



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

Date of decision: 18th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 13023/2023 & CM APPL. 51472/2023**

CA SUBODH MAHESHWARI

..... Petitioner

Through: Mr. J.S. Bakshi, Sr. Advocate with
Mr. Abhishek Mohan and Mr.
Amitesh Bakshi, Advocates.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA &
ANR. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks to challenge the Order dated 30.07.2023, passed by the Appellate Authority, ICAI, directing the removal of the name of the Petitioner from the Register of Members maintained by the ICAI for a period of nine months and imposing a fine of Rs.1,00,000/- on the Petitioner. The Petitioner also seeks to challenge the Order dated 10.02.2022, passed by the Disciplinary Committee of the ICAI holding the Petitioner guilty of Professional Misconduct under the Chartered Accountants Act, 1949 (*hereinafter referred to as 'the CA Act'*).

2. Facts of the case reveal that a complaint in Form – 1 had been filed against the Petitioner herein by one Dr. Kanchan Kumar Saxena, CEO of Bhopal Sahakari Dugdha Sangh, Maryadit, Bhopal Co-operative Society (*hereinafter referred to as 'the Society'*). It is stated that the Petitioner had been working as a Tax Consultant with the Society. During period between



2013 and 2015, the Society issued various cheques amounting to Rs.1.90 crores to the Petitioner herein in his professional capacity for depositing tax with the Statutory Authorities. It is alleged in the complaint that instead of depositing the said tax amount with the concerned Statutory Authorities, the Petitioner herein forged the cheques and transferred Rs.1.90 crores into his and his wife's bank account.

3. It is stated that on becoming aware about the commission of the offence, the Society filed an FIR, being FIR No.1024/2015, dated 22.12.2015, registered at Police Station Gobindpura for offences under Sections 420, 409, 467, 468, 471, 34 IPC. It is stated that in terms of Rule 19 (1) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (*hereinafter referred to as 'the Conduct Rules'*), a copy of the complaint was forwarded to the Petitioner herein *vide* letter dated 10.02.2017 with a request to send his written statement.

4. Material on record discloses that in the written statement, the Petitioner herein denied the allegations levelled against him and stated that the complaint is motivated and is *mala fide*. The Petitioner further denied the allegation of embezzlement of money received by him from the Society in his professional capacity, and that the entire sum of Rs. 1.90 crores had been transferred to the Society. It was also stated in the written statement that the Petitioner had got anticipatory bail from the High Court of Madhya Pradesh at Jabalpur. It is the stand of the Petitioner that he worked with the Society as a Tax Consultant only till 31.03.2013 and he was not responsible for deposit of any tax from 01.04.2013, thereby absolving him of any obligation to deposit the said amount.



5. *Vide* Order dated 09.12.2017, the Disciplinary Directorate, ICAI, found that the amount of Rs. 2.60 crores had been remitted to the Respondent in different trenches by way of 12 cheques dated between 29.10.2013 to 19.06.2015 for the payment of tax and that despite the submission of the Petitioner that he had returned the money of the Society, Rs.70 lakhs was still to be recovered from him. The Disciplinary Directorate also refuted the contention of the Petitioner that since he has worked with the Society only till 30.03.2013, he was not obliged to work as Chartered Accountant of the Society. The Disciplinary Directorate held that the Petitioner herein had placed on record the letter dated 03.02.2015 in which the Petitioner himself has referred to the M.P. Vat, Entry Tax, Central Sales Tax assessment orders for the year 01.04.2012 to 31.03.2013 which itself indicates his association with the Society even after 2013. The Disciplinary Directorate has, therefore, opined it is of the *prima facie* opinion that the Petitioner is guilty of “other misconduct” falling within the meaning of Clause (2) of Part IV of the First Schedule and of Professional Misconduct falling within the meaning of Clause (4) of Part II of the Second Schedule to the Chartered Accountant Act.

6. Subsequently, a notice was sent to the Petitioner on 31.07.2018 by the Disciplinary Directorate informing him about the *prima facie* opinion formed by the Disciplinary Directorate and the same was also placed before the Disciplinary Committee. The Disciplinary Committee has concurred with the reasons given by the Disciplinary Directorate that the Petitioner is guilty of professional misconduct and has decided to proceed further under Chapter V of the Conduct Rules. Accordingly, in terms of Rule 18 of the Conduct Rules, a copy of the *prima facie* opinion of the Disciplinary



Directorate, along with a copy of the documents relied upon by the Disciplinary Directorate was forwarded to the Petitioner and the Petitioner was directed to give his reply.

7. Hearings were conducted on 29.01.2021 and 25.06.2021. *Vide* Order dated 10.10.2022, the Disciplinary Committee found that the Petitioner was associated with the Society even after 2013 and that the amount of Rs.2.60 crores had been remitted to his and his family members' account in different trenches by way of 12 cheques. Committee held it was surprised to know that despite being a Chartered Accountant neither the Petitioner herein nor his family members had bothered to check as to how these amounts were reflected in their bank accounts. The Committee, therefore, held that the Petitioner was guilty of Professional and/or Other Misconduct falling within the meaning of Item (2) of Part-IV of the First Schedule and Item (4) of Part II of Second Schedule to the Chartered Accountants Act.

8. *Vide* a separate Order dated 26.08.2022, the Committee imposed a punishment by way of removal of the name of the Petitioner herein from the Register of the Members of the ICAI for a period of one year, along with a fine of Rs.1,00,000/-. Thereafter, the Petitioner herein filed an appeal against the said Order before the Appellate Authority.

9. There is nothing on record to indicate that the Appellate Authority has stayed the Order of punishment passed by the Disciplinary Committee of the ICAI. It is pertinent to mention here that the authorized representative of the Petitioner herein had stated before the Appellate Authority that the Petitioner did not dispute the charges of misconduct and only contended that the punishment imposed on the Petitioner is too harsh and had, thus, prayed for reduction of the quantum of punishment. The said Appeal was dismissed



by the Appellate Authority *vide* Order dated 30.07.2023. However, the Appellate Authority reduced the period of punishment from one year to nine months. It is this Order which is under challenge in the present Writ Petition.

10. It is stated by the learned Counsel for the Petitioner that the procedure prescribed under the Conduct Rules has not been followed by the ICAI. He further states that the decision of the Disciplinary Committee to proceed ahead with the matter under Rule 9(2)(b) of the Conduct Rules is contradictory as the notice to the Petitioner does not specify the reasons as to why further proceedings are to be taken against the Petitioner. He states that proceedings dated 29.01.2021 were contrary to the Conduct Rules as no charges were framed against the Petitioner. He further submits that the Committee did not permit the Petitioner to lead evidence and had straightway proceeded with the arguments.

11. At the outset, it should be mentioned that in the Appeal, the learned Counsel for the Petitioner had admitted the guilt of the Petitioner herein. Relevant portion of the Order dated 30.07.2023, passed by the Appellate Authority reads as under:

“10. Today, the Learned Authorized Representative for the Appellant, after arguing the matter for some time, has fairly conceded that he does not dispute the order dated 10.02.2022 (findings) of the Disciplinary Committee holding the Appellant 'Guilty' of professional and other misconduct falling Within the meaning of Clause (2) of Part IV of the First Schedule and Clause (4) of Part II of the Second Schedule to the Act, however, he has submitted that the punishment awarded, by order dated 26.08.2022, is too harsh and prayed for reduction in the quantum of punishment.”

12. The only argument, therefore, raised before the Appellate Authority



was that the punishment imposed on the Petitioner is disproportionate to the misconduct committed by him and more so because the entire money has been returned back to the Society.

13. The role and function of a Chartered Accountant (CA) is extremely important in the functioning of any organization. Given the nature of duties discharged by a CA, they enjoy the full faith and trust of all parties, and thus, the profession of Chartered Accountancy requires utmost sincerity, with no place for dishonesty. The Conduct Rules indicate that Chartered Accountants must perform their jobs with integrity and it also indicates zero tolerance towards the CA if dishonesty is proved.

14. The present case is a classic case of rank dishonesty on the part of the Petitioner herein. Material on record indicates that even after the Petitioner herein stopped being the CA of the Society, he was connected with the working of the Society till 2015. Cheques were given to the Petitioner by the Society in good faith and he has misappropriated the money and has encashed the cheques. Even though the amount has been returned after the FIR was lodged but the fact that the money has been returned cannot absolve the Petitioner of the default.

15. This Court, at this juncture, is not going further into the merits of the case lest it will have an adverse effect on the criminal case which is pending against the Petitioner and, therefore, the observations of this Court are only confined to the question as to whether this Court should exercise its jurisdiction under Article 226 of the Constitution of India to interfere with the orders challenged in the present Writ Petition.

16. Material on record indicates that proper notices have been given to the Petitioner and the procedure as laid down in the Conduct Rules has been



followed. The *prima facie* opinion of the Disciplinary Directorate, along with all the relied on documents were forwarded to the Petitioner and the Petitioner has been given full opportunity to defend his case. There is nothing on record which discloses that the Petitioner had asked for cross examination of witnesses and, in the absence of any material, this Court is not inclined to accept the contention of the learned Counsel for the Petitioner that the correct procedure had not been followed. Though it has been stated in the present Writ Petition that the composition of the members of the Committee changed, the same was not objected to in the hearing. In fact, the material on record discloses that the Petitioner was explicitly asked if he had any objections and the Petitioner did not raise any objection to the change in the composition of the Committee.

17. The procedure that is to be followed by the Disciplinary Committee on finding of professional misconduct has been recorded by the Apex Court in D.K. Agrawal v. Council of the Institute of Chartered Accountants of India, 2021 SCC OnLine SC 903, wherein it has been observed as under:

“17. It is clear from the above provisions that the report of the Disciplinary Committee will contain a statement of the allegations, the defence entered by the members, the recorded evidence and the conclusions expressed by the Disciplinary Committee. The conclusions of the Disciplinary Committee are tentative and the same are not recorded as findings. It is only the Council which is empowered to find out whether the member is guilty of misconduct. If on receipt of the report, the Council finds that the member is not guilty of misconduct, Section 21(2) requires that it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed. On the other hand, if the Council finds that the member is guilty of misconduct, Section 21(3)



requires it to record a finding accordingly and to proceed in the manner laid down in the succeeding sub-sections. The findings by the Council constitute the determinative decision as to the guilt of the member and because it is determinative in character, the Act requires it to be recorded. Thus, the Council has to determine that a member is guilty of misconduct and the task of recording of the findings has been specifically assigned to the Council. Sub-section (4) of Section 21 mandates that where a member of the Institute has been guilty of professional misconduct specified in the First Schedule of the Act, the Council shall afford to such member an opportunity of being heard before any orders are passed against him. After recording a finding that a member is guilty of misconduct, the Act moves forward to the final stage of penalisation. The recording of the finding by the Council is the jurisdictional springboard for the penalty proceedings which follow.”

18. Material on record demonstrates that the procedure that is required to be adhered to on finding of professional misconduct by the Disciplinary Committee has been duly followed. The Petitioner has not been able to demonstrate any prejudice that has been caused to him by the Disciplinary Committee. In any event, once the Petitioner has already admitted to his guilt before the Appellate Authority, it does not lie in the mouth of the Petitioner anymore to challenge the Order on the ground that procedure has not been followed by the Committee.

19. It is well settled that while exercising jurisdiction under Article 226 of the Constitution of India, the Courts, while interfering with the decision of Disciplinary Committee, must only look into the decision-making process and not the decision as such. If the decision-making process is fair, then Writ Courts must not interfere with the findings of a Disciplinary



Committee. In the instant case, the Petitioner has not been able to demonstrate as to how the procedure adopted by the Disciplinary Committee is not reasonable or fair or is violative of the principles of natural justice.

20. The Supreme Court in Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 has held as under:

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the



disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

21. The Petitioner is guilty of a very serious misconduct that has the ability to shake the faith of persons in the profession of Chartered Accountancy and the larger Institute of Chartered Accounts. The Appellate Authority has been considerably lenient on the Petitioner by reducing the period of punishment from one year to nine months. This Court is of the opinion that no further reduction in the quantum of punishment is necessary.
22. Keeping in mind the seriousness of allegations against the Petitioner which have been proved in the proceedings, this Court is not inclined to interfere with the judgment passed by the Appellate Authority.
23. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

DECEMBER 18, 2023

Rahul