only at the far end of the proceedings, at the time of filing written submissions. Ms. Saigal further apprises the Court that the proceedings against the Petitioner are in relation to "other misconduct" and not "professional misconduct" as provided under the Chartered Accountants Act, 1949. She submits that under Section 21A of the

said Act, the proceedings before the BOD are summary in nature and there is no procedure for examining the witnesses. She clarifies that the proceedings conducted by the BOD are governed by Chapter IV of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007[3]. She further submits that under exceptional cases, a request for cross examination may be entertained by the Board, however, in the instant case, since the Petitioner had made the request after the arguments were concluded in the matter, his request was not entertained.

6. The Court has heard the counsel for the parties. It is noticed that in their counter affidavit, the Respondent has clearly stated that the reasons for not affording the opportunity to the Petitioner would now be spelt out in the final decision of the Respondent, which is being held up on account of an interim order passed by this Court on 17th March, 2021, whereby this Court directed the Respondent not to pass the final order.

7. Moreover, it is also noted that there is an appeal remedy provided under Section 22G of the Chartered Accountant Act, 1949, against an order of the BOD. Therefore, all the grounds urged in the present writ petition, including the denial of an opportunity of cross-examination, can also be urged as a ground to challenge the impugned order, if so maintainable in law, before the Appellate Authority.

8. In light of the above, without going into the merits of the case, the present writ petition is disposed of with the following directions:

(a) The Respondent is now directed to pass the final order in respect of the proceedings initiated against the Petitioner under Section 21A of the

[3] "Rules"

Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

(b) All rights and contentions of the Petitioner are reserved. In case the final order passed by the Respondent, is against the Petitioner, he would be free to assail the same before the Appellate Authority. In case such an appeal is filed, the Petitioner shall be permitted to raise the ground of denial of opportunity to cross-examine witnesses, if so entitled to, in accordance with law.

9. With the above directions, the present writ petition is disposed of along with pending applications.

SANJEEV NARULA, J

DECEMBER 5, 2024/ab