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

\+ W.P.(C) 9181/2024, CM No. 37539/2024 & CM No. 37540/2024

TEHMUL SETHNA .....Petitioner

Through: Mr. Saurabh Agrawal, Advocate with Ms. Komal Mundhra and Ms. Vanshika Dubey, Advocates.

versus

THE INSTITUTE OF CHARTERED ACOUNTANTS OF INDIA (ICAI) & ORS. .....Respondents

Through: Mr. Robin Ratnakar David, Advocate with Mr. Febin M. Verghese and Ms. Nihar Baijal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **08.07.2024**

1. The present writ petition assails the orders dated 20th May, 2024 and 23rd May, 2024,[1] passed by the Board of Discipline[2] as constituted under the Chartered Accountants Act, 1949[3]. Although there is an appellate remedy before the Appellate Authority under Section 22G of the Act, since the Petitioner has raised a jurisdictional challenge to the order of the Board, the Court has heard the Petitioner.

2. The background facts leading to the issuance of the Impugned Orders is as follows:

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[1] collectively "the Impugned Orders"
[2] "the Board"
[3] "the Act"

2.1. On a complaint filed by Respondent No. 2 alleging professional misconduct, disciplinary proceedings were initiated against the Petitioner. After holding an enquiry and affording a hearing to the Petitioner, on 11th February, 2021, the Board of Respondent No.1 found the Petitioner to be guilty of professional misconduct.

2.2. Aggrieved by the above findings, the Petitioner filed an appeal bearing No. 39/ICAI/2022 before the Appellate Authority. The same was allowed as the order of the Board was not signed by all its members. The relevant findings of the Appellate Authority are as follows:

> "*9. During the course of the hearing, it has transpired that the order dated 11.02.2021 (Findings), passed by the Board of Discipline under Rule 14 (9) of the Rules holding the Appellant guilty, does not bear the signature of all the members who were present on the date of final hearing i.e. 08.02.2021 when the matter was finally heard, as such, the order dated 11.02.2021 (Findings) bears the signature of CA. Prasana Kumar D, (Presiding Officer). Further, it emerges from the record that the Appellant was afforded an opportunity to be heard under Rule 15(1) of the Rules before passing order under Section 21A(3) of the Act and accordingly, a hearing was fixed on 05.10.2021 to hear the Appellant on the quantum of punishment wherein CA. Prasanna Kumar D (Presiding Officer) and Ms. Rani Nair, Retd. IRS (Govt. Nominee), Member and CA. Satish Kumar Gupta, Member were present and after the conclusion of the said hearing, the punishment order dated 01.02.2022 was passed awarding the Appellant a punishment of removal of his name from the Register of Members for a period of one (01) month along with a fine of Rs. 1,00,000/- (Rupees One Lakh). However, the punishment order dated 01.02.2022 also does not bear the signature of all the Members, who heard the matter on quantum of punishment on 05.10.2021. As such, the punishment order dated 01.02.2022 bears the signature of CA. Prasanna Kumar D (Presiding Officer) only.*
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> *10. Having noted the factual matrix as above, now, we may refer to the relevant statutory provisions governing the issue at hand in the succeeding paras.*
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> *11. In terms of Rule 13(2) of the Rules, the Coram for any meeting/hearing of the Board of Discipline shall be two members. In the instant matter, perusal of the order dated 11.02.2021 (Findings) shows that CA. Prasanna Kumar D (Presiding Officer) and Ms. Rani Nair, Retd. IRS (Govt. Nominee) were*

present in the hearing held on 08.02.2021, meaning thereby, the coram of the Board of Discipline was complete when the matter was finally heard on 08.02.2021. However, the order dated 11.02.2021 (Findings) bears the signature of CA. Prasanna Kumar D (Presiding Officer) only. Similarly, the punishment order dated 01.02.2022 bears the signature of CA. Prasanna Kumar D, (Presiding Officer) whereas CA. Prasanna Kumar D (Presiding Officer) and Ms. Rani Nair, Retd. IRS (Govt. Nominee), Member and CA. Satish Kumar Gupta, Member were present in the hearing held on 05.10.2021 to hear the Appellant on quantum of punishment.

12. In terms of Rule 13(1) of the Rules, the matters which are placed before the Board of Discipline, are required to be decided by the majority of Members present in the hearing. It means that the decision taken by the Board of Discipline is reduced to writing in the form of orders, which are invariably required to be signed by all the members present in the hearing/meeting.

13. For the reasons stated above, it can be safely concluded that the orders dated 11.02.2021 and 01.02.2022 are not bearing the signatures of all the members present on particular dates, hence, these orders were passed by the Board of Discipline in violation of the procedures laid down in the Rules framed under the Act, hence, these orders are non est in the eyes of law.

14. On being confronted as to why, in the given circumstances, the matter should not be remanded back to the Board of Discipline, the Learned Counsel for Respondent No. 1/ICAI, after seeking instructions from the ICAI, has very fairly stated that the ICAI has no objection in case the said impugned orders are set aside and the matter is remanded back to the Board of Discipline for passing afresh orders.

15. In viewof the discussion contained in the preceding paras, we, without going into the merits, set aside the impugned orders dated 11.02.2021 and 01.02.2022 with a direction to the Board of Discipline to pass afresh orders under Rule 14 (9) of the Rules and Section 21A (3) of the Act, after affording the Appellant as well as the Respondents an opportunity to submit their arguments."

2.3. Subsequently, Respondent No.1 filed W.P.(C) 5310/2024 before this Court, assailing the afore-noted order of the Appellate Authority. In the said petition, the Court *vide* order dated 29th April, 2024, upheld the order of the Appellate Authority, and granted liberty to issue fresh orders bearing the signatures of all the members of the Board.

2.4. Pursuant to the above liberty, the Respondent No.1 issued fresh orders on 20th May, 2024 and 23rd May, 2024 holding the Petitioner herein guilty of professional misconduct.

3. Counsel for Petitioner points out that the Impugned Orders have been signed by members, who on the date of signing of the order, had retired from the Board.

4. In response, counsel for Respondent No.1 states that the order was passed at a time when COVID-19 was prevalent.

5. The Court has considered the afore-noted contentions.

6. In the opinion of the court, the Impugned Order dated 20th May, 2024 cannot sustain as it has been signed by persons who are not member of Board. The directions issued by this Court on 29th April, 2024 in W.P.(C). 5310/2024 has been misinterpreted. The implementing of the Court's directions cannot be construed to mean that the persons who are not members of the Board have been called upon now to adjudicate the disciplinary proceedings. If the constitution of the Board subsequent to the order dated 29th April, 2024, had undergone a change, it was incumbent upon the new constituent members of the Board to have heard and then passed the order.

7. In light of above, the present writ petition is allowed with the following directions:

a. The order dated 20th May, 2024 and the consequential punishment order dated 23rd May, 2024 is set aside.

b. Respondent No. 1 is directed to pass a fresh order, in accordance with law.

c. The order shall be passed by the persons who are currently constituents/members of the Board of Discipline of Respondent No. 1. If this entails hearing the matter afresh, the same is to be done expeditiously.

8. The Court has not reflected any opinion on the merits of the case and all rights and contentions of the parties are left open.

SANJEEV NARULA, J

JULY 8, 2024
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