

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32279 of 2013

V.Venkata Siva Kumar

...Petitioner

Vs.

1.Union of India
Ministry of Corporate Affairs, Rep. by the Secretary,
A-Wing, Shastri Bhavan
Rajendra Prasad Road
New Delhi 110 001

2. Institute of Chartered Accountants of India
Rep. by its Secretary
P.O. Box.No.7100 - I.P. Marg
New Delhi-110 002

3. The Disciplinary Directorate
Institute of Chartered Accountants of India
P.O. Box.No.7100 - I.P. Marg
New Delhi-110 002

4. N.S.Srinivasan
...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the decision of the Board of Discipline dated 30.10.2013 and quash the same and further direct the respondent one to constitute a committee of independent legal experts to examine, unravel and fix accountability for malafied exercise of quasi-judicial powers if any by the respondent two and three within a reasonable time.

For Petitioner	:	Mr.V.Venkata Sivakumar (Party in Person)
For Respondent 1	:	Mrs.Anuradha Central Government Standing Counsel
For Respondents 2 & 3	:	Mr.Krishna Srinivasan for M/s.S.Ramasubramaniam & Associates
For Respondent 4	:	Mr.M.Deivanandam

ORDER

The writ on hand has been instituted to quash the decision of the Board of Discipline dated 30.10.2013 and further direct the



respondent one to constitute a committee of independent experts to examine, unravel and fix accountability for mala fide exercise of quasi-judicial powers.

2. The petitioner has filed the present Writ Petition challenging the proceedings of the 38th meeting of the Board of Discipline of the respondent, wherein, the said committee accepted the report of the *prima facie* opinion of the Director Discipline in the matter of complaint made by the petitioner against the respondent 4 under Section 21 of the Chartered Accountants Act, recommending / passing the order for closure of the case vide their letter No. Ref:PR-13/12 – DD/28/2012/NG dated 30th October 2013.

3. The petitioner states that he is a Chartered Accountant and lawyer by qualification and has been a member of the Institute of Chartered Accountants of India for a period of 25 years, at the time of filing the Writ Petition. The petitioner has been working as a



professor of accountancy, costing and management for students

pursuing professional courses like CA, MBA, ICWA and in this

capacity, the petitioner has been a member of faculty of leading

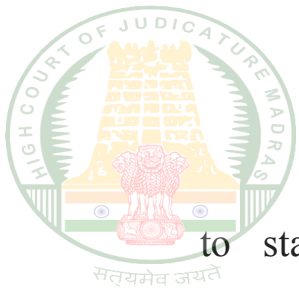
management and professional institutions like Indian Institute of

Chartered Accountants (ICAI), IIPM, Loyola Institute of Business

Management, RBI Staff College among others.

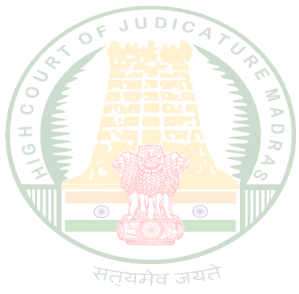
4. The petitioner states that he has also published several books and articles in professional journals on professional management and other topics relevant to the profession of chartered accountancy.

5. The petitioner further states that, on 06.07.2003, the Economic Times published an article stating that allegations had been leveled against the President of the ICAI, one Mr.R.Bhupathy over the running of a private coaching centre for Chartered Accountant students in his wife's name. The article further went on



to state that the students of the coaching centre linked to Mr.R.Bhupathy have placed consistently high in the exams conducted by the ICAI, thereby, insinuating a lack of integrity. The article further states that a number of highly placed officials in the ICAI had demanded a probe to maintain the integrity of the ICAI as an institution.

6. Several Writ Petitions based on the said article were admitted by the High Court at different stages of hearing. The 4th respondent, Mr.N.S.Srinivasan admitted during enquiry that he has no basis for making the said complaint, which was also confirmed by the Disciplinary Committee. The petitioner filed a disciplinary complaint against the 4th respondent for making malicious and frivolous allegations that resulted in the petitioner being removed from the faculty position, which was held by him for 18 years, resulting in loss of reputation among the students and the intellectual community causing mental agony and irreparable financial loss.



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7. The conclusions of the Director Discipline was accepted by the Board of Discipline and the complaint filed by the petitioner was rejected. Thus, the petitioner is constrained to move the present Writ Petition.

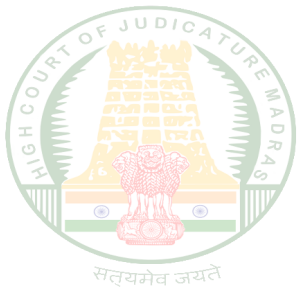
8. The petitioner in person articulated his case by saying that the 4th respondent filed a complaint against him which resulted in imposing of punishment. When his complaint was taken into consideration, the respondents acted in a biased manner and closed the complaint without conducting proper enquiry. The very decision taken in this regard reveals that the authorities have acted with mala fide intention.

9. The petitioner further contended that Mr.R.Bhupathy filed Civil defamation case at Chennai and also using the ICAI, filed a Criminal case against the petitioner at New Delhi. During the cross examination of Civil defamation case, Mr.R.Bhupathy had admitted



all his misdeeds fearing the serious consequences, the 2nd respondent deputed Mr.Ved Jain, Mr.T.N.Manoharan and Mr.N.D.Gupta, all past presidents to enter into a compromise, whereby, it was agreed that the Criminal defamation case at Delhi will be withdrawn, the petitioner will be reinstated as a faculty in return for allowing Mr.R.Bhupathy to withdraw the Civil defamation case in O.S.No.6185 of 2005. The petitioner believing the assurance, given a letter as per request of the council but the respondents went back and insisted an apology letter for withdrawing the Criminal case at Delhi, as it is a matter concerning an Institution.

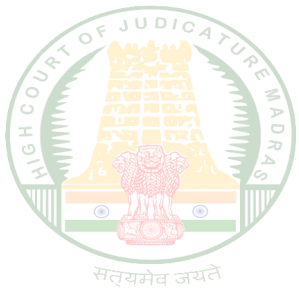
10. The Criminal case was withdrawn. However, the apology letter was published in the CA news journal that was circulated among Three lakh members and the top officials of various corporates with main intention of humiliating the petitioner for bearing out various fraudulent acts of the Presidents, which was also confirmed by the High Court in W.P.No.5035 of 2013.



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11. The petitioner raised allegations of bias against the respondents in dealing with the complaint filed by him and based on improper enquiry, the complaint was closed. Contrarily, the complaint against him was ended with an order of punishment. Thus, the allegations set out in the complaint of the petitioner has to be re-enquired for the purpose of considering the grounds raised by the petitioner with evidences.

12. The learned counsel appearing on behalf of the respondents objected the said contention raised by the petitioner, who has appeared before this Court as a party-in-person by stating that an enquiry was conducted by following the procedures as contemplated and there is no infirmity as such. The Board of Discipline considered the enquiry report and based on the findings, the decision was taken.



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13. The petitioner on account of certain personnel vengeance started accusing the authorities of the Chartered Accountants of India and filed a complaint with incorrect facts. Even then the complaint was enquired into by the competent authority, namely, the Director Discipline and an opportunity was provided to the petitioner to establish his case. Thereafter, an enquiry report was filed. Based on the enquiry report, the Board of Discipline has taken a decision. Thus, there is no infirmity as such and the Writ Petition itself is motivated and therefore liable to be rejected.

14. This Court has to consider the complaint made by Mr.N.S.Srinivasan / 4th respondent against the petitioner. The complaint note reveals that the petitioner published an article in the newspaper, Economic Times report with an allegation regarding coaching scam and the said allegations are false and caused disreputation to the institute. Based on the said complaint, action



was initiated and the disciplinary committee conducted an enquiry under Section 21 of the Chartered Accountants Act, and made a findings that the petitioner was guilty of misconduct. The enquiry committee gone into the nature of the allegations, elaborately considered and formed an opinion that the petitioner is guilty of misconduct.

15. The petitioner also filed a complaint against Mr.N.S.Srinivasan for making frivolous and highly derogatory allegations against the petitioner in the form of complaint to SIRC without any basis. The said complaint filed by the petitioner was enquired into by the disciplinary committee separately. However, the findings of the enquiry committee reveals that the complainant / petitioner made allegation against the 4th respondent without any evidence.

16. The disciplinary committee formed an opinion that the



4th respondent did not make any derogatory or frivolous allegations as stated in the complaint because the committee arrived at a finding that the petitioner is guilty of misconduct. In respect of the complaint filed by the 4th respondent the petitioner has chosen to file the present complaint. In other words, the disciplinary committee formed an opinion that due to personal vengeance, the petitioner has filed a complaint against the 4th respondent and they made a finding that the 4th respondent in the complaint is not guilty of misconduct under any of the provisions of the Act.

17. The learned counsel appearing on behalf of the respondent mainly contended that the complaint filed against the petitioner and the complaint filed by the petitioner against the 4th respondent were independently enquired into by the Discipline Committee and the Board of Discipline accepted the report of the enquiry committee and passed a resolution accordingly. There is no infirmity in respect of the procedures followed by the competent



authorities and the petitioner was provided with an opportunity to establish his case.

18. When the enquiry committee formed an opinion that the petitioner has filed a complaint without any evidence, the committee arrived at a conclusion that there is no *prima facie* case made out against the 4th respondent in the complaint and accordingly closed the complaint filed by the petitioner. In respect of the other complaint, the petitioner was punished for committing misconduct and with this motive the petitioner has chosen to file the Writ Petition. Thus, the Writ Petition has to be rejected.

19. A perusal of the enquiry report as well as the order reveals that several allegations have been made against the 4th respondent and the authorities of Chartered Accountants of India.



No doubt, the Director Discipline has relied on the apology letter given by the petitioner. In respect of the apology letter, the petitioner in his affidavit has stated that the compromise discussion were going on between the parties and during the discussion the petitioner was made to believe that the criminal case as well as the defamation case will be withdrawn and he will be taken back as a faculty.

20. However, the criminal case alone was withdrawn and other promises were not honoured by the authorities. The letter of apology was further published largely, which caused disreputation to the petitioner amongst the students. Thus, the petitioner came to understand that the promise was made in order to damage his reputation and to harass him.

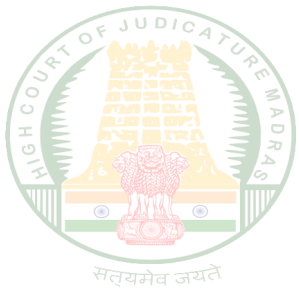
21. The petitioner has stated that the said apology letter



when objected, ought not have to be relied upon by the enquiry committee, but the enquiry committee ought to have gone into the merits of the allegations raised against the 4th respondent and made a finding on merits.

22. Contrarily, there is an institutional bias and conspiracy to cover up the fraudulent acts of the President, Mr.R.Bhupathy. There are several allegations against the said Mr.R.Bhupathy and those allegations were not gone into by the enquiry committee. Contrarily, they have connived each other to form an opinion that the petitioner has not made out any prima facie case.

23. The petitioner states that he has submitted number of documents, evidences and precedents to establish his case. None of those documents were considered nor findings have been given by the disciplinary committee.



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24. With reference to the complaint submitted by the writ petitioner an enquiry was conducted. The enquiry report reveals that the disciplinary authority recorded the allegations set out in the complaint by the petitioner as well as the written statement filed by the 4th respondent. The rejoinder filed by the complainant were also recorded in the report. But, there is no findings or reasons for the purpose of forming an opinion to close the complaint. Merely recording that the complainant has not submitted the evidence is insufficient and the documents filed by the petitioner as well as the statement are to be scrutinized, considered and appropriate findings are just and necessary, which alone will satisfy the requirements of the fair enquiry to be conducted in accordance with law.

25. A perusal of the enquiry report of the Director Discipline reveals that the pleadings are recorded and he has directly formed an opinion that the complaint was made without any evidence. There is no reason to arrive at such conclusion. Reasons



for forming an opinion is of paramount importance in an enquiry proceedings. Any enquiry committee or the Director Discipline while dealing with complaint is expected to deal with each and every issue raised by the complainant and consider the documents and evidences filed by all the respective parties and made a finding on *what basis such evidences can be relied upon or cannot be relied upon.*

26. Reasons are the live link for forming an opinion. In the absence of reasons, the enquiry report is undoubtedly incomplete and cannot be relied upon. Merely forming an opinion is insufficient as the complainant is also a Chartered Accountant and was working as a faculty for several years. The service rendered by the petitioner with the institute also need not to be undermined and if at all the complaint is given based on some motive or otherwise even then the genuinity of the allegations must be gone into as the petitioner is also responsible member of the Chartered Accountants of India and



having served as a faculty for several years, the petitioner also knows the consequences, nature of allegations he is making against the institute and its authorities.

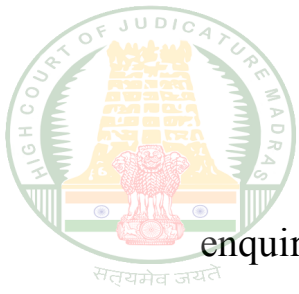
27. Thus, the seriousness involved must be properly considered with reference to documents and evidences made available before the Director Discipline. Contrarily, by recording complaint and the written statement, the Director Discipline ought not to have formed an opinion that the complainant made a report without any evidence. The petitioner produced the evidence, contents in the documents with regard to the grounds raised. All must be elaborately adjudicated and the findings must be given on issue basis so as to arrive at a conclusion that the enquiry was conducted elaborately in an impartial and unbiased manner.

28. In the absence of any such findings, the Court has to form an opinion that based on an improper enquiry the complaint was closed. Though there is an allegation of bias, malafide, etc.,



This Court is not inclined to go into those issues at this point of time as the same would not be necessary as this Court has not inclined to adjudicate the factual merits of the allegations and the counter allegations set out in the Writ Petition.

29. Thus, it has to be construed that the complaint filed by the petitioner was not enquired into properly and by following the established principles of law. The nature of the allegations set out in the complaint by the petitioner, the evidence submitted as well as the statement made are not elaborately adjudicated or any findings are given by the Director Discipline in his enquiry report. Contrarily, the Director Discipline simply formed an opinion that complainant made an allegation against the 4th respondent without any basis and such findings may not be sufficient as the director discipline is the original authority to conduct enquiry which is of Trial nature. Therefore, reasons and the findings in respect of each issue or allegations made are necessary to form an opinion that the



enquiry was conducted in a proper manner.

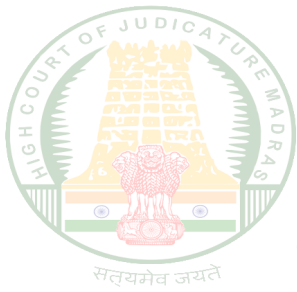
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30. In view of the facts and circumstances, this Court has no hesitation in forming an opinion that the case deserves to be remanded back to the Disciplinary Authority for conducting a fresh enquiry. Accordingly, the following orders are passed:

(i) The impugned decision of the Board of Discipline dated 30.10.2013 and all other consequential proceedings are quashed.

(ii) The Disciplinary Committee (Director Discipline) is directed to take the complaint filed by the petitioner on file and conduct a fresh enquiry by following the procedures as contemplated and by affording opportunity to all the parties and pass final orders providing reasons and specific findings for arriving conclusions.

(iii) The Disciplinary Authority is directed to



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consider all the allegations as well as the documents and evidences produced by the respective parties and deal with the issues in a fair and impartial manner, take an appropriate decision and pass orders within a period of Four months from the date of receipt of a copy of this

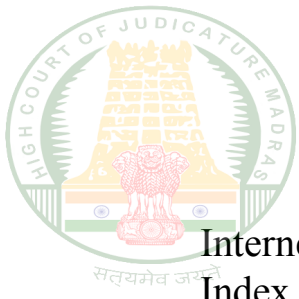
order.

(iv) The petitioner and the 4th respondent are directed to cooperate for conducting a fresh enquiry and they are at liberty to submit their respective pleadings, documents and evidences including additional documents and evidences, if any for the purpose of establishing their case before the enquiry committee.

31. With the above directions, the Writ Petition stands allowed. No costs.

25.01.2022

Kan/Jeni

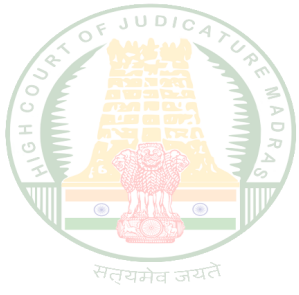


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Speaking order : Yes

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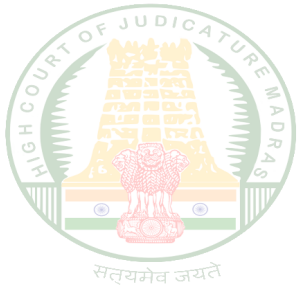
To

- 1.The Secretary
Union of India
Ministry of Corporate Affairs,
A-Wing, Shastri Bhavan
Rajendra Prasad Road
New Delhi 110 001
2. The Secretary
Institute of Chartered Accountants of India
P.O. Box.No.7100 - I.P. Marg
New Delhi-110 002
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