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

\+ W.P.(C) 9776/2024, CM APPL. 40121-40122/2024

RAJ SINGH CHOPRA .....Petitioner

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

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ICAI & ORS. .....Respondents

Through: Mr. Robin Ratnakar David, Mr. Febin M. Varghese and Mr. Nihar Baijal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **19.07.2024**

1. The present writ petition assails the findings order dated 20th May, 2024,[1] passed by the Board of Discipline[2] as constituted under the Chartered Accountants Act, 1949.[3]

2. The background facts leading to the issuance of the Impugned Order are as follows:

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 01st

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[1] "the Impugned Order"
[2] "the Board"
[3] "the Act"

February, 2022, 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. 53/ICAI/2022 before the Appellate Authority under Section 22G of the Act.

2.3. Meanwhile, a fresh Board was constituted for the period of 2023-2024 as the term of the previous Board expired.

2.4. On 19th October, 2023, the appeal was remanded back to the Board to pass fresh orders, as the order of the Board was not signed by all its members. The relevant findings of the Appellate Authority are as follows:

> "*6. During the course of the hearing, it has transpired that Order dated 01.02.2022 (Findings) in Appeal No. 52/ICAI/2022 (Raj Singh Chopra v. ICAI & Anr.) and Order dated 01.02.2022 (Findings) in Appeal No. 53/ICAI/2022 (Rajesh Kumar Chandak v. ICAI & Anr. passed by the Board of Discipline under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007 (hereinafter referred to as 'Rules') holding the Appellants guilty, bear the signature of only CA. Prasanna Kumar D, (Presiding Officer) whereas final hearings in these matters were held on 03.01.2022 wherein CA. Prasana Kumar D, (Presiding Officer) and Ms. Rani Nair, Retd. IRS (Govt. Nominee) were present.*
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> *7. 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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> *8. 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 matters, perusal of the Orders dated 01.02.2022 (Findings) show that CA. Prasana Kumar D, (Presiding Officer) and Ms. Rani Nair, Retd. IRS (Govt. Nominee) were present in the hearings held in these matters on 03.01.2022, meaning thereby, the coram of the Board of Discipline was complete when the matters were finally heard on 03.01.2022. However, the Orders dated 01.02.2022 (Findings) bear the signature of CA. Prasana Kumar D, (Presiding Officer) only.*

9. 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.

10. For the reasons stated above, it can be safely concluded that the Order dated 01.02.2022 (Findings) in Appeal No. 52/ICAJ./2022 (Raj Singh Chopra v. ICAI & Anr.) and Order dated 01.02.2022 (Findings) in Appeal No. 53/ICAJ./2022 (Rajesh Kumar Chandak v. ICAI & Anr.) passed by the Board of Discipline under Rule 14(9) of the Rules are not bearing the signatures of all the Members present on particular date, hence, these orders were passed by the Board of Discipline in violation of the procedures laid down in the Rules framed under the Chartered Accountants Act, 1949, hence, these orders are non est in the eyes of law.

11. In view of the discussion contained in the preceding paras, we, without going into the merits, set aside the impugned Order (Findings) dated 01.02.2022 in Appeal No. 52/ICAJ./2022 (Raj Singh Chopra v. ICAJ. & Anr.) and Order (Findings) dated 01.02.2022 in Appeal No. 53/ICAI/2022 (Rajesh Kumar Chandak v. ICAJ. & Anr. 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 Chartered Accountants Act, 1949 after affording the Appellants as well as the Respondents an opportunity to submit their arguments.

12. We make it clear that fresh pleadings need not to be filed by the parties before the Board of Discipline and the matters may be decided on the basis of the pleadings and the statements of the stakeholders already filed/recorded unless the Board of Discipline directs the parties to file additional pleadings. The matters have to be heard by the Board of Discipline and the orders under Rule 14 (9) of the Rules and Section 21A (3) of the Chartered Accountants Act, 1949 be passed within a period of three (03) months from the date of receipt of this common order. It is also made clear that no adjournment shall be granted to the parties in the matters by the Board of Discipline except in exceptional circumstances."

2.5. Subsequently, Respondent No. 1 filed writ petition bearing No. W.P.(C) 5311/2024 before this Court, assailing the afore-noted order of the Appellate Authority. In the said petition, the Court through order dated 29th April, 2024 granted liberty to Respondent No. 1 to issue fresh orders bearing the signatures of all the members of the Board who were part of the proceedings.

2.6. Pursuant to the above liberty, the Board issued fresh orders on 20th May, 2024 holding the Petitioner herein guilty of professional misconduct.

2.7. In light of the above, the Petitioner seeks the following reliefs:

> *"A. Issue a Writ in the nature of certiorari or any other appropriate writ, order or direction quashing or setting aside the order dated 20.05.2024 passed by the Board of Discipline in PR-189/2017 – DD/248/2017/BOD/597/2021 and its consequential effects; AND/OR*
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> *B. Call for records of Order dated 20.05.2024 passed by the Board of Discipline in PR-373/17-DD/08/18-BOD/547/2020;"*

3. Mr. Robin Ratnakar David, counsel for Respondent No. 1/ Institute of Chartered Accountants of India, at the outset, states that he would like to file a reply to the present petition. However, considering that this Court, in nearly identical circumstances, has already allowed writ petition bearing No. W.P.(C) 9181/2024 titled as ***Tehmul Sethna v. The Institute of Chartered Accountants of India (ICAI) & Ors.***, on 08th July, 2024 and, since the same jurisdictional challenge is arsing in the present matter, the Court has instead called upon the counsel to present their arguments.

4. Counsel for Petitioner points out that the Impugned Order has been signed by members, who on the date of signing of the order, had retired from the Board. Further, he urges that in case the Impugned Order was to be set aside then, consequently, the punishment order dated 24th June, 2022 would also be liable to set aside.

5. *Per contra,* Mr. David further points out that this Court should, instead of dealing with the matter, take the same approach as taken by the Coordinate Bench in writ petition bearing No. W.P.(C) 8137/2024 titled as

CA Raghu Marwah v. Board of Discipline & Ors., whereby this Court on 30th May, 2024, allowed the writ petition and kept the punishment order in abeyance, till the date the preliminary hearing of the appeal was to be taken by the Appellate forum under the Act.

6. The Court has perused the facts and contentions of the parties.

7. In the opinion of the Court, since a jurisdictional issue has been raised in the present petition, it is a fit case for this Court to exercise jurisdiction under Article 226 of the Constitution of India, 1950, and, therefore, it will not be appropriate to defer adjudication awaiting the Appellate Authority to be functional. This is more so because the jurisdictional issue pertains to interpretation of the order passed by this Court. Further, as observed in the preceding paragraphs, this Court has already taken a view regarding a similar matter on 08th July, 2024 in writ petition bearing No. W.P.(C) 9181/2024.

8. There are peculiar circumstances in the present case which need to be highlighted. In this case, the consequential punishment order is dated 24th June, 2022. In terms of the directions issued by this Court on 29th April, 2024, Respondent No. 1 has only got the Impugned Order i.e. findings order, signed from the members of the Board. As a result, we have a situation where the punishment order is of 24th June, 2022 whereas the finding order is of 20th May, 2024. Be that as it may, the members of the Board having become *functus officio* could not have signed an order in the capacity of a member on 20th May, 2024. In the opinion of the Court, the directions issued on 29th April, 2024 in writ petition bearing No. W.P.(C). 5311/2024 have 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. Further, 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.

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

a. The order dated 20th May, 2024 and, consequently, the punishment order dated 24th June, 2022 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.

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

11. With the above directions, the petition along with pending applications, is disposed of.

SANJEEV NARULA, J

JULY 19, 2024
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