



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2026

CORAM

**THE HON'BLE DR JUSTICE G. JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SHAMIM AHMED**

W.P.No. 23686 of 2023

and

W.M.P.Nos.23194, 23196 of 2023 & 10457 of 2026

R.Balaji
Chartered Accountant,
Membership No. 026922,
Residing at Flat A-1, Thiruvallurkudil Apartments,
New No.2, Brindavan Street, West Mambalam,
Chennai 33

..Petitioner

Vs

1. The Appellate Authority
The Institute of Chartered Accountants of India
Through its Registrar,
4th Floor, ICAI Bhawan,
Indraprastha Marg,
New Delhi 110 002

Also Having Office at
2nd Floor, Research Block,
ICAI Bhawan, A-29,
Sector 62, Noida 201 301.

2. The Disciplinary Committee
The Institute of Chartered Accountants of India
ICAI Bhawan, P.O. Box 7100 ,
New Delhi 110 002
3. The Institute of Chartered Accountants of India
Through its Secretary,
ICAI Bhawan, P.O. Box 7100 ,
New Delhi 110 002



Also Having Office At
ICAI Bhawan, 122, Mahatma Gandhi Road,
Post Box No. 3314, Nungambakkam,
Chennai 34

4. Venkataramani Swaminathan,
DSL V Ventures,
1540 Oakwood Trail,
Xenia, Ohio 43585

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, Calling for the records of the 1st respondent in Appeal No. 17/ ICAI/ 2019 and quash the impugned order dated 27.07.2023 passed by the 1st respondent in Appeal No. 17/ ICAI/ 2019.

For Petitioner: Mr.V.Raghavachari, Senior Counsel for
M/s. Sriram Venkatavaradan

For Respondents: Mr. Rajesh Ramanathan for R2 & R3
Ms. Tanya Kapoor for R4

ORDER

(Order of the Court was made by Dr.G.Jayachandran J.)

This Writ Petition has been filed by the petitioner, a Chartered Accountant by profession, being aggrieved by the order passed by the Appellate Authority constituted under the Chartered Accountants Act, 1949 (hereinafter referred to as Act), in Appeal No.17/ ICAI/ 2019, dated 27.07.2023.

2. The brief facts of the case are that the petitioner is a Chartered Accountant for Dr.Kamakshi Memorial Hospital Private Limited. A complaint against him came to be lodged on 05.12.2013 before the Institute of Chartered



Accountants of India, who is the 3rd respondent herein. The complaint was processed as per the procedure established under the Act. After framing 10 charges against the petitioner and conducting an enquiry, the Director of (Discipline) formed a prima facie opinion. Based on this opinion, the Disciplinary Committee passed an order on 09.07.2018, holding the writ petitioner guilty of professional misconduct falling within meaning of Clause (7) of Part 1 of the Second Schedule to the Chartered Accountants Act, 1949. Consequently, a punishment was imposed, removing his name from the register of members for a period of one (1) month and imposing fine of Rs.10,000/-. This was challenged by the petitioner herein before the Appellate Authority. The Appellate Authority vide order dated 27.07.2023 upheld the decision of the Disciplinary Committee. The said order of the Appellate Authority is impugned in this writ petition.

3. Out of the 10 charges framed against the writ petitioner, three charges were found to be proved by both the Disciplinary Committee as well as the Appellate Authority. These three charges are as below:-

“4. Two certificates dated 05.12.2009 issued with different amounts as Promoter’s margin. Second Schedule-7.

8. FDI norms not complied. Second Schedule-5.

9. The correctness of accounts and no frauds in the accounts from 2006 to 2010 was certified on the respective dates. Later, at the instance of the client, he has fabricated a report in Dec.2010 contrary to earlier reports to suit the complaint, and hide all misdeeds that came to light on our



review, which is under investigation by the police. Second Schedule-5.”

4. The reasoning of the Appellate Authority in confirming the findings of the Disciplinary Committee for each of these charges is as below:-

“20. Perusal of record shows that the Appellant issued two certificates both dated 05.12.2009 purportedly for the purpose of taking loan from the Bank. However, the Appellant has not mentioned therein the purpose for which these two certificates were issued by him. The omission of not mentioning the purpose for issuing these certificates certainly suggests malafide and manipulation by the Appellant on the behest of the management of the Company to suit its requirements. It is also the admitted fact that the Appellant has not carried out any due diligence before issuing these certificates which he was required to do by going through the bank statements of the Company. This fact becomes more important and glaring because the Appellant has not placed on record the relevant bank transactions/statements evidencing that any such cash flow as has been mentioned in the certificates in question was there into the accounts of the Company. For the reasons stated herein, an inference can be safely drawn that there was no inflow of the margin money by the promoters into the account of the Company as has been shown in the certificates. Therefore, this charge stands proved against the Appellant.

21. Foreign Direct Investment of Rs.2.5 crore was inducted into the Company towards the equity between 13.04.2006 and 06.06.2007. Therefore, the Notification dated 14.12.2007 issued by the Reserve Bank of India was relevant in this regard. It emerges from the record that neither the shares were issued within 180 days nor the amount of consideration so received was refunded to the non-residents from whom the Foreign Direct Investment was received, thus the Company violated the FDI norms. This being the fact which was in the knowledge of the Appellant but the



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Appellant has miserably failed to disclose the violation of FDI norms by the Company in his audit report. Hence, this charge also stands proved against the Appellant.

22. With regard to the charge of issuing a fabricated report by the Appellant in December, 2010 (Special Audit Report) contrary to his earlier statutory audit report certified by the Appellant for financial year 2005-06 to 2009-10, we are in the agreement to the findings of the Disciplinary Committee contained in para 11.3 of its order dated 09.07.2018, for reference, which is extracted hereunder:

“11.3 The Committee was of the view that although the scope of special audit and statutory audit are different, but when both the audits have been conducted by the same auditor and with same sets of documents then irregularities pointed out by the Respondent in Special Audit Report might have been detected at the time of statutory audit also if he would have exercised due diligence in conduct of the statutory audit...”

5. The learned Senior Counsel appearing for the writ petitioner submitted that there is apparat error in the appreciation of documents by the Disciplinary Committee as well as the Appellate Authority, which requires interference of this Court in the exercise of its writ jurisdiction.

6. In respect of charge No.4, which was found to be concurrently proved, the learned Senior Counsel for the writ petitioner submitted that a comparison of the two certificates, which the impugned orders claim are identical, but reflect different amounts, clearly shows that the conclusion of the Appellate Authority is perverse.



7.

To appreciate the above submission, it is appropriate to extract the two certificates. Hence, the same is produced as below:-

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R. Balaji & Co.
Chartered Accountants

For No. 13A, New No. 15, Tathaimani Street, Mangalagiri,
Tangraapattinam, Kodaikumbam, Chennai - 600 024.
☎ 9444 1976 Telex: 9444 1033 E-mail: rbalaji@rediffmail.com

Certificate

This is to certify we have verified the records submitted to us by Dr. Kamakshi Memorial Hospital Pvt. Ltd., having office at # 1, Radial Road, Palikarai, Chennai-600 100 that the Promoter's Margin for the PET CT project is as detailed below.

Cost of Project	Invoice Amount	Means of Finance Loan from IUS	Promoter's Margin
MRI Scan	170.00	130.00	40.00
Cyclotron	1400.00	1050.00	350.00
Building 2000 Sq. Ft.	400.00	272.00	128.00
Electrical	150.00	92.00	58.00
Air conditioners	100.00	70.00	30.00
PET CT Scan	1430.00	1130.00	300.00
Vehicles	15.00		15.00
Computers	5.00		5.00
Civil Works-PET Site	20.00	20.00	0.00
Total	3770.00	2772.00	998.00

Place: Chennai
Date: 05.12.2009

For R. Balaji & Co.
Chartered Accountants
R. Balaji
Partner



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WP No. 23686 of 2



R Balaji & Co.
Chartered Accountants

Plot No.11A, New No.15, Kathiramar Street, Marugesa Nagar,
Rengasapuram, Kodambakkam, Chennai - 600 054
☎ : 2484 1976 Telefax : 2484 1958 E-mail : rbalajico@yahoo.com

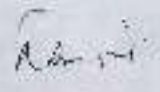
Certificate

This is to certify that M/s. Dr. K. K. Sundaram Managing Director, M/s. Dr. Kannakshi Memorial Hospital Private Ltd. having office at # 1, Bodhi Road, Pallikarunai, Chennai-600 102 has bought Rs.2.50 crores as premium + Margin from 01.04.2009 to 30.11.2009 towards the new project.

Place: Chennai
Date: 05.12.2009



For R Balaji & Co.,
Chartered Accountants



Partner
(R. Balaji)



8. On perusing these two certificates and reviewing their contents, we are fully satisfy that they cannot be considered certificates issued for the same purpose of reflecting the same amounts, this is apparent on the face of the record. Therefore, the inference drawn by the Appellate Authority that there was no inflow margin to the account of the company as shown in the certificate tangent to the content of the certificate.

9. Regarding the Foreign Direct Investment (FDI) of Rs.2.5 crores which pertains to charge No.8, the learned Senior Counsel for the petitioner submitted that if at all there was any failure on the part of the company to fulfil its obligation as per the terms of the agreement between the investors and the company, it is a matter between the investors and the company and not statutory auditor. Even the Appellate Authority concluded that the violation of the RBI Notification dated 14.12.2007 was committed by the company, it further attributed knowledge of this violation to the writ petitioner. It held that the statutory auditor failed to disclose the violation of FDI norms on the company and Audit Report.

10. The learned counsel appearing for the 4th respondent, in support of the said finding, would rely upon a complaint filed before the Company Law Board (CLB) alleging suppression mismanagement and the outcome of the



complaint. The complaint before the Company Law Board has been dismissed and a subsequent Appeal (No.12 of 2011) before the High Court was also dismissed on 18.03.2013. Following the dismissal of a Review Application, the complainant approached the Hon'ble Supreme Court, where a SLP is currently pending.

11. Particularly the fact which is to be taken note that Company Petition was initiated on 22.02.2011. While so, the statutory audit furnished by the writ petitioner for the assessment year 2006-07 and subsequent years much before the complaint, could not have anticipated any future violation of RBI norms by the company which is attracted by FDI. This position is further supported by the statement provided by the 4th respondent through one Ganapathy, who is none other than his own brother.

12. Therefore, we find that the knowledge of the company of any alleged violation of FDI norms, had come to light only after the investors moved the Company Law Board vide C.P.No.25 of 2011 and not prior to that. However, from the record, we find that the company had lodged a complaint to the bank regarding the misappropriation of funds by one Ganapathy. This complaint dated 15.10.2010, was investigated by the Bank's Chief Inspector, who filed a report on 13.01.2011, implicating both Ganapathy as well as the 4th respondent. We find that only after that report of the Chief Inspector, the 4th



respondent has initiated the Company Petition before the Company Law Board.

While fact being so, attributing knowledge of FDI violations and a subsequent failure to disclose them to the statutory auditor appears to be preposterous.

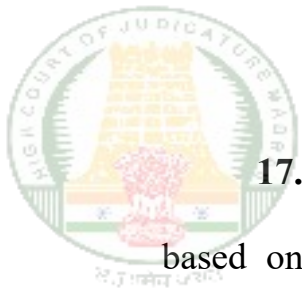
13. Regarding Charge No.9, which was also found proved by the Disciplinary Committee as well as Appellate Authority, the reasoning provided was that the writ petitioner, acting as the statutory auditor, issued a report stating that no fraud had been committed. However, conducting special audit, he pointed out several instances of misappropriation and manipulation of records. The authorities held that, since he had the same set of materials before him, he had given two different reports, one as a statutory auditor and another as a special auditor, constituted a failure to discharge his statutory obligations.

14. In this regard, the learned Senior Counsel for the writ petitioner submitted that the statutory audit report or special audit report were not based on the same set of documents. New documents, which emerged following the complaint given by the company on 15.12.2010, were placed before the writ petitioner, specifically for the purpose of conducting a forensic audit. Thus, on conducting the forensic audit certain new facts came to light. Based on that, he has given special audit report.



15. The sequence of events in this case required to be considered for a better appreciation of the rival contentions raised. We find that until the complaint was lodged by the company against the brother of the 4th respondent regarding financial misappropriation, there was no whisper about any professional misconduct against the writ petitioner, particularly, in respect of the audit reports submitted by him for the years 2006 to 2009. It was only after the dismissal of the Company Petition No.25 of 2011 dated 03.03.2011. The 4th respondent has thought fit to initiate disciplinary proceedings against this writ petitioner by lodging a complaint on 05.12.2013.

16. Meanwhile, a forensic audit had been conducted and the new facts and materials placed before the writ petitioner were considered by him, pursuant to which, he has submitted a special audit report. No doubt, the same person has given statutory audit and special audit report. However, a statutory audit is a legislative mandate for a company, whereas a special audit is undertaken based on specific requirement or circumstances. The assessee is the best person to decide on conducting a special audit, including a forensic audit. In this case, it happened to be carried out by the same statutory auditor. However, this does not mean that what are the informations scrutinised and placed before the forensic audit was also available to him when he conducted statutory audit five years prior.



17. The inference drawn by the Appellate Authority in this regard is based on surmises. When disciplinary proceedings are initiated against the professional, the conclusion cannot be based on presumption or assumption. Any punishment imposed would affect not only his reputation, but also his right to practise the profession. Therefore, the authority has to scrutinise the records and evidence and unless there is clear evidence of failure to disclose material facts within the knowledge of the professional, no punitive action can be taken. Further, we find that though the charges were framed under Clause 5 of Part 1 of the Schedule II of the Act, the punishment was imposed under Clause 7, which pertains to failure to exercise due diligence and grossly negligence in the discharge of professional duties.

18. Thus, we find that the Disciplinary Committee though charged the writ petitioner with failure to disclose material facts within his knowledge, it ultimately found no material to substantiate such allegations. Therefore, it proceeded to punish him for a failure to exercise due diligence. However, from the above discussion and factual narration, we are of the considered view that the writ petitioner herein had exercised the necessary diligence expected of a reasonably competent professional.

19. The allegations of mismanagement and violation of FDI norms surfaced only towards the end of 2010 and whether there was an actual violation



of the RBI notifications is yet to be examined. Even before any conclusion on this aspect, the Disciplinary Committee and Appellate Authority had pre-concluded that there was a violation of FDI regulations and for which the writ petitioner, in his capacity as statutory auditor, had a role and knowledge of such violation, which he allegedly suppressed in his report. We find that the reasoning of the Appellate Authority is perverse, being beyond the material available on record and based purely on presumption and conjuncture.

20. Therefore, this Writ Petition stands allowed. The order of the Appellate Authority impugned herein is set aside. The penalty amount, if already deposited by the writ petitioner, shall be refunded. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(G.J.,J.) (S.S.A.,J.)
26-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

rpl

To

1. The Appellate Authority
The Institute of Chartered Accountants of India
Through its Registrar,
4th Floor, ICAI Bhawan,
Indraprastha Marg,
New Delhi 110 002



Also Having Office at
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ICAI Bhawan, A-29,
Sector 62, Noida 201 301.

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