

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CHARTERED ACCOUNTANT REFERENCE NO. 2 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

COUNCIL OF INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA....Applicant(s)
Versus

MANUBHAI A PANCHAL & CO.....Respondent(s)

Appearance:

MRS SWATI SOPARKAR, ADVOCATE for the Applicant(s) No. 1

MR SIRAJ R GORI, ADVOCATE for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 03/11/2017

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE BIREN VAISHNAV)



1. This is a Reference made under Section 21(5) of the Chartered Accountants Act, 1949 ("The Act" for short). The Reference has been made by the Council of the Institute of Chartered Accountants of India ("Council" for short) in respect of a disciplinary proceeding held against the Respondent, a Professional Chartered Accountant. The Council, on consideration of the report of the Disciplinary Committee, found him guilty of certain misconduct and decided to recommend to this Court that the name of the respondent be removed from the Register of Members for a period of two years.

2. The Reference arises in the following background of facts:

2.1 The case pertains to an audit carried out by the firm of the respondent with regard to the Madhavpura Mercantile Cooperative Bank Ltd. ('MMCB' for short). The Madhavpura Mercantile Cooperative Bank is registered under the Multi State Cooperative Societies Act, 1984. Audit for the Year 1998-1999 was allotted by the Registrar of Societies to the respondent firm in order to see whether the affairs of the Bank were carried out in accordance with the Multi State Cooperative Societies Act, 1984, rules thereunder and the provisions of the Banking Regulation Act and the guidelines of Reserve Bank of India. The audit was assigned to the respondent as he was empanelled by the Central Registrar for this purpose.

2.2 As a result of a scam at the MMCB, the Registrar of

Cooperative Societies, Gujarat State on instructions of the Central Registrar carried out a re-audit of the Bank for the year 1998-1999. Based on the re-audit Report, the Registrar found that the respondent had neither disclosed nor reported serious irregularities in the accounts of the Bank and that the respondent had failed to disclose material mis-statements which were not disclosed also in the financial statement of the Bank though they were known to him. Accordingly, according to the Report, the respondent had shown gross negligence in performing his professional duties and had failed to obtain sufficient information to warrant the expression of opinion. The Registrar was also of the opinion that the respondent had failed to invite the attention to material departures from the generally accepted procedure of audit applicable to the Banks.

2.3 As many as 19 Charges were framed against the respondent listing charges of misconduct. After exchange of written representations and opportunity of hearing a report was submitted by the Disciplinary Authority. On consideration of the report of the Disciplinary Authority, the Council decided to accept the report of the Disciplinary Committee. Of the 19 charges, the Disciplinary Committee held the respondent guilty of professional misconduct with respect to Charge 1(iv) and Charge 13 within the meaning of Clauses(8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The Disciplinary Authority also found the respondent guilty of Charges 2 and 12 within the meaning of Clauses (5), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. Further for Charge No.10, the respondent was found guilty within the meaning of

Clause (5), (6), (7), (8) & (9) of the Second Schedule to the Chartered Accountants Act, 1949.

2.4 The Charges on which the respondent was found guilty, in a nutshell are as under:

Charge 1(iv) : Contravention of Section 60 of the Multi State Cooperative Societies Act, 1984.

Charge 2 : Non-compliance of RBI guidelines for Individual and Group Borrowers.

Charge 10 : Regarding defects in loan documents for advances against shares aggregating to Rs.46,67,48,615.

Charge 12 : Regarding sanctioning of the Temporary Overdraft (TOD) in contravention of RBI Circular,

Charge 13 : Regarding advance against lands and buildings.

3. We shall deal with the factual aspects and the material considered by the Disciplinary Authority, which in turn was considered by the Council and the legality and validity of the recommendations therefore so made. In considering this Reference, we shall only deal with the charges mentioned hereinabove, on which the findings of the Disciplinary Committee are based. Submissions of the respective Advocates on each charge and the validity of the findings of the Disciplinary Authority, which in turn have been accepted

by the Council shall be considered simultaneously. We shall therefore proceed charge-wise.

4. CHARGE 1(iv) - Contravention of Section 60 of the Multi State Cooperative Societies Act,1984.

4.1 According to the complaint of the Joint-Registrar of the Cooperative Societies, relating to this charge, the Board of Directors of the Bank had failed to carry out its duties in accordance with the provisions of the Multi State Cooperative Societies Act,1984 and the Rules thereunder. The Bank, according to the re-audit had violated the provisions of Sections 30(2),34(g),60 and 63 of the Act. According to the complainant, the bank had not identified the Non-Performing Assets correctly. The re-audit report, according to the complaint so filed suggested that 120 Accounts had to their credit of the Profit and Loss Account, interest. Interest could not have been credited to these 120 Bank Accounts as these accounts were Non-Performing Assets. Hence, interest could not be considered as income. In calculating interest credited towards accounts which were Non-Performing Assets, the Counsel Shri Soparkar for the Bank suggested that there was a clear violation of the provisions of Section 60 of the Multi State Cooperative Societies Act,1984. This according to the Institute and the complainant was also in contravention of the RBI Guidelines and circulars.

4.2 Based on the Re-audit report, in the opinion of the Re-Audit Report, the NPA classification as certified by the statutory auditor and sent to the RBI as on 31.3.1999 and 31.3.2000 showed that the gross NPA of the Bank remained at

Rs.5074.62 lacs against the total loans and advances outstanding at Rs.52776.75 lacs which was 9.62 percentage of the total loans and advances outstanding. The report opined that some of the accounts have been shown as standard assets though they were NPAs and has shown interest on such assets in the Profit and Loss Accounts. According to the Committee's findings, the interest on the 120 accounts amount to Rs 422.95 lacs while the bank debited only Rs.100 lacs. This resulted in excess profit to the tune of Rs.322.95 lacs shown by the Bank.

4.3 The complainant produced the working papers which were examined by the Committee. The respondent examined such working papers and defended his action by stating that the position of NPA accounts had been in accordance with the Annual Financial Inspection carried out by the audit. According to the respondent, statutory inspection of the Bank was conducted under Section 35 of the Banking Regulation Act and the Bank's classification of NPAs was accepted.

4.4 According to Shri Siraj Gori, who appeared for the Respondent, Charge No. I(iv) under no circumstances can be said to have been proved. A specific finding had been arrived at by the Disciplinary Committee that there was no negligence on the part of the Respondent in carrying out the audit and treating the accounts as such. There was no violation of any statutory guidelines of the RBI. According to the Respondent, as per the statutory report, the Bank had made adequate provision of Rs.10094.88 lacs for loan losses. Relying heavily on the findings of the statutory audit report, the learned advocate for the respondent contended that the findings of

the Disciplinary Committee as confirmed and accepted by the Institute are perverse and Charge No. 1(iv) cannot be held to be proved as so held by the Disciplinary Committee. It is contrary to the evidence on record. Shri Gori has also has taken us through the written submissions filed by the Respondent and the question and answer exchange during the inquiry proceedings before the Disciplinary Committee to assail the findings of the Committee.

4.5 The findings of the Committee suggest that the respondent when confronted with the question as to how he had dealt with these accounts and when asked to substantiate his working on the basis of the working papers, failed to explain anything in this regard. The Committee found that the mandatory principles of the AAS1 Basic Governing principles which an Auditor is required to follow were not followed by the respondent. He had failed to document matters in the manner which could go to show that audit was properly carried out. No evidence or working papers were presented to show that the Standard Audit Procedure was followed. According to the committee, the respondent failed to substantiate through the working papers, in order to show that a proper audit programme was followed by which the audit was conducted. The committee however absolved the respondent of the charge of negligence on the ground that in the final assessment of NPA, it was found that the same was approved in the AFI of RBI. However, the Committee based on the factual assessment on record observed that the respondent had failed to obtain sufficient appropriate evidence and had therefore failed to establish that proper accounting procedures were followed. Therefore, the

Committee was of the view that the respondent had failed to obtain sufficient information to warrant expression of an opinion and had failed to invite attention to any material departure from the generally accepted audit procedure and was thus held guilty of Clause (8) and (9) of Part I of Second Schedule of the Chartered Accountants Act, 1949 under this charge.

4.6 The findings have been approved in the Institutes's Meeting. Shri Siraj Gori, as stated in the earlier part of this order has tried to bring about a defence that the respondent had followed due procedures. That, the factual findings of the Committee were erroneous in view of the fact that it observed that no defence was raised though in fact detailed reply and written submissions were filed.

4.7 According to Shri Gori, not only is the complaint not specific but there is no date given to justify that the classification of the NPAs and the omission would tantamount to breach of Section 60 of the Multi State Cooperative Societies Act, 1984. According to Shri Gori, once having been absolved of the charge of negligence, the same yardstick should have been applied to see that the Respondent is not held guilty of Clauses (8) & (9) of the Chartered Accountants Act, 1949.

4.8 The charge pertained to the Chartered Accountant not bringing to the notice of the Bank, the violation of provisions of Section 60 of the Multi State Co-operative Societies Act, 1961. The findings of the Committee based on the guidelines of the basic principles of the AA51 found that such principles

were not followed by the Auditor. The findings of the Committee, based on the material on record as approved by the Council suggested that some of the accounts were shown as standard assets though they were NPAs. A finding of fact arrived at, based on the re-audit report, assessed by the Disciplinary Committee and approved by the Council would not warrant re-appreciation at our hands as our role is not that of an appellate authority.

5. Charge 2 - Non-compliance of RBI Guidelines for individual and group borrowers.

5.1 The charge in the complaint is that before sanctioning advances, the Bank, in its meeting of the Board Of Directors, did not scrutinize the applications properly. It was further alleged that the Board did not verify as to whether the borrowers were of the same group and therefore the RBI guidelines for individual and group borrowers were violated. Reliance by the Complainant was placed on the Resolutions dated 19/06/1998 and 31/07/1998 of the Board.

5.2 In the re-audit report, it is pointed out that in the Board Meeting held on 31/7/1998, the Bank sanctioned advances of Rs.6 crores each to Panther Investment Ltd, Skum Securities Ltd, Luminate Investments Pvt Ltd, Sai Mangal Investments, Panther Industries Product Ltd., V.N.P. Securities Pvt.Ltd, K.M.P. Securities Pvt Ltd and SCE Investments. All these companies belonged to one group of Ketan V Parekh. According to the Bank, as per the RBI Circular dated 27/11/1998, the loans against shares, debentures in physical form should not exceed Rs.10 lakhs. If the securities were in

a dematerialised form, the limit was enhanced to Rs 20 lakhs. The Bank, therefore, had contravened these ceiling limits as stipulated on the said circular of 27th November,1998.

5.3 According to the reply filed by the respondent, it is the Board of Directors which is the supreme authority for sanctioning the advances. Since the full authority to sanction such advances vests in the Board except to verify the Loan documents etc, it was contended by Shri Gori that as far as this charge is concerned, the allegations were general in nature. Moreover, the Board Meetings, as is evident from the dates of such meetings, were held much before the RBI Circular dated 27/11/1998. According to the case of the respondent, the loans were sanctioned according to the bye-laws of the Bank, fully secured against valuable assets.

5.4 Shri Gori, inviting our attention to the written submissions filed by the respondent, pointed out that the circular was not applicable to companies where the ceiling was in respect of loans against security of shares and PSU Bonds. On merits, it was also pointed out that the total capital funds of the Bank was Rs.70,08,31,940 as on year ending 31st March,1998. 25% of the same was Rs.17,52,07,985. The advances therefore did not exceed the ceiling limit. The case of the respondent therefore was that once having stayed within the ceiling limit there was no breach of the circular. The loans were governed by the Circular dated 16th January 1996, and the loans were fully in compliance with the terms of the Circular dated 16/1/1996. Even otherwise, it was suggested by the respondent that the circular of 27/11/1998 applied to individuals and not to other category of borrowers.

5.5 Attention was invited by Shri Gori to the part of the written submissions to point out that the report of Statutory Inspection of the Bank has opined that the Bank has not granted advances in excess of the maximum exposure limits for individual/group borrowers. According to the report, the exposure limits fixed for individual and group borrowers during the three years were as under:

Individual Borrower	Group Borrower	
1997-98	1752.26	3504.53
1998-99	1752.26	3504.53
1999-2000	2391.74	4783.48

5.6 The report therefore suggested that the total unsecured advances of the banks were within 33.33% of its total advances. Therefore, according to the respondent and Shri Gori, Clause (5) of Part-I of the Chartered Accountants Act, 1949 cannot be made applicable to the case on hand and the respondent had not committed any misconduct.

5.7 Having considered the submissions of the respondent, the committee opined that they were not acceptable. According to the Committee, on examination of the working papers and on interpretation of the Circulars, the committee observed that the arguments made out by the respondent were an afterthought. In the opinion of the Committee, the Bank ought to have applied for exemption in accordance with Para 2(vi) of the Circular. No corrective measures were taken by the Bank to ensure compliance of the Circular of 27/11/1998. The respondent in such circumstances failed to

make suitable disclosures in his Audit Report about the violation of RBI Circular. The failure to give such disclosure and give a timely warning to the Bank resulting in the scam. The committee therefore held the respondent guilty of not making the necessary disclosure. In the opinion of the Committee, the respondent failed to obtain sufficient information to warrant expression of an opinion and also failed to invite attention to any material departure.

5.8 Conscious of the fact that in a Reference made to us, we cannot sit in appeal over the decision on the finding of facts arrived at by the Disciplinary Committee and confirmed in the Meeting of the Institute, however, let us examine the circulars of the RBI in question. The first circular in point of time and relevant for the purposes of the loan transactions is that of 16/1/1996. This circular refers to its earlier circular dated 26th May 1994 as modified by a Circular of 29th April 1995. The circular states that on examination of the earlier circulars it says that it has reviewed the earlier policy and decided to withdraw the maximum limit on advances based on total time and demand liabilities and instead fix prudential exposure limits based on capital funds. With regard to the ceiling limit, the circular states that the exposure ceiling should be fixed in relation to Bank's capital funds and it shall not exceed 25 percent of capital funds in case of individual borrower and 50% in case of group borrowers. "Capital funds" for this purpose will comprise of paid up capital and free reserves as per the audited accounts. It further states that all other instructions in the circular of 26th May 1994 remain unchanged. As far as Group is concerned, the circular categorically states that it has been decided to leave the

identification of group to the perception of the Banks who are generally aware of the basic constitution of their clientèle. The guiding principle being commonality of management and effective control.

5.9 Reference at this stage may be made to the Circular of the 26th May 1994. It states that no Primary Co-operative Bank shall make or provide or renew loans or advances or any other financial accommodation to any single party/connected group of individuals, firms or companies where the amount of accommodation together with the amount outstanding in respect of any such accommodation will exceed, 5% of the total of the time and demand liabilities or 5 lakhs if such total demand liabilities is less than 1.00 crores etc. It is in this context that the total capital fund of the bank was Rs.70,08,31,940 and therefore 25% of the same was Rs.17,52,07,985. Even the Statutory Audit Report observed that the bank has not granted advances in excess of the maximum exposure limits for individual/group borrowers. The group exposure limit for the year 1998-99 was 3504.53. The report further observed that the bank had generally complied with the prudential norms, however, a few instances of divergence were noted.

5.10 What emerges from the discussion in relation to Charge No. 2 is that while sanctioning loans to individuals, the Chartered Accountant had not adhered to the RBI guidelines. What needs to be appreciated is that the total capital funds of the Bank were Rs.70,08,31,940. 25% of the same did not exceed Rs.17,52,07,985. Reading of the circular dated 16.01.1996 indicates that the exposure ceiling should be fixed

in relation to the Bank's capital funds and it shall not exceed 25% of capital funds in case of individual borrowers and 50% in case of group borrowers. The Statutory Audit Report observed that the Bank has not granted advances in excess of the maximum exposure limits as the maximum exposure limit was 3504.53 crores. The findings of the Committee and approved by the Counsel that the respondent had not reported that the working limits were violated, in our view is flawed. Looking to the financial status of the Bank and the guidelines of May, 1994 and January, 1996, the Bank did not exceed such limits. Charge No. 2 is accordingly held as not proved.

6. Charge No. 10 - Defects in loan documents for advances against shares aggregating to Rs.46,67,48,615/-.

6.1 According to the complainant, the balance as on 31.3.1999 of advances against shares was Rs.46,67,48,615/-. The defects which the re-audit observed had come to its notice while scrutinising loan documents for advances against shares were illustrated as under:

(a) Market Price Register for advances against shares has not been maintained.

(b) The drawing power was not revised as per market price.

(c) The Bank has also not prepared a list of shares of the companies against which advances were sanctioned.

(d) The Bank has violated the guidelines vide RBI Circular dated 27.11.1998 by making advances more than Rs.10 lakhs against shares. Examples of such cases were:

(i) Three account holders were provided advances against 1700 shares of Madhur Housing Finance Limited on 23.8.96 vide resolutions of the Board dated 18.7.1996. The shares of the company have been de-listed in the market. These three accounts have become overdue since 30.11.1997. The Bank has not taken steps for recovery.

(ii) Several loanees had been given advances in contravention of the RBI Circular dated 27.11.1998 which did not permit advances of more than 50% of the market price. According to the complaint, no action has been taken to get the additional amount deposited after verifying the market price of the shares or the sanctioned limits have not been lowered down.

(iii) The complaint further stated that as per the RBI Circular dated 27.11.1998, Urban Co-operative Banks cannot lend more than 20% of the amounts of its paid up share capital and reserve funds against shares although there is a provision that not more

than 4% of the paid up share capital and reserve funds of the bank cannot be lent against the shares of only one company. More advances were sanctioned violating these norms.

6.2 The defence of the respondent in the first reply filed by him was that they had already informed the respective branch managers of the non-observance of the various norms of the RBI and for taking precautionary measures while giving advances against shares. The Market Price Register was not maintained at the branches which was brought to the notice of the Branch Managers. The loans were sanctioned by the Board by passing appropriate Resolutions and as they had used their discretion, the role of the statutory auditor was restricted and they could not object to such use of discretion by the Board.

6.3 According to the respondent, all the loans were sanctioned in 1996 much before the RBI Circular of 1998. Loans were sanctioned on 23.08.1996 whereas the Circular is of 27.11.1998. Loans were already disbursed before the Statutory Audit period. It was contended by Shri Gori, on the basis of the Written Submissions filed before the Committee that the complaint made vague and sweeping allegations. The loans pertained to 1996 whereas the breach alleged was of a Circular of 27.11.1998, a period prior to the Circular. This charge, according to Shri Gori, who invited our attention to the extract of the Disciplinary Committee's findings showed that the charge had no relation to the respondent. The exchange of submissions between the Counsel for the

complainant and the respondent before the Committee, according to the respondent, would indicate that the charge was more connected with the Chartered Accountant one Shri Valera. The tenure of the respondent as far as the audit is concerned was over.

6.4 Shri Gori invited our attention to pages 256 and 257 of the Paper Book, to that part of the Written Submissions, which according to him sufficiently explained the allegations. The first advance of Rs.2,26,29,064/- was against Reserve Bank Of India's Relief Bonds and not against shares of the Company. Even otherwise the borrower had fully repaid the loan and the account was squared up. With regard to the loan accounts of one Shri Patel, the outstanding amounts were within the credit limits and also within the exposure limits prescribed, namely 25% of the Bank's capital funds in case of individual borrowers and 50% in case of group borrowers. As reiterated in the Charge No.2, the Total Capital Funds of the Bank were Rs.70,08,31,940/- and the ceiling limit therefore @ 25% for an individual borrower was Rs.17,52,07,985/-.

6.5 The Committee in its findings on this charge observed that the respondent had failed to produce audit evidence to defend himself against the Charges. No evidence was produced to justify these deficiencies on his part and therefore in the opinion of the Committee there was no reliable and sufficient audit evidence produced by the respondent to support the audit opinion that he gave. The Committee agreed with the findings of the re-audit report and held that there was professional misconduct on the part of the respondent inasmuch as there was failure on his part to

disclose the material facts and material misstatements known to him which were not disclosed in the financial statements. The committee was of the opinion that the respondent was guilty of professional misconduct falling under the meaning of Clauses (5),(6),(7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6.6 What is evident from the perusal of the charge and the findings of the Committee and the submissions made by Shri Gori that the Committee's opinion is based on the reasonings which we have discussed in connection to the Charge No.2. In our opinion, therefore, once not having disturbed the findings of the Committee, reiterated by the Institute, which findings are based on the appreciation of facts and record, which is not for us to substitute, we cannot but hold the same view and uphold the findings of the Committee as confirmed by the Institute.

7. Charge 12 - Sanctioning of the Temporary Overdraft (TOD) in contravention of the RBI Circular.

7.1 According to the version in the complaint, the Bank can sanction temporary overdraft of up to five thousand rupees for a period of not more than 30 days in extraordinary circumstances per RBI Circular dated 11.11.1996. According to the complaint, which enlisted 10 accounts, the outstanding balance was much more than the limit. The case of the complainant was that no action was taken to recover these amounts and there were no securities against the Temporary Over drafts and as such they had become unsecured advances.

7.2 The Respondent's case here too was that it was the duty of the Branch Manager to follow the RBI Norms for sanctioning of Temporary Overdraft. Attention of the respective Branch Managers was drawn and the Head Office was also informed. The Temporary Overdrafts were relating to a period of the past years i.e. 1992, 1993, 1997 and not relating to the Audit Period from 1.4.1998 to 31.3.1999. It was for the Board Of Directors to take suitable legal action against such outstanding dues of the Bank.

7.3 Even here Shri Gori took us through the written submissions filed by the respondent. He reiterated that all the ten transactions were in the years prior to the financial year 1998-1999. Of the total advances of Rs.527 crores during the period ending 31/3/1999 these advances in all were to the tune of only Rs.1.04 Crores. The transactions were properly recorded in the Books of Accounts. During the discussion that the respondent claimed to have had with the Management during the Audit Proceedings, the Management assured him that legal proceedings were initiated in respect of these ten accounts. According to the respondent, therefore, the action against him on this count was not warranted.

7.4 The Disciplinary Committee observed that it was within the scope of duties of the respondent to point out instances where the temporary overdraft was in excess of Rs.50,000. The respondent ought to have disclosed these facts and in not doing so he was grossly negligent in his professional duties and therefore was guilty of misconduct under the meaning of Clauses (5),(7),(8) and (9) of Part-I of the Second Schedule of

Chartered Accountants Act,1949. This again is a factual finding of the committee based on the material adduced before it. Even otherwise, it cannot be viewed in isolation of the other charges.

8. Charge No.13 - Advance against loan and buildings.

8.1 According to the complaint, Account No. 11239 of Prafulchandra Maganlal Shah had a loan sanctioned of Rs 10,50,000 on 8.1.1997. Such loan could not have been advanced on nominal membership. No proper documents regarding the ownership of property mortgaged were available. So also with regard to the other two accounts mentioned in the complaint it was found that lien of land was not recorded and the account had become overdue. A car loan was similarly sanctioned when such a party had secured a loan from another Bank. The loan sanctioned was given for more than the hypothecated value.

8.2 According to the respondent, one of the accounts was overdue since 1997 whereas the other two accounts which were mentioned were regular till 31.3.1999 and it was only subsequently that they had become irregular. The Committee has in its findings recorded that the three accounts were proper and the documents were kept at the Head Office by the Bank. The classification, if according to the respondent was wrong, the burden to prove it was on the respondent, which according to the Committee was not discharged by the respondent. The respondent, according to the Committee had not followed the generally prescribed procedure of verification and examination and therefore the respondent

had committed professional misconduct. The Institutes's Committee in the case of this charge also confirmed the finding.

8.3 Defence of the respondent may be plausible but in a Reference made under Section 21(5) of the Act, one cannot sit in Appeal over the decision of the Committee and therefore there is no reason to disturb the findings of the Disciplinary Committee.

8.4 Shri Bandish Soparkar, learned advocate for the Institute supported the findings of the Disciplinary Committee and the Institute's Report based on such findings, making a Reference to this Court. Shri Soparkar further submitted that on consideration of the Report of the Disciplinary Committee along with the written representations dated 17th January 2005 and 20th January 2005 and further representation dated 17th March 2005, the Council has decided to recommend to this Court that the name of the respondent be removed from the Register of Members for a period of two years. There is sufficient material based on which the Committee and the Council in turn have arrived at such a decision and this Court should answer the Reference as recommended by the Institute.

8.5 In support of his submissions, Shri Soparkar relied upon the following decisions:

(1).In re B, A Pleader, Simla reported in AIR 1941 Lahore 384.

This decision was cited to contend that it is in the interests of the Profession that such professionals are given the requisite punishment.

(2).In re, P, An Advocate reported in AIR 1934 Rangoon 33.

This decision has been relied upon to submit that the test that the Court has to apply in considering the report is whether the charges are such and the findings suggest that the name of the Professional be struck off/removed from the Rolls. If there is sufficient material to so suggest then the Court should uphold the decision to do so.

(3) Reliance was also placed on an unreported decision in **Chartered Accountant Reference 1 of 2000**. This was cited in support of the observations made by this Court to suggest that Chartered Accountants are highly respected professionals and they should take due care and in the facts of the case, the Committee's decision which is approved by the Council needs no interference.

9. Shri Gori had argued that the Reference itself was misconceived. The entire exercise was carried out in pursuance of a complaint of the Registrar of Cooperative Societies under Section 67 of the Multi State Cooperative Societies Act, 1984. According to Shri Gori, the re-audit was carried out by a person not competent to do so. As a result thereof the entire exercise was void-ab-initio. The re-audit was not carried out by a Chartered Accountant and therefore the complaint based on such an Audit Report of a Registrar of

Co-operative Societies could not be the basis of institution of disciplinary proceedings against the Respondent.

10. Mr Gori further in addition has taken us through each charge and having argued on merits, which submissions' gist we have dwelt upon while dealing with each charge, has also contended that the Committee has travelled beyond the charges. The Committee's findings are perverse and without appreciating the Written Submissions filed by the respondent. There was no irregularity committed by the respondent. At best it was an exercise of audit and it cannot be said that the respondent had committed any mistakes. Under the Multi State Cooperative Societies Act, 1984 only the Central Registrar has powers to conduct an audit and carry out an investigation and such a function cannot be delegated to the officer, namely, the Registrar of Cooperative Societies of the State Government.

11. First in point of time, having noted the submission of Shri Gori that the genesis of the entire exercise is misconceived on the facts that the audit exercise has been carried out by a Registrar of a State and also not by a Chartered Accountant need not detain us much. What is worthy of noting is that the re-audit was carried out. Based on such re-audit the Registrar of Societies filed a complaint before the Institute. The Registrar's action therefore is only of filing of a complaint putting into motion the mechanism of dealing with the issue of professional misconduct. A complaint simpliciter need not be based on or backed only by a Chartered Accountant. Professional misconduct at the hands of a professional need not be brought to the notice of its

Regulatory Authority by a professional of the same class. As long as the proceeding is based on a complaint, its sanctity nowhere gets diluted as a result of the lack of support or material based on analysis.

11.1 Shri Gori has also relied upon a few decisions which are as under:

(1) Shadi Lal Batra vs Unknown reported in AIR 1968 Delhi 283.

(2) Council of The Institute of.. vs. C.H.Padliya and Co. And Ors. Of the Madhya Pradesh High Court reported in (1979) 49 CompCas 478 MP.

These citations are relied upon by Shri Gori to contend that the Profession of Chartered Accountants is a technical profession and a mere lapse on the part of a Chartered Accountant in performing his duties as a professional cannot be termed as misconduct.

(3) Council Of The Institute Of...vs R.N.Bahl Fca of the Delhi High Court.

This also was relied upon to support his submission that when the charges regarding the respondent's failure to follow RBI Circulars is concerned, the findings of the Disciplinary Committee are bad inasmuch as admittedly the case was not one which warranted the Charge in question.

12. Reading of Section 21, particularly sub-section (1) thereof makes it very clear that where on receipt of information by or of a complaint made to it, the Council is prima facie of the opinion that any member of the Institute has been guilty of any professional or any other misconduct the Council shall refer the case to the Disciplinary Committee. Therefore the reference to the Disciplinary Committee can be at the receipt of information or a complaint. Even information is sufficient to warrant triggering of the machinery and therefore the contention that initiation has to be backed by a Professional's Report is bereft of merit.

13. Now coming to the appreciation on merits, as the title itself suggests, it is a Reference made to the High Court, by the Institute's Council. The Council, in its meeting, having perused the Disciplinary Committee's findings, has recommended that the name of the respondent be removed from the Register of Members for a period of two years. Section 21(5) and (6) of the Chartered Accountants Act, 1949 provides that where the misconduct in respect of which the Council has found any member of the Institute guilty of misconduct shall forward the case to the High Court with its recommendation thereon. On receipt of the case the High Court shall make one of the orders, including removing the Member from its Membership.

14. It is well recognised that the profession of Chartered Accountants is a noble profession and is regulated by norms of behaviour of its Members which are universally recognised. Section 22 of the Chartered Accountants Act, 1949 states that for the purposes of the Act, the expression "professional

misconduct” shall be deemed to include any act or omission specified in any of the Schedules. The First Schedule to the Act lays down professional misconduct in relation to Chartered Accountants in practice; Professional Misconduct in relation to Members of the Institute in service; Professional Misconduct in relation to Members of the Institute generally. The Second Schedule relates to Professional Misconduct in relation to Chartered Accountants in practice requiring action by a High Court. The Second Schedule enlists that a Chartered Accountant shall be deemed to be guilty of professional misconduct if he, causes any of the omissions in the 8 Clauses enlisted therein. As is evident from the facts on hand it is under these clauses, that the respondent has been held guilty of committing misconduct and a Reference has therefore has been made to the High Court for approval of the penalty recommended by the Institutes's Council under Section 21(5) of the Chartered Accountants Act,1949.

15. Under Section 21(5) of the Chartered Accountants Act,1949 the High Court has been given an important function in context of the behaviour of the Members of the profession in the disciplinary matters that come before the Court.

16. The word “misconduct” when seen in light of the provisions of Section 21 of the Act would mean such conduct which is wrong, improper, unlawful or transgression of an established and a definite Code of Conduct. As is evident from reading the provisions of Section 21 of the Chartered Accountants Act,1949 the High Court can remove any member of the profession for a stipulated period or permanently from the Membership of the Institute. However

when an important body particularly a statutory body like the Council, in the present case finds a member of the Institute guilty of the misconduct and forwards the case to the High Court with its recommendations under Section 21(5) of the Chartered Accountants Act, 1949, its findings based on material on record would ordinarily not be disturbed unless found to be unjust, unwarranted or contrary to law.

17. In the present case several charges have been levelled against the Respondent alleging misconduct enlisted in the Second Schedule of the Act. The Disciplinary Committee has found that the respondent has been guilty of the relevant clauses in the Second Schedule as far as Charges 1(iv), 2, 10, 12 and 13 are concerned. The Disciplinary Committee's findings suggest that it has examined the material based on the re-audit report and the complaint made to it. Due care has been taken by the Committee, during the course of proceedings to consider each and every aspect and perception put forth by the Respondent while explaining his point of view on the charges alleged. The proceedings have been carried out in consonance with the twin principles of fair play and natural justice. The Disciplinary Committee has arrived at findings of fact which in the opinion of this Court, cannot be said to be unjust, unwarranted or contrary to law. This Court while deciding a Reference needs to keep in mind the limitations of its role. It does not sit in appeal over the decision making process of the Disciplinary Committee and the recommendations so made by the Council of the Institute. Hence in examining the Report and the recommendation of the Council it cannot re-appreciate the evidence on record or assess the findings of the Committee as an Appellate

Authority.

18. In discharge of his duties as a Special Auditor entrusted with the work of Audit of the Bank, the Committee has found the respondent guilty of having violated various provisions of the Multi State Cooperative Societies Act,1984 and non compliance of the guidelines of the Reserve Bank Of India while disbursing loans. The respondent while carrying out the Audit found that he had failed to disclose material fact known to him and/or failed to report material mis-statement known to him to appear in a financial statement or that he was grossly negligent in performing his duties or had failed to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of opinion.

19. These are serious flaws, in conduct of and in discharge of professional conduct of a Chartered Accountant. As is evident on reading the provisions of Section 22 of the Chartered Accountants Act,1949 the Council has wide powers to regulate the conduct of its Members and take disciplinary action. The Council can make recommendations to the High Court to act on such recommendation. The Council is the custodian of the interests of the profession and its members. Once a Council as a custodian finds that its Member has committed a breach of its code of conduct and has done anything detrimental to the interest and prestige of the profession, he is liable to disciplinary action under, Section 21 of the Chartered Accountants Act,1949.

20. Keeping these parameters in mind, we find that the we

have no hesitation in accepting the recommendation of the Council which has decided to recommend that the name of the Respondent be removed from the Register of Members for a period of two years.

21. Accordingly, we answer the Reference by accepting the recommendation and accordingly direct the Council to remove the name of the Respondent from the Register of Members for a period of two years.

(AKIL KURESHI, J.)

(BIREN VAISHNAV, J.)

FURTHER ORDER

After pronouncement of the judgment, learned advocate for the respondent has requested for suspension of operation of the judgment. Request is accepted. The execution and implementation of the judgment is suspended for a period of six weeks from today.

(AKIL KURESHI, J.)

(BIREN VAISHNAV, J.)

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