

2023:BHC-OS:12765-DB



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHARTERED ACCOUNTANTS REFERENCE NO. 1 OF 2023

**The Institute of Chartered Accountants
of India,**
Indraprastha Marg, New Delhi.

... PETITIONER

~ VERSUS ~

CA Gordhanbhai Madhabhai Savalia,
G-3, Ground Floor, Vraj Kunj Compound,
Vallabhbhai Patel Road, Vile Parle (West),
Nr. Rly. Station, Mumbai – 400 056.

... RESPONDENT

APPEARANCES

FOR THE PETITIONER Mr. Prerak Choudhary.

FOR THE RESPONDENT Mr. Sujit B. Shelar.

**CORAM : K. R. Shriram &
Dr. Neela Gokhale, JJ.**

DATED : 25th October 2023

JUDGEMENT (Per Dr. Neela Gokhale, J.):

1. This is a reference made by Petitioner. The Institute of Chartered Accountants of India (“**the Institute**”) under the provisions of Section 21(v) read with Section 22 of the Chartered Accountants Act, 1949 (pre-amended as applicable to the present case) against Respondent, viz., the Chartered Accountant concerned.

2. The Institute received a complaint dated 20th April 2004 from one Bhuvnesh Chandra, Mumbai (“**Complainant**”) the Director of M/s. Twincity Glass Pvt. Ltd. (“**the Company**”) making certain allegations against Respondent more particularly that Respondent used to calculate the sales tax liability and collect money from the Company to deposit in the authorized bank and used to send to the Company the photocopies of the original payment challan. Respondent used to tell the Company that the originals were required to be retained by him for assessment. Respondent used to claim reimbursement from the Company in cash for tax payments purportedly done by him on behalf of the Company. Respondent fabricated bogus payment challans by putting forged stamp of Dena Bank, Vile Parle (W) Branch and gave photocopy of the same as proof of payment to the Company. It is also alleged that Respondent fabricated certificates of Sales Tax Authorities showing completion of assessment and sent photocopies of the same as proof thereof. Respondent is further alleged to have collected account payee cheques for making payment of sales tax dues which he misappropriated by depositing in his own bank account. The alleged incident has taken place during the period 1992-1994.

3. Upon receipt of the complaint, the Institute called upon Respondent to send his response and by a written statement dated 16th December 2004, Respondent defended himself firstly by denying each and every allegation against him and referring to the complaint as sweeping, reckless and containing unsubstantiated allegations. He claimed to have an unblemished record of professional integrity for as many as 20 years. Complainant rebutted the written statement by its own rejoinder reiterating the allegations.

The Council of the Institute (“**Council**”) at its meeting held in September 2007 at New Delhi, prima facie, found Respondent guilty of professional misconduct and/or other misconduct and accordingly referred the case to Disciplinary Committee (“**Committee**”) constituted under the Chartered Accountants Act, 1949 (“**the Act**”).

4. The Committee held various meetings and concluded the hearing on 1st August 2008. Report was submitted to the Council holding Respondent guilty for ‘other misconduct’ falling within the meaning of Section 22 read with Section 21 of the Act. The Council in its meeting held in November 2010, upon consideration of the Committee’s report along with Respondent’s written representations dated 29th August 2009 and 8th March 2010, remanded the matter to the Committee for an enquiry *de novo*.

5. The Committee conveyed two hearings for the purpose of inquiry on 5th April 2013 and 22nd April 2013. After hearing the parties, recording evidence and on perusal of the documents produced before the Committee, the Committee gave its report on 27th February 2015 holding Respondent guilty of ‘other misconduct’ under Sections 21 and 22 of the Act. The Council considered the report at its 374th meeting held between 21st to 24th March 2018 at New Delhi. The Council on the basis of the contents of report, written representation and oral submissions made by Respondent accepted the conclusion of the Committee and decided to recommend to this Court that the name of Respondent be removed from its Register of Members for a period of one year. The present

Reference has been thus filed on 25th September 2019. The same remained under objections till 2023 and was ultimately registered as Reference No.1 of 2023. It is this Reference that arises for our consideration today.

6. Mr. Prerak Choudhary, learned Counsel appears for Petitioner and Mr. Sujit Shelar, learned Counsel appears for Respondent. Mr. Choudhary took us through the report of the Committee as well as the deposition of Respondent. He also took us through the written statement, written representation of Respondent before the Council as well as the decision of Council. We have perused the material placed on record and considered the submissions of Petitioner.

7. The Institute of Chartered Accountants of India is a statutory body created by an Act of Parliament that is the Chartered Accountants Act, 1949. In accordance with Section 9 of the Act, the management of the affairs of the Institute are vested in the Central Council. The Council performs its function through three different standing committees constituted under Section 17 of the Act and various other committees. One of the standing committees of the Institute is the Disciplinary Committee. The function of the Institute is to regulate the provisions of the Act and it is also empowered to take action against its members for any misconduct as contemplated in the Act and relevant regulations framed thereunder. Section 21 of the Act prescribes the procedure to be followed with regard to an inquiry relating to the misconduct of the members of the Institute. Section 22-A provides for filing of an

appeal by a member against imposition of penalty. The Act was amended on 8th August 2006 by Act 9 of 2006. However, since the alleged other misconduct relates to the period prior to the amendment, we are concerned with the unamended Sections 21 and 22, which are as under:

“21. Procedure in inquiries relating to misconduct of members of Institute:

“(1) Where on receipt of information by, or of a complaint made to it, the Council if prima facie is of the opinion that a member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in Clause (a) or Clause (b), but shall forward the case to the High Court with its recommendations thereon.

(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 (6) On receipt of any case under sub-section (4) or subsection (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 :

- (a) direct that the proceedings 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;.....”*

8. Regulation 13 of the Chartered Accountants Regulations, 1964 (“**Regulation**”) provides for the procedure of an inquiry before the Committee. Regulations 14 and 15 which are relevant for the purpose of this case are as under:

“14. Report of the Disciplinary Committee.

(1) The Disciplinary committee shall submit its report to the Council.

(2) The Council shall consider the report of the Disciplinary Committee and if, in its opinion, a further enquiry is necessary, shall cause such further enquiry to be made whereupon a further report shall be submitted by the

Disciplinary Committee.

(3) The Council shall, on the consideration of the report and the further report, if any, record its findings.

(4) If the finding is that there is no case for passing one of the orders specified in clauses (a) or (b) of subsection (4) of section, the complainant and the respondent shall be informed accordingly.

15. Procedure in a hearing before the Council.

(1) If the Council, in view of its findings, is of opinion that there is a case for passing one of the orders specified in clauses (a) or (b) of sub-section (4) of Section 21, is shall—

(a) furnish to the respondent a copy of the report of the Disciplinary Committee and a copy of its findings: and (b) give him a notice indicating the order proposed to be passed against him and calling upon him to appear before it on a specified date or if he does not wish to be heard in person, to send within a specified time, such representation in writing as he may wish to make against the proposed order.

(2) The scope of the hearing or of the representation in writing, as the case may be, shall be restricted to the order proposed to be passed.

(3) The Council shall, after hearing the respondent, if he appears in person, or after considering the representation, if any, made by him, pass such orders as it may think fit.

(4) The orders passed by the Council shall be communicated to the complainant and the respondent.”

9. It is clear from the above provisions that the stipulated procedure required the Committee report to contain a statement of allegations, the defense entered by the delinquent Chartered Accountant, the recorded evidence and the conclusions of Committee. The Council is to apply its mind to the report of Committee and is empowered to conclude regarding the guilt of its member or otherwise. A perusal of Committee report indicates that there was also a criminal case pending against Respondent before

the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade Court, Mumbai (“ACMM”) regarding the same allegations made in the present complaint and he was prosecuted for offences under Sections 406, 420, 465, 467, 468, 471 and 204 of the Indian Penal Code (“**the criminal complaint**”) which was pending when the Committee gave its report and also when the Council met and accepted the report of Committee. The Committee indicted Respondent holding that although complainant was unable to produce sufficient evidence against Respondent, he was able to show that books of accounts and other documents were in the custody of Sales Tax Enforcement Branch, Mumbai and the Economic Offence Wing. Further, the Committee noted that though complainant was unable to establish that Respondent withdrew money from the bank and altered the names and figures on the cheque and complainant gave money to Respondent to deposit the same against the sales tax liability, yet Respondent gave an undertaking that in case the Company failed to discharge its sales tax liabilities, he shall personally shoulder the same. The Committee went on to observe that no professional such as Respondent will give an undertaking while at the same time denying his involvement in the act of forging the challans. The Committee further accepted complainant’s affidavit which confirmed that Respondent has made several payments on behalf of the Company to the Sales Tax Department. On the basis of this evidence and the fact that Respondent failed to give an explanation regarding the circumstances and reasons compelling him to give an undertaking as aforesaid, the Committee held him guilty of ‘other misconduct’.

10. Respondent has filed his affidavit in reply and placed on record subsequent events. He states that the trial against him in the criminal complaint by judgment and order dated 5th May 2018 passed by the ACMM, he stands acquitted of all the charges. He has placed the order of acquittal on record. He has also denied the allegations made by the Institute in the Reference and has categorically denied the execution of the so-called undertaking which was relied upon by the Committee to indict him. He says that it is the complainant Company that has forged the undertaking. He further contests the decision making process of the Committee and the Council on the ground that the report of the Committee was never served on him.

11. We have perused the documents, the Reference memo and the affidavit in reply carefully. Noteworthy is the sequence of events in the present matter.

Sr.No.	Date	Particulars
1	1992-1994	The incident of offence allegedly took place.
2	20 th April 2004	Complaint was made to the Institute.
3	September 2007	The Council reached a prima facie opinion regarding the guilt of Respondent and referred the case to the Disciplinary Committee.
4	2nd February 2009	The Committee concluded the hearing on 1 st August 2008 and submitted its report of guilt of Respondent to the Council.
5	November 2010	The Council remanded the matter

		to the Disciplinary Committee for a <i>de novo</i> inquiry.
6	27 th February 2015	The Disciplinary Committee found Respondent guilty of 'other misconduct' and submitted its report to Council.
7	March 2018	Council accepted the report of Disciplinary Committee and held Respondent guilty of 'other misconduct'. It resolved to recommend to this Court that the name of Respondent be removed from its Register for one year.
8	25th September 2019	The Reference was filed in this Court.
9	2023	The objections were removed in the Registry and the Reference was numbered.

12. The sequence of events clearly indicate that firstly the complaint itself was made after 10-12 years of the incident having taken place. Thereafter, it took the Council as many as 14 years to complete the procedure prescribed under the Act and reach a finding of guilt of Respondent. Another almost two years were spent in the process of filing the Reference and finally, about four more years were spent in removing office objections to get the Reference registered. Thus, the Council has prolonged the procedure for as many as 19 years and kept Respondent in the dock for the entire period.

13. Considering the nature of accusation against Respondent, the finding of guilt by the Committee and the Council and the

consequent penal recommendation of such grave ramification, it is surprising that the Institute took such a long time to complete the procedure of indictment. The attitude of the Institute appears to be completely casual and negligent. The long drawn disciplinary proceedings themselves suggest the lack of seriousness on the part of the Institute to take the procedure against Respondent to its logical conclusion. Respondent is presently 77 years of age and save and except a period of five years for which he himself had surrendered his certificate of practice, he has been professionally active and no other complaint is found to have been made against him. The Institute has offered no explanation whatsoever for the inordinate delay in initiating and concluding the disciplinary action against Respondent.

14. The Supreme Court in its decision in the matter of *State of Madhya Pradesh v Bani Singh*¹ has quashed the charge memo and the departmental enquiry against an officer of the SAF, Gwalior on the ground of inordinate delay of 12 years to initiate departmental proceedings with reference to an incident that took place in 1975-76 and held that since there was no satisfactory explanation for the delay, it will be unfair to permit departmental enquiry against the officer to continue.

15. The Supreme Court in another decision in the matter of *State of A.P. v. N. Radhakrishnan*² in paragraph 19 has observed as follows:

1 (1990) Supp. SCC 738.

2 (1998) 4 SCC 144.

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

(emphasis supplied)

16. In the present case no explanation is offered by the Institute for the inordinate delay of as many as 19 years. Respondent has inasmuch suffered the agony of the sword of Damocles hanging over his head for so many years. In any case, we do not find that the Committee has found any substantial justification in the form of un rebutted evidence against Respondent as much as to hold him guilty to the extent that his name should be removed for a period of one year and Respondent be compelled to face an ignominy of the tag of 'other misconduct' at this stage in his professional career and at an age of 77 years. Moreover, the criminal court after having

applied the rigor of ‘proof beyond reasonable doubt’ principle has also acquitted him. Though the degree of proof required in disciplinary action is much less than a criminal prosecution, it can still be safely inferred that there is a cloud of doubts over the finding of guilt of Respondent.

17. Lastly, we see that even the Council has merely reproduced the report of the Committee without giving its own independent findings. There is neither any analysis by the Council nor any justification recorded to explain the quantum of punishment recommended to this Court.

18. In the decision of this Court in the matter of *Institute of Chartered Accountants of India v. Sudhir M. Desai*,³ this Division Bench, placing reliance on the decision in *D.K.Agrawal v. Council of the Institute of Chartered Accountants of India*⁴ has held that:

‘10.....Recording of reasons is a principle of natural justice and every judicial/quasi judicial order must be supported by reasons to be recorded in writing. It ensures transparency and fairness in the decision making process. The person who is adversely affected wants to know as to why his submissions have not been accepted. Giving of reasons ensures that a hearing is not rendered as a meaningless charade. Unless an adjudicatory body is required to give reasons and make findings of fact indicating the evidence upon which it relied, there is no way of knowing whether the concerned body genuinely applied itself to and evaluated the arguments and the evidence advanced at the hearing. Giving reasons is all the more necessary because it gives satisfaction to the party against whom a decision is taken. It is a well known principle that justice should not only be done but should also be seen to be done. An unreasoned decision may be just, but it may not

³ (2023) SCC OnLine 2209.

⁴ (2021) 131 taxmann.com 103.

appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of fairness and justice.....'

19. Having regard to the facts in the present matter and the discussion as above, we are satisfied that the view of Council is wholly untenable and we are not inclined to accept the recommendation of the Council as prayed. In view thereof, in our considered opinion, there is no need to take any further action against Respondent. We, therefore, direct the proceedings be filed by the Institute.

20. Reference is disposed accordingly. There will be no order as to costs.

(Dr. Neela Gokhale, J.)

(K. R. Shriram, J.)