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

\+ W.P.(C) 4611/2024 & CM APPLs. 18908/2024, 18909/2024

(63) ANUPAM DHAWAN ..... Petitioner

Through: Mr. Kapil Sibal, Sr. Advocate with Mr. Allwyn Noronha, Mr. V.P. Singh, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul and Mr. Arjun Narang, Advocates.

versus

DISCIPLINARY COMMITTEE BENCH - V , THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, THROUGH ITS PRESIDENT AND ANR. ..... Respondents

Through: Ms. Pooja M. Saigal, Mr. Nipun Gupta and Mr. Ishank Jha, Advocates for ICAI.

\+ W.P.(C) 4679/2024 & CM APPL. 19196/2024

(64) NEERAJ KUMAR GUPTA ..... Petitioner

Through: Mr. Sudhir K. Makkar, Sr. Advocate with Mr. Allwyn Noronha, Mr. V.P. Singh, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul and Mr. Arjun Narang, Advocates.

versus

DISCIPLINARY COMMITTEE BENCH V THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA THROUGH ITS PRESIDENT & ANR. ..... Respondents

Through: Ms. Pooja M. Saigal, Mr. Nipun Gupta and Mr. Ishank Jha, Advocates for ICAI.

\+ W.P.(C) 4680/2024 & CM APPL. 19197/2024

(65) DINESH YASHAVANT SUPEKAR ..... Petitioner

Through: Mr. Allwyn Noronha, Mr. V.P. Singh, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul and Mr. Arjun Narang, Advocates.

versus

DISCIPLINARY COMMITTEE BENCH V THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA THROUGH ITS PRESIDENT & ANR. ..... Respondents

Through: Ms. Pooja M. Saigal, Mr. Nipun Gupta and Mr. Ishank Jha, Advocates for ICAI.

\+ W.P.(C) 4681/2024 & CM APPL. 19198/2024

(66) N K VARADARAJAN ..... Petitioner

Through: Mr. Allwyn Noronha, Mr. V.P. Singh, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul and Mr. Arjun Narang, Advocates.

versus

DISCIPLINARY COMMITTEE BENCH V THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA THROUGH ITS PRESIDENT & ANR. ..... Respondents

Through: Ms. Pooja M. Saigal, Mr. Nipun Gupta and Mr. Ishank Jha, Advocates for ICAI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R

% **01.04.2024**

1. The Petitioners who are Chartered Accounts by profession have approached this Court by filing the instant writ petitions.

2. W.P.(C) 4611/2024 has been filed with the following prayers:-

> *"I. Direct the Respondents by way of a writ of prohibition, an order or a direction in the nature of prohibition directing the Respondents not to continue with the Penalty Hearing without the Petitioner getting legal representation through counsel as an authorised representative during the hearings conducted by the Respondent No. 1; and*
>
> *II. Direct the Respondents by way of a writ of mandamus, an order or a direction in the nature of mandamus directing Respondents to permit the Petitioner the right to avail legal representation during the Penalty Hearing being conducted by the Respondent No. 1 on April 02, 2024 in terms of Notice of Hearing dated March 15, 2024 in PPR/HPC/DD 12/INF/18/DC/858/18 and, or on any other date(s);and*
>
> *III. Direction to the Respondents to bear the cost of the present proceedings; and*
>
> *IV. Pass such further order(s), direction(s) or relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest."*

3. W.P.(C) 4611/2024 has been filed with the following prayers:-

> *"I. Direct the Respondents by way of a writ of prohibition, an order or a direction in the nature of prohibition directing the Respondents not to continue with the Penalty Hearing without the Petitioner getting legal representation through counsel as an authorised representative during the hearings conducted by the Respondent No. 1; and*
>
> *II. Direct the Respondents by way of a writ of mandamus, an order or a direction in the nature of mandamus directing Respondents to permit the Petitioner the right to avail legal representation during*

the Penalty Hearing being conducted by the Respondent No. 1 on April 02, 2024 in terms of Notice of Hearing dated March 15, 2024 in PPR/ HPC/DD/11/INF/18/DC/857/18; PPR/ HPC/ DD/13/ INF / 18 / DC / 859 / 18; PPR /HPC /DD /14/ INF /18/DC/860/18; PPR/HPC/DD/16/INF/18/DC/862/18; PPR/HPC/DD/75/ INF/18/DC/865/18; and PPR/HPC/DD/76/INF/18/DC/ 866/18 and, or on any other date(s);and

III. Direction to the Respondents to bear the cost of the present proceedings; and

4. W.P.(C) 4680/2024 has been filed with the following prayers:-

> *"1. Direct the Respondents by way of a writ of prohibition, an order or a direction in the nature of prohibition directing the Respondents not to continue with the Penalty Hearing without the Petitioner getting legal representation through counsel as an authorised representative during the hearings conducted by the Respondent No. 1; and*
>
> *2. Direct the Respondents by way of a writ of mandamus, an order or a direction in the nature of mandamus directing Respondents to permit the Petitioner the right to avail legal representation during the Penalty Hearing being conducted by the Respondent No. 1 on April 02, 2024 in terms of Notice of Hearing dated March 15, 2024 in PPR/HPC/DD/15/INF/18-DC/861/18 and, or on any other date(s);and*
>
> *3. Direction to the Respondents to bear the cost of the present proceedings; and*
>
> *4. Pass any other and further orders that the court may find necessary on account of justice, equity, and good conscience.*

5. W.P.(C) 4681/2024 has been filed with the following prayers:-

"I. Direct the Respondents by way of a writ of prohibition, an order or a direction in the nature of prohibition directing the Respondents not to continue with the Penalty Hearing without the Petitioner getting legal representation through counsel as an authorised representative during the hearings conducted by the Respondent No. 1; and

II. Direct the Respondents by way of a writ of mandamus, an order or a direction in the nature of mandamus directing Respondents to permit the Petitioner the right to avail legal representation during the Penalty Hearing being conducted by the Respondent No. 1 on April 02, 2024 in terms of Notice of Hearing dated March 15, 2024 in PPR/HPC/DD/17/INF/18/DC/863/18; and PPR/HPC/ DD/18/INF/18/DC/864/18 and, or on any other date(s);and

III. Direction to the Respondents to bear the cost of the present proceedings; and"

6. The facts in brief leading to the writ petitions are as under:-

i. The Director Discipline of Respondent No.2 issued a notices alleging professional misconduct against the firms, wherein the Petitioners are working, under the First and Second Schedule of the Chartered Accountants Act while seeking disclosure of the 'member answerable' in terms of Rule 8 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct of Cases) Rules, 2007 (*hereinafter called as the* 'Chartered Accountants Rules, 2007').

ii. Respondent No.1, which is the Disciplinary Committee constituted under Section 21B of the Chartered Accountants Act, 1949, conducted Disciplinary Proceedings in relation to each of the Petitioners between 14.10.2019 and 21.12.2023. During this period, several hearings took place before Respondent No.1 and the Petitioners, through their Counsel duly participated in the said proceedings.

iii. The Petitioners were issued common findings under Rule 18(17) of the Chartered Accountants Rules, 2007 on 22.01.2024 holding the Petitioners guilty of professional misconduct under the Chartered Accountants Act. Notices have been issued to the Petitioners informing that hearing would be held under Rule 19(1) of the Chartered Accountants Rules, 2007, for the purposes of determining the penalty to be imposed on the Petitioners.

iv. The notice states that the Petitioners have to appear in person during the penalty proceedings which means that they will not be permitted to be represented through Counsel.

v. It is this notice which is under challenge in the instant writ petitions wherein the Petitioners claim that they should be permitted to be represented through Advocates.

7. Heard learned Counsel for the parties and perused the material on record.

8. Explanation 1 to sub-Rule 6 of Rule 18 of the Chartered Accountants Rules, 2007 permits a Chartered Accountant against whom disciplinary proceedings have been initiated to be represented either by an Advocate or through any authorized representative who may be a Chartered Accountant, Cost Accountant or Company Secretary before the Disciplinary Committee.

9. If the Committee after considering evidence and arguments arrives at a finding that the Chartered Accountant is guilty of professional misconduct, proceedings under Rule 19 of the Chartered Accountants Rules, 2007 are

held when a hearing is afforded to the professional before an order of penalty for misconduct is passed. Rule 19 of the Chartered Accountants Rules, 2007 reads as under:-

> *"**19. Orders of the Committee***
>
> *(1) On arriving at a finding under sub-rule (8) of sub-rule (17) of rule 18 that the respondent is guilty of professional or other misconduct, the Committee shall give the respondent an opportunity to be heard before passing any order under sub-section (3) of section 21B of the Act;*
>
> *Provided that if the respondent does not appear before the Committee at the time directed to do so when given such an opportunity to be heard, the Committee shall presume that he has nothing more to represent before it and shall pass orders under sub-section (3) of section 21B of the Act.*
>
> *(2) On arriving at a finding under sub-rule (17) of rule 18 that the respondent is not guilty of professional or other misconduct, the Committee shall pass orders closing the case.*
>
> *(3) The Committee shall send, free of charge, to the Director, respondent and the complainant, a certified copy of the final order."*

10. A perusal of Rule 19 shows that unlike Rule 18, there is no provision for the Chartered Accountant being represented in the hearing through an Advocate or through an authorized representative who may be Chartered Accountant, Cost Accountant or Company Secretary.

11. The Petitioners places reliance on the Judgment dated 05.10.2023 passed by the High Court of Madras in W.P.(MD) No.15544/2020, <u>P. Ramalingam v. The Institute of Chartered Accountants of India</u>, wherein the

High Court of Madras has permitted the Chartered Accountant to be represented through a Counsel in proceedings under Rule 19 of the Chartered Accountant Rules.

12. Material on record discloses that in the facts of the present case, complicated questions of law and fact will arise for consideration even at the time of hearing under Rule 19 of the Chartered Accountant Rules, 2007. Material on record also indicates that certain questions which are likely to arise during the hearing are purely legal in nature and in the facts of the present cases, this Court is of the opinion that in the interest of justice, the Petitioners should be permitted to be represented through Advocates who would be better placed then the Petitioners to defend themselves in these proceedings.

13. Resultantly, this Court is inclined to dispose of the writ petitions by permitting the Petitioners to engage Counsels to represent them during the proceedings under Rule 19 of the Chartered Accountants Rules, 2007.

14. In view of the fact that the matter is to be heard on 02.04.2024, this Court directs the Respondents to give at least one week's time to the Petitioners to engage Counsels so that the lawyers can be given proper instructions and get prepared to represent the Petitioners during the hearing.

15. The writ petitions are disposed of with the aforesaid observations. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

APRIL 1, 2024
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