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

% Date of Decision: 07.05.2025

\+ **W.P.(C) 3131/2019**

NIZAR MAWANI .....Petitioner

Through: Mr. Kamall Ahuja with Mr. Priamvada, Mr. Ankit Sethi and Mr. Ritish Chauhan, Advocates.

versus

CS AJAY ANTARKAR AND ANR .....Respondents

Through: Mr. Aditya Madaan with Mr. Anmol Singh, Advs. for respondent no.1.
Mr. Sangram Patnaik, Mr. Sohel Rishabh, Ms. Swayamsidha Patnaik and Mr. Nishu Bhushan, Advocates for respondent no.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner seeks setting aside of order dated 15.11.2018 (hereinafter, '*impugned order*') passed by the Disciplinary Committee, the Institute of Company Secretaries of India (hereinafter, '*ICSI*') whereby respondent No.1 was absolved of the charge of professional misconduct levelled against him by the petitioner.

2. Pithily put, the case of the petitioner is that the respondent No.1 had certified various e-forms 20B with respect to the Annual Returns in respect

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of the Annual General Meetings held in September 2007 and 2008 with respect of seven companies, of which the petitioner is a shareholder and director. As per the petitioner, one *Hanif Somji* and *Mrs. Jenice Somji* had transferred the shares held by them in the subject companies to the petitioner and his wife in 2006-2007 and the Respondent No.1 has certified Form 20B having attachment of the Annual return for FY 2006-07 of M/s. Zerostart Trading Pvt. Ltd, for FY 2007-08 in which the shareholding pattern after the transfer of shares from the abovementioned persons to the petitioner has been confirmed and verified. However, *Hanif Somji* and *Mrs. Jenice Somji* deny the above position and have preferred Company Petitions No. 45 to 53 of 2013 before the CLB, Mumbai, contending that they continue to be shareholders of the company. In these proceedings, the respondent No.1 has filed an affidavit stating that the share transfer deeds were not executed in his presence.

3. The petitioner preferred a complaint bearing no. ICSE/DC/216/2014 against respondent No.1 for professional misconduct before the Disciplinary Committee, ICSI. Petitioner's case before the Disciplinary Committee was that though the annual returns certified by the respondent No.1 confirm the factum of the share transfer having taken place, and despite the respondent No.1 again confirming the said fact vide letter dated 03.02.2010, the respondent falsely stated on oath in an affidavit that the transfer forms were never executed by the petitioner in his presence and further that he had revoked the said letter vide email/letter of revocation dated 11.03.2010. It was alleged that the Respondent No.1 had acted in a prejudiced manner not befitting a professional by making contrary statements under his signature in

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his professional capacity while signing the Annual Returns and on Oath before a quasi-judicial authority.

4. On 12.09.2024, the Director (Discipline) in his *prima facie* opinion held respondent No.1 guilty of professional misconduct under Clauses (6), (7) and (8) of Part-1 of the Second Schedule of the Company Secretaries Act, 1980 (hereinafter, '*the Act*'), however, the Disciplinary Committee, vide the impugned order, exonerated respondent No.1.

5. The respondent has taken a preliminary objection that the Act does not provide an opportunity of appeal to a non-member and the petitioner, not being a member of the ISCI, cannot therefore approach this Court as an appellate forum. Reliance is placed on a decision of the Co-ordinate Bench of this Court in Rajendra Eknath Wagh v. The Institute of Chartered Accountants of India & Ors.[1] while drawing a parallel with the Chartered Accountant Act, 1949, which is stated to be *pari materia* to the subject Act.

6. The petitioner has limited his challenge to the impugned order on the ground of violation of principles of natural justice, insofar as *firstly*, it is contended that the adjudication was made by a biased committee and *secondly*, it is stated that the petitioner was denied an effective opportunity of hearing before passing of the impugned award. On the aspect of maintainability, it is submitted that in the absence of an effective alternate remedy, the writ petition against the impugned order is maintainable. In support of his submissions, reliance is placed on United Bank of India v. Satyawati Tondon.[2] It is also pointed out that since it is the admitted position

[1] **W.P.(C) 9003/2024** dated 31.07.2024.
[2] 2010 SCC OnLine SC 776.

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of the respondents that the Act provides for no appellate remedy to the petitioner, preferring the writ petition was the only viable avenue available to the petitioner to seek redressal of his grievances.

7. *Per contra*, learned counsel for the respondent No.1 submits that the Disciplinary Committee being the competent authority to adjudicate on the complaint of the petitioner, the merits of its decision cannot be questioned before this Court as long as it adheres to the principles of natural justice. In this regard, reliance is placed on the decisions in Regional Manager, UCO Bank v. Krishna Kumar Bhardwaj,[3] Union of India v. P. Gunasekaran[4] and B.C. Chaturvedi v. Union of India.[5] The allegations of violation of principles of natural justice are vehemently denied by submitting that both the parties were given a fair opportunity before the Disciplinary Committee insofar as multiple hearings were conducted in both their presence and their respective written submissions were taken on record and considered while passing the impugned order. Moreover, it is submitted that in 2018, a member of the Disciplinary Committee initially constituted, recused himself due to a potential conflict, even in the absence of allegations to that effect.

8. I have heard learned counsels for the parties and gone through the records.

9. When it comes to judicial review of administrative actions, the Court does not sit in appeal and cannot replace the decision of the administrative authorities by its own decision. Interference in an administrative decision is called for when the decision is an outcome of an unfair procedure. Some of

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[3] (2022) 5 SCC 695.
[4] (2015) 2 SCC 610.

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the grounds mandating judicial review are illegality, irrationality and procedural impropriety. The proceedings have to conform to the rules of natural justice.

10. The Director (Discipline) on examination of the complaint, written statement, rejoinder and other material on record, in her *prima facie* opinion dated 12.09.2014, held that there were contradictory statements made by respondent No.1 in asmuch as though he had certified Form 20B indicating share transfer deeds evidencing transfer of shares, however in the affidavit filed before CLB, Mumbai, he denied the execution of the transfer deeds. The Director also noticed an email of the respondent dated 06.03.2010, wherein he stated that the custody of all documents relating to transfer is with Mr *Somji.* The Director held as under:-

> *…Though, the Respondent has stated that the purpose of the Affidavit was limited to the point that the transfer deeds related to the shares of the said companies were not executed in his presence hence, he denied the transfer of shares in the affidavit but this contention of the Respondent that he was not aware of the transfers cannot be accepted in the instant case, as he himself has certified Form 20B of the said company indicating the share transfer.*
>
> *In view of the foregoing, the Respondent is prima-facie 'Guilty' of professional Misconduct under Clauses (6) (7) and (8) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he (i) failed to report a material mis-statement (il) did not exercise due diligence and (il) failed to obtain sufficient information necessary for affirmation.*

11. This *prima facie* opinion was brought before the Disciplinary Committee which agreed with it and proceeded ahead with the matter. The parties were provided with copies of the opinion, and they submitted their written statement and rejoinder in response, taking certain additional

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[5] (1995) 6 SCC 749.

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grounds. The Committee held multiple hearings, wherein the parties made their respective oral and written submissions through their respective representatives. The Committee, after considering all the material on record; submissions made by the parties and after considering all the facts and circumstance of the matter, took a contrary view to the Director (Discipline) and held that the respondent No.1 was not guilty of Professional Misconduct under the Company Secretaries Act, 1980. While doing so, it observed that the alleged transfer was done on 10.08.2006, and the respondent No.1 had not certified the Form 20B of M/s. Zerostart Trading Pvt. Ltd., for the financial year 2006- 2007. The Committee also observed that it was admitted case of the petitioner that they were not alleging that the Annual Return was improperly certified by the respondent No.1 but rather a misstatement in the affidavit filed by him was alleged. It was further observed that the petitioner had failed to place any material evidence to show that the transfer deeds in question were signed in the presence of the respondent apart from a letter dated 03.02.2010 addressed to the respondent No.1 by the petitioner, which is signed by both the parties. The respondent No.1 had alleged that he was forced to sign the same which was backdated and he had revoked it vide email dated 11.03.2010. With respect to the email dated 05.03.2010, the Committee observed that if the respondent No.1 had already confirmed the share transfer on 03.02.2010, then it could not understand the need for the petitioner in again sending an email for the same purpose on 05.03.2010, without even referring to the earlier letter dated 03.02.2010. Since the petitioner failed to place on record any record material evidence to show that the transfer deeds in question were signed in the

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presence of the respondent, it was held that there was no misstatement in the affidavit of the respondent No.1.

12. I have gone through the impugned order and the same does not appear to be arbitrary or irrational or devoid of any reasoning. Rather, the Committee has relied on both oral and written submissions of the parties while reversing the *prima facie* findings of the Director (Discipline). The only challenge that can sustain against the decision in disciplinary proceedings is denial of natural justice to the aggrieved. However, a perusal of the disciplinary authority record would indicate otherwise. During the pendency of the disciplinary proceedings, the petitioner had statedly levelled allegations of biasness against one of the Members of the Disciplinary Committee. Notably, the said issue was adequately dealt with inasmuch as the said member, in wake of likely potential bias, recused himself and was duly substituted, concededly before the passing of the impugned order.

13. As regards the petitioner's contention of lack of grant of an effective hearing during the course of the disciplinary proceedings, it is noted that the petitioner failed to show anything to substantiate the said contention. Indisputably, the petitioner was represented through a counsel at every stage of the disciplinary proceedings. The same is also evident when perusing the record, wherein all interim orders as well as the impugned order records and takes note of submissions made on behalf of the petitioner herein and duly marks the appearance of his counsel.

14. Even otherwise, the scheme of the Act does not allow for appeals by persons who are not members of ICSI. The petitioner's grievances, which are raised in the instant petition, have already been considered and

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adjudicated upon after following the procedure as prescribed in the Act. It is a settled position in law that the Court cannot supplant its view over the view taken by the appropriate authority in disciplinary proceedings conducted between professional institutes, such as respondent No.2 herein, and its members, as is respondent No.1 herein. A complainant (such as the petitioner herein) is entitled to participation in such disciplinary proceedings, however, he cannot appeal against the decision under the Act as the said dispute pertaining to the conduct of a member is not private in nature but essentially between the institute and its members. [Ref: Rajendra Eknath Wagh (*Supra*) and Wholesale Trading Services P Ltd v. The Institute of Chartered Accountants of India & Ors.[6]]

15. In view of the above discussion and the facts and circumstances of this case, it is the considered opinion of this Court that there is no merit in the present petition and accordingly, the same is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

MAY 7, 2025/ik&ry
(*corrected and released on 19.05.2025*)

[6] **W.P.(C) 8071/2019** dated 01.08.2019.

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