



2024:DHC:4666



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 24th MAY, 2024IN THE MATTER OF:+ **W.P.(C) 7517/2024****INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

..... Petitioner

Through: Mr. Roshan Santhalia and Mr. Harsh
Mishra, Advocates.

versus

NARESH SINGLA & ANR.

..... Respondents

Through:

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)****CM APPL. 31327/2024 (Exemption)**

Allowed, subject to all just exceptions.

W.P.(C) 7517/2024

1. The Petitioner, Institute of Chartered Accountants of India (ICAI) has approached this Court under Article 226 of the Constitution of India challenging Judgment dated 12.10.2023 passed by the Appellate Authority constituted under the Chartered Accountants Act, 1949.
2. The Appellate Authority *vide* the impugned order has allowed an appeal filed by Respondent No.1 herein against the findings Order dated 03.02.2020 passed by the Disciplinary Committee holding Respondent No.1 guilty of professional misconduct under Clause (7) of Part I of the Second Schedule of the Chartered Accountants Act and consequential Order dated



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08.02.2022 awarding punishment of removal of the name of Respondent No.1 from the Register of Members for a period of six months along with fine of Rs.1,00,000/-.

3. The facts of the case reveal that Respondent No.1 is a Chartered Accountant and dealt with a company, namely, Lotus Refineries Private Limited and issued a net worth certificate dated 29.10.2012 to Lotus Refineries Private Limited holding that the company has net worth of Rs.268.27 lakhs as on 30.09.2012. A complaint was filed by Respondent No.2 against Respondent No.1 stating that the net worth certificate issued by Respondent No.1 is not correct.

4. The Respondent No. 2/Complainant, 'National Spot Exchange Limited', is the pan India electronic commodity spot exchange under the oversight of the Forward Market Commission (FMC), Ministry of Finance. It is stated that Respondent No.2 is engaged in organizing the trade of commodity spot markets and facilitating purchase and sale transactions in commodities through its electronic trading platform.

5. It is stated that Respondent No. 2/Complainant helps the farmers to sell their crop produce through an electronic trading platform while the processors/ exporters/ manufacturers spread across the county are able to buy the same resulting into higher price realization to the farmers. One of the products of Respondent No.2 is a short and long duration contract, the facility enabling bulk buyers and sellers to trade in commodities. It is stated that a few entities in connivance with some of the Exchange senior officials compromised with the risk management system of the Exchange and defaulted in their obligation. They sold goods that were supposed to be in their warehouse and received the money in lieu of sales.



6. After the exchange operations were closed on 31.07.2013, it was found by an audit agency appointed by the Board of NSEL that there were no goods in the warehouses. This fraudulent activity led to an unprecedented settlement crisis of Rs.5,647.20 crores and that the matter was investigated by EOW, Mumbai and the Enforcement Directorate.

7. It is stated that M/s Lotus Refineries Pvt. Ltd. (*hereinafter referred to as 'LRPL'*) is one of the 22 defaulters. It is stated that Respondent No.1 had issued the certificate dated 29.10.2012 of the net worth of the Company called LRPL certifying the net worth of Rs. 268.27 lakhs as on 30.09.2012. The said Company was admitted as a member of the Complainant and the particular limit was earmarked based on the certificate of net worth certified by Respondent No.1. However, it was later on found that the Company had defaulted for a huge amount in dealing with the Respondent No.2/Complainant.

8. The Respondent No. 2/Complainant observed that the certificate of net worth certified issued by Respondent No.1 certifying the net worth of the Company was not correct as the Company has defaulted for the huge amount in dealing with the Respondent No. 2/Complainant. It is also found that the Company has dealt with the Respondent No. 2/Complainant amounting to Rs.272.35 crores during the financial year 2011-2012.

9. In view of the above, Respondent No.2/Complainant filed complaint dated 28.06.2014 against the Respondent No.1 alleging that Respondent No.1 committed professional misconduct falling within the meaning of Clauses (5), (6), (7), (8) and (9) of Part I of the Second Schedule to the Act.

10. The Disciplinary Committee proceeded further in terms of Chapter V of the Rules and after having given due consideration to the pleadings,



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materials available on record and submissions made by the parties, the Disciplinary Committee *vide* Order dated 03.02.2020 held Respondent No.1 guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Act and by a consequential Order dated 08.02.2022 awarded punishment of removal of his name from the Register of Members for a period of six months along with a fine of Rs.1,00,000/-.

11. Aggrieved and dissatisfied with the aforesaid impugned Orders dated 03.02.2020 and 08.02.2022, Respondent No.1 preferred an appeal before under Section 22G of the Act.

12. The Appellate Authority *vide* order impugned herein accepted the contention of Respondent No.1 that the net worth certificate was given by Respondent No.2 on the basis of a provisional balance sheet as on 30.09.2012 and not on the basis of the balance sheet given at the end of the financial year which was in March, 2013. The Appellate Authority stated that mere omission to mention that the net worth certificate is issued on the basis of provisional balance sheet does not amount to professional misconduct and such omission is nothing but only technical in nature.

13. The appeal was therefore allowed and the orders impugned therein were set aside and the punishment imposed on Respondent No.1 has been set aside. It is this order which has been challenged by the ICAI in the present writ petition.

14. At the outset it is pertinent to mention that this Court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit as an Appellate Authority. A writ court exercising its jurisdiction under Article 226 of the Constitution of India does not substitute its own conclusion to the one arrived at by any authority unless the decision is so perverse that no



authority can come to such a conclusion or that the order is completely in contravention of any provision of any law be it an Act or the Regulation framed under the Act.

15. The Apex Court in Central Council for Research in Ayurvedic Sciences & Anr. v. Bikartan Das & Ors., **2023 SCC OnLine SC 996**, has held as under:-

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its



extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

53. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

"7. ... In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal

8. The supervision of the superior court exercised



through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited [[1922] 2 A.C. 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction.”

54. Relying on T.C. Basappa (supra), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (supra), laid down the following propositions as well established:

“(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.”

55. This Court explained that a court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the



Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.

56. In Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, P.B. Gajendragadkar, CJ., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of



evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.....”

57. In *Surya Dev Rai v. Ram Chandra Rai*, (2003) 6 SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to



the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233 occasioning failure of justice.”

16. Applying the said law laid by the Apex Court to the facts of the present case, the learned Counsel for the Petitioner has not been able to point out any specific Regulation or accounting standards which Respondent No.1 has violated.

17. Learned Counsel for the Petitioner has drawn the attention of this Court to Paragraph 9.3.1 of the order passed by the Disciplinary Committee. Paragraph 9.3.1 of the said order reads as under:-

“Para 9.3.1- However, from the documents on record, it appears that the Respondent had relied upon unaudited figures and further, the financial statements certified by CA. Mulraj D. Gala clearly indicates that it was provisional. Though the Respondent stated that it was audited financial statement as it was subject to audit report of CA. Mulraj D. Gala but he cannot bring on record copy of audit report signed by CA. Mulraj D. Gala. The Committee noted that as per para 5(2)(j) of the afore-stated Guidance note, where the statement on which CA is required to give his report or certificate, includes some information which has not been audited, CA should clearly dictate in his report or certificate the particulars of such information. Further, as per para 6.4 of the Guidance note, if where the reporting auditor prepares his report or certificate on the basis of duly audited general purpose financial statements he may take the following precautions.

(i) He may clearly state in his report or certificate that the figures from the audited general purpose financial



statements have been used and relied upon.

(ii) He may include in his report or certificate a statement showing the reconciliation between the figures in the general purpose financial statements and the figures appearing in his report or certificate.

It is viewed that in both the above conditions as to whether the financial statements was audited or unaudited, the Respondent was required to mention the fact in his certificate but he appears to have failed to do so Further, it is noted that net worth as certified by the Respondent as on 30th September, 2012 consist of paid up capital and reserve & surplus only As per provisional balance sheet, amount of net profit was Rs.2 42 crore which was part of reserve & surplus as mentioned in the net worth certificate of Rs 2 43 crore and the same fact clearly represents that reserve & surplus was mainly made from net profit earned by the Company during the period 01 04.212 to 30.09.2012 Since except the provisional financial statements of the Company, no other financial statement was brought on record by the Company, it has been observed that for the figures of reserve & surplus or net profit, the Respondent relied upon the provisional financial statements. As per requirement of the guidance note, the Respondent was required to mention his certificate that he relied upon unaudited financial statements so as to enable the users of the same to decide the degree of reliance to be placed on the same.”
(emphasis supplied)

18. A perusal of the above paragraph shows that the Chartered Accountant should indicate in his report or certificate on the basis of duly audited general purpose financial statements and he should take the precaution of clearly stating in his report or certificate the figures from the



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audited general purpose financial statements have been used and relied upon and a statement showing reconciliation between the figures in the general purpose financial statements and the figures appearing in his report or certificate.

19. The Appellate Authority has come to an opinion that no guidelines have been violated. The Appellate Authority is of the opinion that the guidance note will not have a statutory aberration in following the guideline note is only a technical omission and will definitely not amount to misconduct.

20. The Appellate Authority has held that mere omission to mention that the net worth certificate is issued on the basis of provisional balance sheet does not attract any misconduct or otherwise as such omission is technical in nature. This Court is not inclined to interfere with the opinion of the Appellate Authority which consists of a retired Judge of a High Court and three expert members who have opined that the actions of Respondent No.1 are not such that it would attract a penalty of removal of his name from the Register of Members for a period of six months.

21. In view of the above, this Court is not inclined to interfere with the order of the Appellate Authority which cannot be said to be perverse calling for interference under Article 226 of the Constitution of India. However, the Respondent No.1 is directed to be more careful in future.

22. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 24, 2024/hsk