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Case :- REFERENCE AGAINST MISC. ACTS NO.1 OF 1999
Applicant :- Council of the Institute of Chartered Accountants of India, Indraprastha Marg, New Delhi.
Opposite Party :- Shri D.K.Agrawal, FCA, M/S D.K.Agrawal & Co., Chartered Accountants, 46-A, Madhav Kunj, Pratap Nagar, Agra.
Counsel for Applicant :- Vinod Swarup
Counsel for Opposite Party :- Shambhu Chopra, Rahul Sahai

Hon'ble Sudhir Agarwal,J.
Hon'ble Dr. Kaushal Jayendra Thaker,J.

(Delivered by Hon'ble Sudhir Agarwal, J. under Chapter VII Rule 2 of Allahabad High Court Rules, 1952))

1. This Reference, under Section 21 (5) of Chartered Accountants Act, 1949 (hereinafter referred to as "**Act, 1949**"), has been received in this Court, sent by Council of Institute of Chartered Accountants of India (hereinafter referred to as "**ICAI**") in the matter of D.K.Agrawal, FCA of M/s Dinesh K. Agrawal & Co., Chartered Accountants, 46-A, Madhav Kunj, Pratap Nagar, Agra.

2. Facts in brief are; an information was furnished by Sri R. Jha, Inspecting Assistant Commissioner of Income-tax, Agra (hereinafter referred to as "**Complainant**") stating that he (Sri D.K. Agrawal) deposited in local treasury unit of Income-tax Department, at Agra, a total sum of Rs.2,514/-, being the last digit of amount, outstanding against partners of M/s Bharat Gas Agencies and M/s United Pulverisers. He interpolated Assessee's copies of challans so as to show figures of Rs.1,242/-, Rs.192/-, Rs.435/-, Rs.512/-, Rs.8,751/- and Rs.1,254/-. He presented forged copies of challans to partners of Assessees and collected/claimed amounts allegedly paid on behalf of Assessees. This information was received by ICAI on 24.09.1978.

3. In accordance with provisions of Regulation 11(5) of Chartered Accountants Regulations, 1964 (hereinafter referred to as “Regulations 1964”), above information was conveyed to respondent vide ICAI letter dated 14.02.1980. He was permitted to submit written statement, if any, duly verified. Respondent submitted reply vide letter dated 18.10.1980 (Annexure-B to the Reference Paper Book) denying allegations made against him. Besides others, he also stated that since First Information Report has also been lodged against him under Sections 468, 471, 120-B I.P.C. at Police Station Hari Parwat, Agra, wherein he has been enlarged on bail, and since matter is sub-judice in Criminal Court, therefore, he reserves his right to submit further reply later-on.

4. ICAI considered the matter in its meeting held on 20/21.07.1981 at Madras in accordance with Regulation 11(8) of Regulations, 1964, and formed opinion that respondent was guilty of "professional" or "other misconduct" and referred the case to Disciplinary Committee (hereinafter referred to as “**DC**”).

5. Respondent communicated a letter dated 21st September, 1981 informing Council that since criminal matter is pending, therefore, enquiry should be deferred.

6. DC fixed 5th October, 1981 and decided to examine witnesses of Income Tax Department on that date. The first meeting of DC for the purpose of enquiry was held on 5th October, 1981 at New Delhi when respondent was absent though two witnesses namely, Sri T.D.Chandna, Income Tax Officer, Aligarh and Sri R.K.Mittal, Income Tax Officer, Agra were present. Respondent vide letter dated 4th October, 1981, sought adjournment on the ground of serious illness.

7. ICAI sent letters communicating decision of holding inquiry on 06.11.1981, 13.02.1982 and 30.02.1982 but respondent did not

give any response whatsoever.

8. With regard to criminal cases, Income Tax Department communicated progress vide letters dated 04.05.1982, 01.04.1982 and 18.05.1982.

9. In the letter dated 18.05.19682 Income Tax Department informed that trial of criminal case against respondent may take 2 to 3 years. Income Tax Department also vide letter dated 29.01.1986 suggested to proceed with enquiry without waiting for result of criminal matter pending in the Court.

10. DC examined the matter and found that contents of criminal case and subject matter of enquiry were different, both are separate proceedings and one has no bearing on the other. Moreover, there was no otherwise obstruction in continuing with enquiry by DC. Hence, it decided to proceed with enquiry and fixed 09.04.1986 at New Delhi. Again respondent did not appear before DC on 09.04.1986.

11. Four witnesses from Income Tax Department and one Major H.S. Sawhney (Retd.), Agra were present to depose their statements. DC found attitude of respondent of evading enquiry, but in order to give a final opportunity, deferred the matter for 27.05.1986 at Agra. Respondent was communicated above decision and also that in case he fails to appear, enquiry shall proceed ex-parte.

12. Before enquiry could proceed on 27.05.1986, respondent sent a letter seeking adjournment on the ground that he has filed a Writ Petition in Allahabad High Court on 15.05.1986 and, therefore, enquiry at this stage be deferred. DC accepted request of respondent and adjourned the matter. Next date fixed was 19.08.1986 at Agra. Information was conveyed to respondent, who also undertook to participate and cooperate in enquiry.

13. However, no meeting could be held on 19.08.1986 and it was adjourned to 28.11.1986 at Agra. It was again adjourned on the request of respondent's father communicating that he (respondent) had suffered some injuries in an accident. Next date was fixed by DC on 20.02.1987 when respondent was also present. Besides him, following persons summoned as witnesses, also appeared before DC :

(i) *Shri SM.Misra, Income-tax Officer, Agra.*
(ii) *Shri R.K.Mittal, Income-tax Officer, Meerut.*
(iii) *Shri H.G.Seymour, Income-tax Officer, (Retd.), Meerut.*
(iv) *Shri R.N.Agrawal, Advocate, Agra (Former partner of United Pulverisers).*
(v) *Shri R.N.Garg, Chartered Accountant, Agra.*

14. Two other witnesses, i.e. Sri T.D.Chandana, Income-tax Officer (Retd.), Agra and Major H.S.Sawhney (Retd.), partner of Bharat Gas Agency, Agra could not appear for their own reasons but under communication to DC.

15. During the course of hearing on 20.02.1987, DC got information that certain challans and documents were seized by police authorities and, examination of those documents by DC was necessary. Consequently, 07.04.1987 at New Delhi, was fixed for further enquiry. It was further adjourned to 07.05.1987 when evidence of Sri T.D.Chjandana, Income-tax Officer (Retd.), Agra and Major H.S.Sawhney (Retd.) were recorded in presence of respondent.

16. For the purpose of inspection of originally deposited challans available with Income Tax Department and/or Court, D.C. adjourned enquiry proceedings.

17. On 29.12.1988 when DC met in furtherence of enquiry, one of Members of DC had changed and therefore, respondent was given

an option under Regulation 11(5) to request for de-novo enquiry or to continue from the stage it was left at the last hearing. Respondent opted to continue enquiry from the stage of last hearing. On 21/22.02.1989 when enquiry was fixed at Agra, respondent did not appear before DC and instead handed over a closed envelope, addressed to Secretary and left a message that he would appear before DC only after decision on the alleged contents in the envelope given by him. Envelop contains a copy of telegram dated 19.02.1989 sent by respondent to ICAI, requesting for adjournment and to take a decision on his earlier letter dated 11.02.1989. DC observed that in the letter dated 11.02.1989, respondent requested for supply of copy of certain documents produced by Income Tax Department and to hold enquiry *de novo,* in view of the change of membership of DC. It was noted that copies of documents requested by respondent have already been supplied to him by ICAI's letter dated 08.02.1989 and 17.02.1989. With regard to *de novo* enquiry, DC found that respondent was given that option but he opted otherwise on 29.12.1988. Ultimately, D.C. proceeded and inquiry concluded.

18. After assessing material on record available, DC recorded findings in the report dated 12.09.1989, extract whereof is reproduced as under:

> *"35. The Committee has carefully considered the deposition of the witnesses, the documents filed by the Income-tax Department the Respondent and the vouchers of M/s Bharat Gas Agencies for the period March, 1979. It is true that none of the witnesses could identify the handwriting in the challans, whereas the payments deposited in the SBI are in the handwriting of the Respondent. However, from the copy of the bill which has been produced by R.N. Agarwal indicating the various payments made on account of Income-tax as on 24.3.1979 submitted by the*

Respondent clearly indicates that the Respondent was responsible for claiming the reimbursement of the payments purported to have been made in the said bill. Similarly, the vouchers produced by Major Sawhney (Retd.) of Bharat Gas Agencies, which are evidently being kept in the ordinary course of business clearly indicate reimbursement made to Shri D.K.Agrawal namely of Rs.600/-, Rs.711/- and Rs.851/- on 26.3.1979. Besides these, certain other payments have also been made during the year. The voucher dated 24.3.1979 indicates payments of Rs.1,621/- made to Chartered Accountant indicating the balance payment of Rs.600/- to pay.

36. It is also evident from the two written sheets produced by the witnesses which are in the handwriting of the Respondent, and ***confirmed by the Respondent as in his own handwriting*** *that the Respondent has been responsible for claiming income tax money deposited by him from these firms.*

37. The Committee observed that the bills submitted by the Respondent to M/s United Pulverisers includes Rs.20,949/- includes Rs.8,751/- and Rs.1,254/- was the income tax payment made on 22.3.1979. It is therefore quite evident that the Respondent had claimed payment made on account of said parties although no such payments were deposited by him in the Income-tax Department, but only Re.1/- and Rs.4/- being the last digit of these two payments were deposited in the Bank. These counterfoils were produced before the Committee. The said bills are made by the Respondent himself in his own handwriting. The Respondent when confronted with the evidence, has not been able to explain in what circumstances, he has made the bills and claimed re-imbursement and received the partial money.

38. The Committee has also carefully perused written statement and the statement of the Respondent at the hearing held on 29th December, 1988. The Respondent has *thereafter chosen to absent himself and decided not to present himself at the last meeting fixed by the Committee in the wake of the evidence. The Respondent has continued to maintain that he was not responsible for depositing any amount in respect of these parties and has also been pleading that the Department having filed FIR, it would be appropriate to wait for the decision in the case of prosecution lodged by the Police.*

39. As already stated, in view of the positive evidence wherein the Respondent claimed the re-imbursement of payment from United Pulverisers and the payment's vouchers of M/s Bharat Gas Agencies, the statement made by the witnesses, it is quite evident that the Respondent was responsible for depositing and then claiming the money from the parties. The fact that the challans produced by the Department are not in his own handwriting is of very little help to him, in the wake of evidence before the Committee about the re-imbursement claimed by the Respondent, which he has not been able to explain.

40. The Committee notes with ***regret that a member of the noble profession on whose conduct the whole society depends for meeting their obligations, has chosen to involve himself in a systematic fraud, involving huge amount.*** *The Committee regrets to note that the conduct of the Respondent by not presenting himself for the examination by the Committee, at the final hearing, is hardly justified.*

41. In view of what has been stated above, the ***Committee is of the view that the Respondent has involved himself in respect of two parties namely; United Pulverisers and Bharat Gas Agencies*** *in depositing the money only to the extent of the last digit and claiming the amount in full in respect of the payments of Rs.1,242/-, Rs.192/-, Rs.435/-, Rs.512/-, Rs.1,254/- and Rs.8,751/- indicated in the "information" and,*

> *therefore, is guilty of "other misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949."* *(emphasis added)*

19. A copy of the aforesaid report was forwarded to respondent vide ICAI's letter dated 20.08.1990 and he was given opportunity to submit representation, if any, and if so advised, to appear before Council on 14.09.1990, either in person or through a Member of ICAI, duly authorized. Respondent submitted representation dated 05.09.1990. On his request, consideration on report was postponed by Council of ICAI, and, deferred to be considered in the meeting held from 6th to 8th December 1990. Respondent was informed vide letter dated 12.11.1990 to avail opportunity of oral hearing by appearing in person or through authorized representative and remain present on 07.12.1990 before Council. Again, on the request of respondent, consideration on report was deferred. Vide letter dated 19.01.1991 respondent requested Council to defer consideration on report in the next meeting. Vide letter dated 08.07.1993, ICAI informed respondent that report of DC would be considered in the Council's meeting held from 5th to 7th August, 1993 and respondent may avail opportunity of hearing on 06.08.1993. Respondent appeared before Council on 06.08.1993 and stated that his counsel was out of Delhi and in his absence, it was not possible for him to proceed with the case and again requested for adjournment. He was informed that the matter had already been adjourned thrice and now it is not possible. However, on the persistent request on behalf of respondent, it was again adjourned so as to be considered in next meeting, whenever it would be held at Delhi. Vide letter dated 21.10.1993, respondent was informed that the report would be considered in the meeting scheduled to be held from 24th to 26th November, 1993. Respondent again regretted his

inability to appear on account of death of his mother and sought adjournment. Request was accepted and matter was deferred to next meeting scheduled from 14th to 16th July, 1994. Respondent was informed by ICAI, vide letter dated 22.06.1994, asking him to appear on 15.07.1994. Respondent again sought adjournment vide letter dated 06.07.1994 on the ground that he had suffered cardiac pain and has been advised bed rest. Then next meeting was scheduled from 1st to 3rd September, 1994, and respondent by letter dated 09.08.1994, was informed to appear before Council on 02.09.1994, on which date, he appeared and made oral submissions. After considering report, written representations and oral submissions of respondent, Council resolved to accept report of DC finding respondent guilty of "other misconduct" under Section 22 read with Section 21 of Act, 1949 and decided to recommend to this Court, in terms of Section 21(5) of Act, 1949.

20. Section 21(5) and (6) read as under :

> *"(5)* ***Where the misconduct*** *in respect of which* ***the Council has found any member of the Institute guilty is misconduct*** *other than any such misconduct as is referred to in sub-section (4), it* ***shall forward the case to the High Court with its recommendations thereon****.*
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> *(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely :-*
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> > *(a) direct that the proceeding be filed, or dismiss the complaint, as the case may be;*
> >
> > *(b) reprimand the member;*

> *(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit,*
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> *(d) refer the case to the Council for further inquiry and report.”* *(emphasis added)*

21. Counsel for respondent contended that report has been submitted by DC after holding ex-parte enquiry and hence, it is liable to be rejected, being in violation of principle of natural justice; in respect of same matter, if criminal proceedings were going on, it was not open to DC to proceed with enquiry and submit report; no handwriting expert was examined to draw an inference that any kind of tampering etc. has been made by respondent; Report has been submitted without perusing the original documents; entire proceedings are in violation of Regulations, hence report is liable to be rejected, etc.

22. So far as contention with regard to violation of Regulations is concerned, despite repeated query, no specific Regulation could be pointed out, which has been infringed either by DC or Council. Various dates on which proceedings were scheduled, and the manner in which respondent has sought accommodation, makes it clear that there was well planned attempt on the part of respondent to delay proceedings, as far as possible, and that is how, enquiry which commenced in 1980, took almost 14 years. DC took about four years in submission of report and, thereafter, before Council also, repeated adjournments were sought, which were allowed by Council so that respondent may not have any impression of injustice. In this process also, it took four years before Council. Thereafter, Council itself has taken almost five years in making Reference to this Court and it has been received in the year 1999.

23. Respondent did not examine any witness in his defence nor

made any attempt in this regard. It allowed DC to proceed ex-parte, while on the contrary, several witnesses were examined in his presence also, who supported facts constituting information against respondent. Documentary evidence examined by Council clearly shows manipulations which were also admitted by respondent, as is evident from the findings recorded by DC in para 30 of its report, which may be reproduced as under:-

> *"30. At the hearing held on 29th December, 1988, the following witnesses were present:-*
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> *1. Shri T.D.Chandna*
>
> *2. Major H.S.Sawhney (Retd.)*
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> *Major Sawhney, partner of M/s Bharat Gas Agencies, Agra maintained that he had filed papers at the earlier hearing and for advance tax, challan of Rs.851/- for the assessment year 1979-80 paid on 15.3.1979, was prepared by the Respondent and he deposited the money and afterwards got money back from them. The said payment was reimbursed to Respondent on 26th March, 1979 after about nine or ten days. The witness has produced vouchers for the month of March, 1979. The witness produced two vouchers dated 28.3.1979 and 26.3.1979 indicating payments of Rs.541/- and Rs.600/-, Rs.711/- and Rs.851/- respectively in the name of Shri D.K.Agrawal. These vouchers indicate payment of Income-tax made through Shri D.K.Agrawal.* ***The witness also produced two papers which are in the handwriting of Shri D.K.Agrawal wherein the exact figures of the challan was mentioned in his own handwriting which was paid by the Respondent and then claimed the money from the witness.*** *When the Respondent was confronted to ascertain whether the said papers were in the handwriting of the Respondent, he admitted that these were in his own handwriting. The Respondent maintained that the appropriate papers containing these details are in his own handwriting."*

24. The report of DC shows that during the course of examination of witnesses, when respondent was present, he was confronted with relevant facts and his stand has been noted by DC in its report. Learned counsel for respondent could not show anything so as to persuade us to form a view that findings recorded by DC are on account of misreading of fact or otherwise perverse. It is in these facts and circumstances, we are in agreement with the report as well as resolution of affirmance of Council and confirm that respondent is guilty of "other misconduct", warranting appropriate punishment therefor.

25. For the purpose of awarding punishment, we have heard learned counsel for parties and considered entire facts and circumstances. A Chartered Accountant is a person, who holds an office of confidence and not only his client, but even in Department in which Chartered Accountant represents the matter of his client, normally believe that he (Chartered Accountant) is performing his duties honestly. Confidence has been breached by respondent not only with the persons, who engaged him, but it has played fraud on the Department also. He is admittedly a person of having long-standing in the profession, still has shown such a conduct, which can never be expected of a Chartered Accountant. In the circumstances, ICAI has recommended removal of name of respondent from the register of Member for a period of two years. Looking to the conduct of respondent, and the tactics adopted by him in delaying proceedings, stretching it to almost one and half decade, in our view, appropriate punishment would be removal of his name from Membership of the Institute for a period of five years.

26. We order accordingly.

27. Let this order be communicated to ICAI for consequential action and compliance.

28. Reference stands answered and disposed of accordingly.

Dated : 25.04.2017

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