

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.02.2019

+ W.P.(C) 10020/2016 & CM Nos. 39730/2016, 35843-35844/2018

LALIT AGRAWAL

..... Petitioner

versus

**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA & ANR**

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Ashok Bhalla.

For the Respondents :Ms Pooja M. Saigal, Advocate for R-1.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is a practicing Chartered Accountant and a member of the Institute of Chartered Accountants of India (hereafter 'ICAI'). The petitioner has filed the present petition impugning the decision (hereafter 'the impugned order') of the Board of Discipline of ICAI (hereafter 'the Board'), taken at a meeting held on 06.11.2015. By the impugned order, the Board expressed its disagreement with the *prima facie*, opinion of the Director (Discipline) that the petitioner was not guilty of "other misconduct" falling within the meaning of Clause 2 of Part IV of the First Schedule to the Chartered Accountants

Act, 1949 (hereafter 'the Act'). It is the petitioner's case that the allegations made against him have no bearing with him carrying on the profession as a Chartered Accountant and, therefore, the Board and/or ICAI would have no jurisdiction to entertain a complaint in this regard.

2. The proceedings before the ICAI were commenced pursuant to a complaint filed by respondent no.2. He had alleged that the petitioner had outraged the modesty of his daughter (hereafter referred to as 'HA') and also committed certain offences punishable under the Indian Penal Code, 1860 (IPC). He stated that the petitioner was acquainted with HA, as both of them were students of the same school and the petitioner's residence was also located in the vicinity. It is stated that there was an incident of harassment in 2004 and a complaint was lodged by HA with Shalimar Bagh Police Station. In connection with the said complaint, the petitioner had submitted a statement on 12.09.2004, wherein he undertook that he would not go to the street on which HA's residence was located and would neither speak to her nor obstruct her while she was on her way. The complainant (respondent no.2) alleged that despite the aforesaid undertaking, the petitioner had repeated the offence twice, thereafter.

3. HA alleged that the petitioner was stalking her and had repeatedly accosted her while she was on her way. It is further alleged that the petitioner had also distributed pamphlets on which HA's photographs were printed and the same was derogatory to her. An FIR

(FIR No. 143/2013) in this regard was registered with P.S. Shalimar Bagh on 02.04.2013.

4. It is stated that the petitioner continued to harass HA and on 29.06.2013, he had followed HA in his car and attempted to drag her inside the car. On HA resisting his actions, the petitioner had threatened to defame her and also throw acid on her. He had also thrown a letter on her face expressing his love for her, which HA found to be offensive. An FIR (FIR No.231/2013) in this regard was registered with PS Shalimar Bagh.

5. Thereafter, respondent no.2 also lodged a complaint dated 19.09.2013 with ICAI for initiating disciplinary proceedings against the petitioner. A copy of the said complaint was forwarded to the petitioner calling upon him to file his written statement. In response thereto, the petitioner filed a written statement dated 07.12.2013, *inter alia*, casting aspersions on the integrity and character of HA. According to the petitioner, respondent no.2 had made a false complaint to pressurize the petitioner to marry HA.

6. The petitioner also relied upon the investigation conducted by the police in regard to FIR No.143/2013. According to the said investigation, HA had also made several phone calls and sent messages from her mobile number. The petitioner contended that this clearly established that he was being pursued by HA.

7. The police authorities have filed a chargesheet in respect of FIR No.231/2013, accusing the petitioner of the offences under Sections

341/354/354B/354D/366/511/506 IPC. It is stated that charges under Section 366 IPC were subsequently quashed. Further, the petitioner was also released on bail by this Court by an order dated 24.10.2013 (in Bail Application No.1835/2013).

8. In view of the above, the Director (Discipline), ICAI concluded that the allegations leveled against the petitioner relate to interpersonal relationships between HA and the petitioner and thus, it would be appropriate if respondent no.2 sought redressal of the problems in another forum. According to the Director (Discipline), the allegations did not necessarily fall within the disciplinary mechanism in respect of professional or other misconduct as provided under the Act and the Rules framed thereunder.

9. The Board considered the aforesaid opinion at a meeting held on 06.11.2015. The relevant extract of the minutes of the said meeting are set out below:-

“The Board considered the prima facie opinion dated 18th October, 2015 of the Director along with the Complaint, Written Statement of the Respondent and Rejoinder of the Complainant.

The Board, on consideration of the same, was of the view that the charges alleged against the Respondent are grave and his alleged acts clearly bring disrepute to the profession of Chartered Accountancy.

Thus, the Board did not agreed with the prima facie opinion of the Director that the Respondent is not guilty of Other Misconduct falling within the meaning of Clause (2) of part IV of the First Schedule to the

Chartered Accountants Act, 1949 [as amended from time to time] and decided to proceed further under chapter IV of these Rules. The Board also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 14, the prima facie, opinion formed by the Director including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion be sent to the Respondent and he be asked to submit his Written Statement.”

Submissions

10. Mr Bhalla, the learned counsel appearing for the petitioner contended that the impugned order is without jurisdiction. He submitted that the allegations of offences under the IPC were being tried by the concerned courts and the Board had no jurisdiction to render any findings on whether the petitioner had committed any such offences.

11. He further submitted that the existence of an alternative remedy would not preclude the petitioner from approaching this Court, since the disciplinary proceedings initiated were without jurisdiction. He relied on the decision of the Supreme Court in *Chief of the Army Staff and Others v. Major Dharam Pal Kukrety: 1985 (2) SCC 412* and *M/s Dhampur Sugar Mills Ltd. v. State of UP and Ors.: 2007 (8) SCC 338* in support of his contention.

12. Ms Pooja Saigal, learned counsel appearing for the ICAI countered the aforesaid submissions. She submitted that the petitioner had an equally efficacious alternative remedy under the Rules and, therefore, the present petition ought not to be entertained. She further

submitted that the Board had the jurisdiction to entertain the complaint in question. She submitted that although the alleged conduct of the petitioner did not fall within the definition of ‘professional misconduct’, it would certainly fall under the definition of ‘other misconduct’ as the same brings disrepute to the profession of Chartered Accountancy.

13. She referred to the decisions of the Supreme Court in *Council of Institute of Chartered Accountants & Anr. V. B. Mukherjea: 1958 SCR 371* and in *Council of the Institute of Chartered Accountants of India v. Shri Gurvinder Singh and Anr.: Civil Appeal No.11034/2018, decided on 16.11.2018* in support of her contention. She also referred to the following decisions: -

1. Council of the Institute of Chartered Accountants of India v. P. C. Parekh: 2003 SCC OnLine Guj 25 @ para 9 to 22.
2. Institute of Chartered Accountants of India v. H. S. Ghia: 2004 (4) MhLJ 891 @ para 3 and para 6.
3. The Council of Institute of Chartered Accountants of India v. Lokesh Dhawan F.C.A. Chartered Reference No.2 of 2003, Date of Decision 05.11.2007, High Court of Delhi @ para 19 and para 20.
4. Council of Institute of Chartered Accountants of India v. Kul Rattan Bhasin & Anr.: Chartered Reference No.1 of 2007, Date of Decision 18.11.2010, High Court of Delhi @ para 24 and para 26 to para 30.
5. Council of Institute of Chartered Accountants of India v. Mahesh Kumar Gupta & Anr.: Chartered Reference No.2 of 2012, Date of Decision 12.08.2016, High Court of Delhi @ para 11 and para 12.

Reasons and Conclusion

14. Chapter V of the Institute of Chartered Accountants Act, 1949 (the Act) contains provisions regarding misconduct. Section 21 of the Act provides for the constitution of a Disciplinary Directorate, and is set out below:-

“21. Disciplinary Directorate

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule*, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule** or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.”

15. Section 21A of the Act contains provisions for constitution of a Board of Discipline. Sub-section (3) of Section 21A provides that where the Board of Discipline is of the opinion that a member is guilty of professional or other misconduct as specified in the First Schedule, it shall afford to the member an opportunity of being heard and may, thereafter, take any one of the actions as specified therein. Section 21B of the Act contains provisions relating to the Disciplinary Committee.

16. Section 22 of the Act provides for the definition of professional and other misconduct, and reads as under:-

“22. Professional or other misconduct defined

For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.”

17. The First Schedule to the Act is divided into four parts. Part I of the First Schedule to the Act specifies certain acts or omissions, which renders a Chartered Accountant in practice guilty of professional

misconduct. Part II of the First Schedule to the Act relates to professional misconduct in relation to members of an Institute in service. Part III of the First Schedule to the Act relates to professional misconduct. Part III lists out certain instances which would deem to be professional misconduct on the part of a member of the ICAI, irrespective of whether the said member is in practice or not. Part IV of the First Schedule to the Act lists out other misconduct. The said part is relevant in the context present petition and is set out below:-

“PART IV : Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he—

- (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
- (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.”

18. As is apparent from the plain language of Part IV of the First Schedule to the Act, the expression ‘other misconduct’ includes any conduct, which brings disrepute to the profession or the ICAI as a result of an action whether or not related to professional work. Thus, it is not necessary that the misconduct complained of should be a conduct in exercise of the profession of Chartered Accountancy. Any

conduct, which tends to bring disrepute, would be a subject matter of proceedings under Chapter V of the Act.

19. In *Council of the Institute of Chartered Accountants and Another v. B. Mukherjea: 1958 SCR 371*, the Supreme Court had examined the provisions of the Act, as in force at the material time (prior to the amendments in the year 2006 and in the year 2011). The Court had explained that the acts of commission and omissions specified in the Schedule were not exhaustive and did not purport to limit the power of the Council under Section 21(1) of the Act. The relevant extract of the said decision is set out below:-

“Section 21, sub-s. (1), deals with two categories of cases in which the alleged misconduct of members of the Institute can be inquired into. If information is received or complaint is made to the Institute against the conduct of any chartered accountant the Council is not bound to hold an inquiry straightaway. The Council is required to examine the nature of the information or complaint made and decide whether, if the facts alleged against the member are proved, they would render the member unfit to be a member of the Institute. In other words, in the case of a private complaint made against members, it is only where the Council is satisfied prima facie that facts alleged against the member, if proved, would justify the exercise of disciplinary jurisdiction against the member that the Council is required to hold an inquiry. The conduct alleged must be such as, if proved, would render the member unfit to be a member of the Institute. The other case of cases has reference to the complaint received by the Council from the Central Government. In regard to this class of

cases, the Council is not required, - and indeed has no jurisdiction to apply the prima facie test - before holding an inquiry. The Council is required to cause an inquiry to be held on such complaint straightaway. In both the cases when the inquiry is concluded, the findings of the Council are to be forwarded to the High Court. Section 22 purports to define the expression "conduct which, if proved, will render a person unfit to be a member of the Institute". It is an inclusive definition; it includes any act or omission specified in the schedule but the latter portion of s. 22 clearly lays down that nothing contained in this section shall be construed to limit or abridge in any way the power conferred on the Council under sub-s. (1) of s. 21. The position thus appears to be that though the definition of the material expression used in 21, sub-s. (1), refers to the acts and omissions specified in the schedule, the list of the said acts and omissions is not exhaustive; and, in any event, the said list does not purport to limit the powers of the Council under s. 21, sub-s. (1), which may otherwise flow from the words used in the said sub-s. itself."

20. In a recent decision in *Council of the Institute of Chartered Accountants of India v. Shri Gurvinder Singh & Anr. : Civil Appeal No. 11034/2018 decided on 16.11.2018*, the Supreme Court had allowed an appeal preferred against the decision of this Court. In that case, a complaint was made against a Chartered Accountant who had sold certain shares of a public limited company to the complainant therein, in the year 1999. However, the transfer deeds were lodged subsequently in November, 2014. The Chartered Accountant in question (respondent no.1 therein) continued to receive the dividends

in respect of those shares. Initially, respondent no.1 claimed that he had not sold the shares to the complainant but thereafter, settled the matter with him. The Disciplinary Committee found that the conduct of Chartered Accountant was unworthy of a member of the ICAI. The Disciplinary Committee reasoned that the Chartered Accountant in question had continued to receive dividends declared in respect of shares sold by him, because the complainant had not lodged the shares for transfer. Taking benefit of the aforesaid, the Chartered Accountant had made an attempt to deprive the purchaser of his rightful dues. The Division Bench answered the reference in favour of the Chartered Accountant and held that since he was acting in an individual capacity while dealing with the complainant and not acting as a Chartered Accountant, he could not be held guilty of misconduct. The Supreme Court allowed the ICAI's appeal against the said decision and held that the High Court had incorrectly appreciated the provisions of the Act. The Court referred to Part IV of the First Schedule to the Act and held as under:-

“The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity. This, it was entitled to do under Schedule I Part-IV sub-clause (2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work.

This being the case, it is clear that the impugned judgment is incorrect and must, therefore, be set aside. We thus remand the matter to the High Court to

be decided afresh leaving all contentions open to both parties.”

21. The learned counsel appearing for respondent no.1 has referred to various decisions where members of the ICAI have been subjected to Disciplinary proceedings on account of conduct unrelated to the practice of the profession of accountancy. In *Council of the Institute of Chartered Accountants of India, New Delhi v. P.C. Parekh: AIR 2003 Guj. 334*, the Court upheld the ICAI’s contention that the respondent was guilty of misconduct. In that case, the respondent had authored a book entitled “Tax Planning for Secret Income (Black Money)”. In that case, it was found that the said work would tend to lower the image of the profession in public eyes. The Court accepted the said contention and found that the conduct of the respondent, in associating with the methods of tax evasion rather than denouncing them, is a gross misconduct on the part of the member.

22. In view of the above, this Court is unable to accept the contention that the Board of Discipline does not have the jurisdiction to examine the alleged misconduct on the part of the petitioner. Clause (2) of Part-IV of the First Schedule to the Act is wide, and would include within its scope, any conduct that would tend to bring disrepute to the profession or the Institute. If a Chartered Accountant is found to have been guilty in outraging the modesty of a woman and/or other offences involving moral turpitude, it would not be inapposite for the Board of Discipline to also conclude that the conduct did, in fact, lower the dignity of the profession. In this view, this Court is not able

to accept that the proceedings before the Board of Discipline are without jurisdiction.

23. It was also contended on behalf of the petitioner that the Board of Discipline could not return any finding as to whether the petitioner was guilty of any of the offences alleged in the FIR, as the said matters were pending trial before the concerned Court. In this regard, it is relevant to mention that the standards of proof as required in Disciplinary Proceedings and Criminal proceedings are different. Whereas, the standard of proof as required in the criminal proceedings is beyond reasonable doubt, the standard of proof as required in Disciplinary proceedings is preponderance of probability. Whilst, it is correct that the Board of Discipline has no jurisdiction to sentence the petitioner, it would be erroneous to contend that the Board of Discipline does not have the jurisdiction, to examine the allegations made against the petitioner, in the context of determining whether the petitioner is guilty of other misconduct as defined under Part-IV of the Schedule-I to the Act. Having stated the above, there may be cases where it may be apposite to await the decision in a trial, and the Board of Discipline has the power to defer the consideration of the complaint in such cases. However, that is a matter of exercising discretion and cannot be considered as denuding the Board of its jurisdiction.

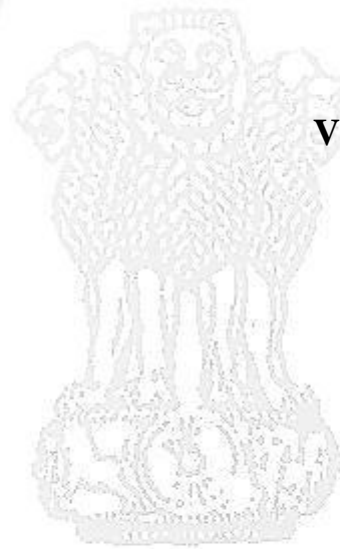
24. This Court is refraining from expressing any opinion on the merits of the complaint made by respondent no.2, as the question whether the petitioner is guilty of other misconduct is yet to be decided by the Board of Discipline. There is also no reason for this

Court to believe that the Board of Discipline will not give the matter the consideration it deserves. Further, if the petitioner is aggrieved by any decision rendered by the Board of Discipline, he has the remedy of an appeal before the Appellate Authority under Section 22G of the Act.

25. In view of the above, the petition is dismissed. All pending applications stand disposed of.

FEBURARY 11, 2019
MK/pkv

VIBHU BAKHRU, J



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