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

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Judgment delivered on: 27.07.2016

+ W.P.(C) 6140/2016

R. SIBRAMANIAN

..... Petitioner

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA & ORS.

..... Respondents

Through:

Advocates who appeared in this case:

For the Petitioner

:

Mr. R. Subramaniam, Petitioner in person

For the Respondents

:

Ms Pooja M, Saigal, Advocate for Respondents.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM No. 25203/2016 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 6140/2016 & CM No. 25202/2016

1. The petitioner has filed the present petition with the following prayers:

(a) issue a writ of certiorarified mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the disciplinary proceedings No PR/85/11/DD/95/2011/DC/255/13 and PR

85/B/11-DD/114/11/DC/255/13 on the file of the 2nd Respondent in respect of the complaints of professional misconduct against the 3rd Respondent herein together with all proceedings thereunder conducted by the 2nd Respondent on and after 05.10.2015 including exclusion of the Petitioner from the proceedings based on Affidavit of 7th Respondent set out as taken on record on that date, and orders passed in the said proceedings without hearing the Petitioner on the allegations said to be contained in the Affidavit of 7th Respondent against Petitioner dated 26.09.2015, and on perusing the same, this Hon'ble Court may be pleased to annul the proceedings therein taken up from 05.10.2015, including any order passed thereunder, and consequently direct the 2nd Respondent to resume the proceedings with the participation of the Petitioner herein and first decide on the manner of dealing with the Affidavit after hearing the Petitioner and thereafter proceed in the matter based thereon;

(b) issue a writ of certiorarified mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the disciplinary proceedings Ref No PR/85/A/11/DD/95/2011/DC/256/13 on the file of the 2nd Respondent in respect of the complaints of professional misconduct against the 4th Respondent herein together with all proceedings thereunder conducted by the 2nd Respondent on and after 05.10.2015 including exclusion of the Petitioner from the proceedings based on Affidavit of 7th Respondent set out as taken on record on that date, and orders passed in the said proceedings without hearing the Petitioner on the allegations said to be contained in the Affidavit of 7th Respondent against Petitioner dated 26.09.2015, and on perusing the same, this Hon'ble Court may be pleased to annul the proceedings therein taken up from 05.10.2015 , including any order passed thereunder, and consequently direct the 2nd Respondent to resume the proceedings with the participation of the Petitioner herein and first decide on the manner of dealing

with the Affidavit after hearing the Petitioner and thereafter proceed in the matter based thereon;

(c) issue a writ of certiorarified mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the disciplinary proceedings No PR 116/12-DD/130/12-DC/388/14 on the file of the 2nd Respondent in respect of the complaints of professional misconduct against the 5th Respondent herein together with all proceedings thereunder conducted by the 2nd Respondent on and after 05.10.2015 including exclusion of the Petitioner from the proceedings based on Affidavit of 7th Respondent set out as taken on record on that date, and orders passed in the said proceedings without hearing the Petitioner on the allegations said to be contained in the Affidavit of 7th Respondent against Petitioner dated 26.09.2015 , and on perusing the same, this Hon'ble Court may be pleased to annul the proceedings therein taken up from 05.10.2015, including any order passed thereunder, and consequently direct the 2nd Respondent to resume the proceedings with the participation of the Petitioner herein and first decide on the manner of dealing with the Affidavit after hearing the Petitioner and thereafter proceed in the matter based thereon;

(d) issue a writ of certiorarified mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the disciplinary under No PR /77/11/DD/94/2011/DC/254/13 and PR 77/A/11-DD/113/11/DC/254/13 on the file of the 2nd Respondent in respect of the complaints of professional misconduct against the 6th Respondent herein together with all proceedings thereunder conducted by the 2nd Respondent on and after 05.10.2015 including exclusion of the Petitioner from the proceedings based on Affidavit of 7th Respondent set out as taken on record on that date, and orders passed in the said proceedings without hearing the Petitioner on the allegations said to be contained in

the Affidavit of 7th Respondent against Petitioner dated 26.09.2015 , and on perusing the same, this Hon'ble Court may be pleased to annul the proceedings therein taken up from 05.10.2015 , including any order passed thereunder, and consequently direct the 2nd Respondent to resume the proceedings with the participation of the Petitioner herein and first decide on the manner of dealing with the Affidavit after hearing the Petitioner and thereafter proceed in the matter based thereon

(e) issue a writ of prohibition or any other appropriate writ, order or direction in the nature of prohibition staying the operation of any order(s) passed by the Respondent Nos. 1 and 2 their servants and agents on or after 05.10.2015 in respect of the proceedings under No PR /85/11/DD/95/2011/DC/255/13 and PR 85/B/11-DD/114/1 /DC/255/13 against the 3rd Respondent on the file of the 2nd Respondent;

(f) issue a writ of prohibition or any other appropriate writ, order or direction in the nature of prohibition staying the operation of any order(s) passed by the Respondent Nos. 1 and 2 their servants and agents on or after 05.10.2015 in respect of the proceedings under Ref No PR /85/A/11/DD/95/2011/DC/256/13 against the 4th Respondent on the file of the 2nd Respondent;

(g) issue a writ of prohibition or any other appropriate writ, order or direction in the nature of prohibition staying the operation of any order(s) passed by the Respondent Nos. 1 and 2 their servants and agents on or after 05.10.2015 in respect of the proceedings under No PR 116/12-DD/130/12-DC/388/14 against the 5th Respondent on the file of the 2nd Respondent;

(h) issue a writ of prohibition or any other appropriate writ, order or direction in the nature of prohibition staying the operation of any order(s) passed by the Respondent Nos. 1 and

2 their servants and agents on or after 05.10.2015 in respect of the proceedings under No PR /77/11/DD/94/2011/DC/254/13 and PR 77/A/11-DD/113/1 /DC/254/13 against the 6th Respondent on the file of the 2nd Respondent;

(i) issue rule nisi in terms of prayers (a) (b) (c) (d) (e) (f) (g) and (h) above;

(j) pass such other and further order / orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. The case of the petitioner is that he was appointed as a General Power of Attorney by respondent no. 7 to prosecute the complaints filed by respondent no. 7 against respondent nos. 3 to 6 before the Institute of Chartered Accountants of India and its Disciplinary Committee, which have been arrayed as respondent nos. 1 and 2.

3. The petitioner contends that he had appeared in the said complaints filed by respondent no. 7 until 05.10.2015. After hearing of 05.10.2015, no notice or intimation of further hearing was received by him. On an inquiry made on 31.03.2016, from the respondent nos. 1 and 2, he was informed that the respondent no. 7 had filed an affidavit with the respondent no. 1 and 2 contending that the power of attorney on the basis of which he was prosecuting the said complaints on behalf of respondent no. 7, was got issued out of compulsion and was not valid.

4. The petitioner is aggrieved by the said affidavit filed by respondent no. 7 in those proceedings and contends that the allegations in the affidavit

would prejudice the petitioner.

5. The prayers of the Writ Petition extracted above show, that the petitioner who was appearing as a power of attorney of Respondent No. 7 in the complaints filed by him, is seeking that all the proceedings in the complaints held or conducted after 05.10.2015 be annulled and a direction be issued to the respondent no. 2, i.e., Disciplinary Committee to resume the proceedings afresh with the participation of the petitioner. The petitioner further seeks stay of the operation of all the order passed by respondent nos. 1 and 2 after 05.10.2015 in those proceedings.

6. In my view, the present petition is clearly misconceived. The petitioner admittedly, is not a party to any of those proceedings. Since the petitioner is not a party to the complaints, he cannot seek annulment or stay of orders passed therein.

7. The petitioner was prosecuting those proceedings as mere power of attorney holder on behalf of respondent no. 7. A power of attorney cannot insist on continuance as the attorney for the principal. If the principal does not desire the power of attorney to continue to represent the principal, the authorisation can always be revoked/terminated/withdrawn. The petitioner has no right to insist on representing respondent no. 7 in those complaints against his desire. The petitioner was a mere power of attorney holder. He has no independent locus in those proceedings. The prayers made by the petitioner, seeking annulment and stay of the operation of all order passed

after 05.10.2015 in those complaints, raise an apprehension that the present petition is in fact a proxy petition filed to achieve a collateral hidden agenda.

8. Further, the concern of the petitioner that the affidavit filed by respondent no. 7 in those proceedings may prejudice the petitioner is unfounded. If anything stated in the affidavit is sought to be used against the petitioner, principles of nature justice would require, that the petitioner is given an opportunity to rebut the same. Nothing has been pointed out to show that the said affidavit or anything stated therein is sought to be used against the petitioner in any manner.

9. The writ petition is misconceived and has no merit. The writ petition is accordingly dismissed.

JULY 27, 2016

'rs'

SANJEEV SACHDEVA, J