(1962) 11 CAL CK 0013

In the Calcutta High Court

Case No : O.S.M. No. 123 of 1953

Chief Controller of Exports, New Delhi — APPELLANT

Vs

G.P. Acharya — RESPONDENT

Date of Decision : 30-11-1962

Acts Referred:

Chartered Accountants Act, 1949 — Section 20(1), 20(2), 21, 21(3), 22

Citation : AIR 1964 Cal 178 : (1963) 6 FLR 273

Hon'ble Judges : P.B. Mukharji, J;C.N. Laik, J

Bench : Division Bench

Advocate : B.C. Ghose, S.K. Mukherjee, for the Appellant; K.P. Sinha and P.K. Sen, for the Respondent

Judgement

P.B. Mukharji, J.—This is a Reference u/s 21 of the Chartered Accountants Act, 1949. The Chief controller of Exportes, New Delhi, is the complainant and G. P. Acharya, B. SC, F. C. A., Quartered Accountant and Auditor, is the respondent.

2. The complaint against the Chartered Accountant is that he duly certified a statement of exports of onions during 1949-50 before the Joint Chief Controller of Ex-ports, Calcutta, showing that a firm called "pawjee Dadabhoy and Co." of 67, Canning street, Calcutta, had exported a certain quantity of onions during a certain number of years. This statement was necessary for obtaining permits to export the goods. The certificate which the Chartered Accountant gave was as follows:

"G.P. Acharya, B. Sc., F. C. A., Chartered Accountant and Auditor (Membership No. 837) practising at Calcutta do hereby certify that the above statement has been prepared, checked and verified by me from and with reference to export licenses, shipping bills, E. P. Forms, Bills of Lading, Export invoices, account books and other documents in the possession of the firm maintained by them in the course of their export business and that the exports have been made by the Firm in their own name and I do hereby further certify that the particulars shown in the original documents have been examined by me with the particulars shown in the above statement and are substantially correct".

3. The above certificate admittedly contained false and inaccurate statements in respect of three items of invoice value -- (1) Rs. 280/-, (2) Rs. 1995/- and (3) Rs. 8641/-. These figures were figures of exports effected by two other firms and not by the firm Dawjee Dadapnoy and Co. Therefore, the statement in the certificate that these exports were made by the firm in their own name was false. That is the substance of the complaint against the Chartered Accountant. The lots of Tons 4-9-1-18 and Tons 15-10-0-10 were shipped by M/s. K.V.R.M.k. Chetty and M.C. Dhalech respectively and not by M/s Oawjee Dadabhoy and Co. This inaccuracy was revealed on an examination of the Bills of Lading and Invoices produced by the firm.

4. It is admitted by the Chartered Accountant that this was "a gross clerical mistake", cut he says that this gross clerical mistake was by his staff, as will be found from his letter to the Assistant Controller of Exports, exhibit 4. His case is that the snipping documents together with their Register (wherein extract of particulars from Bills of Lading, Custom Receipt, etc. were recorded) were lying with their Clearing Agents, M/s crown Agency of the firm of Dawjee Dadabhoy and CD. and which Agents were handling the quota application affair. According to the case made by the Chartered Accountant in the Written Statement filed by him before the Discoplinary Committee of the Institute of Chartered Accountants of India, he says his clerk was deputed to verify those documents with the statement, and to report next day. That clerk reported that the papers were in order and so the Chartered Accountant signed the certificate on the 23rd October, 1951, which f have quoted above. His case further in the written statement is that when he received the letter dated the 14th February, 1952 from the Joint Controller of Exports and imports, Calcutta, he examinee the available records of the firm once again and found that (i) their Shipping Documents Register was inaccurate, and (ii) both We firm''s clerk who prepared the statement and his own clerk had erred in including the disputed items in the statement, under misconception. The misconception is this that they were of the opinion, that as the lots under the disputed items were sold and billed by the firm to their foreign clients, they treated them as exports of the firm itself. In other words, although other firms were exporting these goods on their Bills of Lading, these Bills of Lading were ultimately purchased by the firm of Dawjee Dadabhoy and Co. Therefore, after purchase Dawjee Dadabhoy and Co. were thought to be the exporters under those BILLS of Lading.

5. An explanation was called from the Chartered Accountant on the 14th February, 1952. A complaint was made on the 20th June, 1952. The chartered Accountants written statement was filed on the 28th July, 1952. The matter then was sent by the Council to the Disciplinary Committee of the Council of the Institute of Chartered Accountants of India. The Disciplinary committee held an enquiry on the 21st November, 1952 where the Chartered Accountant was examined by the Members of the Disciplinary committee. The questions put by

the Members of the Disciplinary Committee and their replies are part of the record before us. The Report of the Disciplinary Committee is dated 27th December, 1952, which reads as follows:--

"In view of the above circumstances and of his au-mission we find him grossly negligent in the conduct or his professional duty,"

this report was thereafter sent to the Council of the institute of the Chartered Accountants, under Regulation 11C of the Chartered Accountants Regulations, 1949, framed of the central Government under the Chartered Accountants Act, 1949. That Regulation provides that the Disciplinary Committee shall submit its report to the Council and the Council shall consider the report of the Disciplinary Committee and after making such further enquiry, if any, as It may deem necessary, forward the same together with its findings to the High Court. The Council considered me report of the Disciplinary committee on the 4tg, 5th, 6th, 7th and 8th February, 1953 and finally came to the following conclusion:--

"The Council finds Shri G. P. Acrtarya grossly negligent in the conduct of his professional duty in respect of the matter mentioned in the complaint which renders him unfit to be a member of the institute."

6. The case was forwarded to the High Court u/s 21 of the Chartered Accountants Act as early as low August, 1953. So far as the Council of the institute of Chartered Accountants and its Disciplinary committee are concerned they were fairly quick about the steps taken and the procedure adopted. But when the case came to this Court unfortunately it had to wait for these long nine years before it came up for disposal. Findings against professional men by professional bodies when intended to be reviewed or examined by the Court should be done as soon as possible and as expeditiously as possible not only in public interest but also in the interest of the professions concerned. After the case was forwarded to this Court on the 10th August, 1933 it was found that one Member of the Disciplinary Committee had not put his signature and therefore an application was made on the 13th January, 1955 for leave to append his signature which was allowed by the court on the 11th March, 1955. mere-after on the 21st March, 1955 an application was made by the Chartered Accountant for production of certain document, copies of which were annexed to the pennon of the Chartered Accountant affirmed on the 16th March, 1955. The affidavits in that application were completed by the 2nd April, 1955 whereupon an order was made on the 4th April, 1955 calling for the production of the documents mentioned in his petition and directing the application to stand over for final orders along with these proceedings. We have disposed of that application by ordering in terms of prayer (a) and (b) of that petition with this modification that instead of the original documents which have been seen and compared the copies as annexed to the petition may be taken as the documents in evidence. These two documents are (1) a form of application for the export of controlled commodities (where the only relevant Clause is Clause 5 stating "As per Auditor''s certified copy of statement together with relative invoices and Bills of

Lading attacnea.") and (2) a Notice ot Ministry ot Commerce and Industry of the Government of India being D.C.C.E. Cal : 220 from the office of the Joint controller of Export and import dated the 14th October, 1951, whose material portions are (a) first "Exports of Onions will be regulated under the system of Estabiisned shippers who have exported Onions during any one of the financial year 1948/49, 1949/50 and 1950/51 are advised to for-ward statements of their past exports during any one or the basic year selected by them duly certified by Chartered Accountant in the form of "Appended"; and (b) secondly the appended form of the certificate to be given by the Chartered Accountant saying "Statements of Exports or Onions effected from the port of Calcutta by M/s. ... In their own name during the year."

7. From that date the 4th April, 1955 until today this matter did not come up for disposal during these long seven years. The office of this court should do well to see that such Inordinate delay does not recur in future.

8. u/s 21 of the Chartered Accountants AM no explicit indications or express directions are to be found on point of the exact nature of jurisdiction of this Court and its functions in respect of the cases that are forwarded to it. This is to be distinguished from and contrasted with the regular Jurisdiction to hear appeals now granted by the new amendment in Section 22-A of the Act. Sub-section (1) of Section 21 only provides that the finding of the Council shall be forwarded to the High court." It Is followed by Sub-section (2) which says that "On receipt of the finding, the High court snail fix a date for the hearing of the case and shall cause notice of the day 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 me central Government an opportunity of being heard before orders are passed on the case". Then follows sub-section (3) of Section 21 of the Act which provides that

"The High Court may, thereafter, either pass such final orders on the case as it thinks fit or refer it back for further inquiry by the Council and, upon receipt of the finding after such Inquiry, deal with the case in we manner provided in Sub-section (2) and pass final orders thereon."

The rest of Section 21 is not materiel for the purposes or the present proceedings. From the above statutory provision this much is clear that the High court can pass final orders. The word ''final'' would seem to indicate that neither the findings of the Disciplinary Committee nor of the council are final. This explains why in Section 20(2) of me Chartered Accountants Act express provision is made directing the Council to remove from the Register the name or any member who has been found by the High court to nave been guilty of conduct which renders him unfit to be a member of the Institute, in other words, until the "final order" from the High Court is made u/s 21 of the Act, the council is under no mandatory obligation to remove a member of the institute found by either its Disciplinary Committee or by itself guilty of misconduct and even though they may feel that such misconduct renders him unfit to be a member of the Institute.

There are, however, three permissive cases mentioned in (a), (b) and (c) of Section 20(1) of the Act where the Council may remove from the Register the name of any member of the Institute in the three circumstances mentioned there. This procedure, therefore, suggests that there should be no undue or unreasonable delay by this court in disposing of References made u/s 21 of the Chartered Accountants Act for what happens then is unfortunate such as what nas happened in this case before us now. This Chartered Accountant was found by the Disciplinary committee as well as by the council of his own Institute of Chartered Accountants to be guilty of gross negligence in the conduct of his professional duty which rendered him unfit to be a member of the institute. But although the verdict of the professional body was made specially by its Disciplinary committee in 1952, for ten years he remained with that finding to practise or work in the profession. Such a course does no credit to the profession of Chartered Accountants or to the member concerned, or to the public or to this court.

9. Elaborate provisions are made for dealing with complaints and inquiries under the Chartered Accountants Regulations. Regulations 11, 11-A, 11-B and 11-c lay down the procedure. The procedure so laid down is fair enough. A member against whom a complaint is made has able express right to defend himself before the Disciplinary Committee either in person or through 3 legal practitioner or through a member of the institute. It also expressly provides that the Disciplinary Committee snail nave the power to regulate its procedure in such manner as It considers necessary and during the course of enquiry may examine witnesses on oath, receive affidavits and any other oral or documentary evidence. The procedure snouia remain flexible at the same time guided by certain broad minimum and irreducible conditions which are clearly set down there. That procedure has been followed and we have nothing to comment on It except on one point. The examination of witnesses or documents recorded in this case should be, in our view, a little more carefully and methodically done. It is not intended to be a record of mutual conversations taking place on miscellaneous and irrelevant points between the Chartered Accountant and the Members of the Disciplinary Committee or between the Members or the Committee inter se. It will help the court In such References if the questions are confined to the main grounds and points of complaint intended to be investigated and the oral evidence and answers on the point recorded and such other documentary evidence that may be produced on the points in issue.

10. Before leaving this question of the nature of jurisdiction exercised by this Court in these proceedings u/s 21 of the Chartered Accountants Act we would like to make a reference to the decision of the supreme Court in Council of the Institute of The Council of The Institute of Chartered Accountants of India and Another Vs. B. Mukherjea, . There the Supreme Court examined the nature of jurisdiction coniarreu on the High Court under this Act and laid down that u/s 21 of the Act the High Court can (1) examine the correctness of the finding recorded by the statutory Domes in that behalf, (2) refer the matter back for further

inquiry by the Council and call for a fresh finding and (3) the powers of the High court u/s 21(3) are undoubtedly wide enough to enable the High court to adopt any course which in its opinion will enable the High court to do complete justice between the parties. See also me observation ot the Division Bench of this Court in Deputy secretary to the Deputy Secretary to the Government of India Ministry of Finance (Department of Economic affairs) Vs. S.N. Das Gupta, .

11. Wide are the powers, therefore, of this court in dealing with References u/s 21 of the Chartered Accountants Act. Nevertheless it appears that some well-settled principles should guide this Court in exercising this ample power, it is essential to remember that this court in such jurisdiction as u/s 21 of the Chartered Accountants Act is dealing with not so much a private dispute or a private litigation but is dealing with the finding of a professional body of people who are intended to be the best judges of what their own standard of professional conduct should be. Unless, therefore, there is a gross violation or disregard of the provisions of the Chartered Accountants Act or the Regulations made thereunder or a gross and utter disregard of certain well Known principles or natural justice and fairness or obvious disregard or essential considerations of law or fact, this High Court should not be too eager to interfere with the findings of professional bodies like the Council of the Chartered Accountants of India and its Disciplinary Committee.

12. Section 22 of the Chartered Accountants Act attempts to define what professional misconduct of a Chartered Accountant is which will render such a person unfit to be a member of the Institute. An attempt is made to provide a schedule giving details of instances when Chartered Accountant shall be deemed to be guilty of misconduct rendering him unfit to be a member of the institute. One such instance is when he is ''grossly negligent in the conduct of his professional duties'', it is under this instance that the present Chartered Accountant has been held to be guilty. It is essential in this context to remember also that these instances are illustrative and not exhaustive for the very simple reason that it is expressly provided in Section 22 which begins with the words that conduct which will render a person unfit to be a member of the Institute "shall be deemed to include any act or omission specified ID the Schedule". That means that it is not an exhaustive definition and what is included in the Schedule Is intended to Illustrate the types. It is also expressly provided in Section 22 that nothing in that section shall be construed to limit or abridge in any way the power conferred on the Council under Sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances. I his was the view taken by a Division Bench of the Madras High Court In Council of Institute of The Council of Institute of Chartered Accountants Vs. M. Rajamany, Chartered Accountant, . That case Incidentally Is an authority for further proposition which will be material for our consideration here that when there is misconduct the High Court is under no obligation to impose maximum penalty. The observations of Vennatarama Alyar J, in that Decision on this point appears at page 312 of that report, in the instant case before us both the

Disciplinary committee and the council have stated that the gross negligence in the conduct of professional duties rendered the Chartered Accountant unlit to be a member of the institute. They do not, however, state whether this unfitness is to continue for ever or is only to be limited to any particular period of time. It will help the Court in disposing of such References to know we views of such professional bodies when they think that a particular misconduct renders a member of the institute unfit to be its member whether it was intended to be an unqualified unfitness for all times or whether any limited time was thought of or indicated. Indeed Venkatarama Alyar, J. in that case and at the page reported observed;--

"it is difficult to believe that such a result was contemplated by the Legislature. Not all the acts or omissions mentioned in the schedule are of the same gravity. .... it is an unreasonable construction to be put on Section 20(2) to hold that in every case in which there is a finding of misconduct as defined in Section 22 there must be a removal irrespective of the nature of the act or omission of which the accountant is found guilty."

we respectfully agree with that observation of the maoras High court and we therefore shall consider on the facts of this case which we shall presently re-examine in this light, what should be the proper sentence or punishment. The types of punishment can be many and varied such as (1) removal from the register of Chartered Accountants either for all time or for a limited time; (2) suspension; (3) censure; (4) remand and (5) warning, in addition to the penalties mentioned in Chapter VII of the Chartered Accountants Act. In each case it is proper and appropriate for the Disciplinary Committee and Council of the institute of the Chartered Accountants as well as this Court on a reference from the Council to consider what is a fair and appropriate sentence or punishment suited to the particular offence of which the Chartered Accountant is found to be guilty. The Courts in disposing of this question of appropriate punishment have been alive to these considerations as for instance in Members of Members of the Council of Chartered Accountants of India Vs. J.R. Chatrath, . The offence there was that the Chartered Accountant falsely described a servant of a firm as a partner. The finding of the professional body was that the offence rendered the Chartered Accountant unfit to be a member of the institute without qualifying the time for such unfitness or without making any other limitation. The Division Bench of the Punjab High Court In modifying the sentence observed at page 261 as follows:--

"It is unfortunate that the opposite party snowed no contrition in regard to the statements which he made. On the other hand, he persisted in maintaining that what he had been stating was correct, although on his own showing there was a period of six months during which he was not practising as a partner. Even before us the plea was one of Justification which in my opinion has not been established nor have any extenuating circumstances been placed before us. In my opinion it is a case in which action is called for, and, therefore, I would order me temporary removal of Jagdish Raj Chatrath for a period of one month from the register."

Again in the case of the Institute of Chartered Accounants of India v. V.K. Madhava Rao AIR 1956 Hyd 205, a Division Bench of the Hyderabad High court dealt with the case where a Chartered Accountant carelessly gave a false certificate regarding the sales of a newspaper for boosting advertisements insertions. There the Hyderabad High Court held that the punishment of suspension was too severe and a warning was sufficient to meet the situation. Precedents, however, will be no guide for us to determine the appropriate punishment in this case, for that purpose each case has to be determined on its own merits.

13. The extenuating circumstances which we consider relevant on the facts of this case for not awarding the maximum punishment may now be briefly set out. As already indicated all kinds of misconduct are not on the same level although they are all misconduct within the meaning of Section 22 and the Schedule of the Chartered Accountants Act. Normally also misconduct is something more than mere failure to do one''s duty as observed by Chakravatti, C.J. in S. Ganesan Vs. A.K. Joscelyne, at page 43 and means "a failure to act honestly and reasonably I would not, however, venture to define what misconduct is, Gross negligence in the conduct of professional duties is specially scheduled to be a misconduct under the Charter-ed Accountants Act. What is gross negligence for the purpose of professional duties is primarily and basically a question of fact. Primarily again the professional bodies charged with the task of maintaining the standards and discipline of the members of the profession are the best primary judges to determine what such conduct or standard should be. The finding here of that professional body is that the Chartered Accountant in this case is guilty on gross negligence in the performance of his professional dunes.

14. With these remarks we now examine the extenuating circumstances in favour of the appellant in considering the question of sentence or punishment.

15. The first circumstance, in our view, is that from the very beginning there was no attempt on the part on the Chartered Accountant to conceal any tact. He admitted that it was a case of gross clerical mistake of his start He also said that it was due to hurry and over-sight, that has been his case throughout. The second extenuating circumstance is that although the exporters in this case originally were other firms in respect of these three items, yet the relative bills of lading were ultimately purchased by the firm of Dawjee Dadabnoy and Co. me Chartered Accountant therefore not without at least very good apparent reasons pleaded in his written statement that there was a misconception as to whether in such cases the firm itself as purchaser of the bills of lading should be considered in law as exporter or the original owners of the bills of lading. The third extenuating circumstance is that the record of this Chartered Accountant until this Incident was without any blemish and the record of the firm of Dawjee Dadabhoy and to on whose beau the chartered Accountant was making the

statement was also a long record without any apparent blemish. Fourthly the amount involved in the context does not appear to be at all an inducement for a Chartered Accountant to make such a false statement to risk his professional right to practise. The reward monetary or otherwise either for me firm in getting the quota or the Chartered Accountant does not appear from the records to be at all such that it court conceivably or reasonably lead to a deliberate and intentional falsehood in the certificate on that point. To put cynic any such falsehood was not worth while either for the Chartered Accountant or the firm concerned. The fifth extenuating circumstance Is that the shipping document register women the Chartered Accountant examined was itself inaccurais from this point of view. The fault for that inaccuracy the shipping document register is the fault of his client Dawjee Dadabhoy and Co. it is no part of the duty of and Chartered Accountant to investigate whether the accounts produced by his client are correct or not as pointed out by Rajamannar C. J. and venkatarama Alyar J, in Commr. of Income Tax, Madras Vs. G.M. Dandekar of M.K. Dandekar and Co., Chartered Accountants, Madras, . But nevertheless here the fault of the Chartered Accountant was that he should nave seen the original bills of lading and shipping documents and should not have given the certificate depending merely on the shipping document register produced by his client.

16. for the reasons stated above we think it win be enough punishment for the carelessness and negligence of the Chartered Accountant in the facts of this case it this Court administers to him a severe warning that he should be more responsible in future so as not to rely on in-competent clerks to make out his own certificates on me basis of which Government and public authorities are expected to act. The Court administers this warning to the Chartered Accountant. We do not consider that the facts of this case render him unfit to be a member of the institute as he is not guilty of such conduct as to render film liable to that extreme penalty and we order accordingly and set aside the order of the Council and the Disciplinary Committee to that extent. This we say with the greatest deference to the professional body, Council of the Institute and its Disciplinary Committee having regard to the circumstances examined by us The respondent Chartered Accountant must, however, pay the costs if the proceedings in this court to both the Union of India represented by the Chief controller of Exports and the Council of the Institute of the Chartered Accountants appearing before us to be taxed according to scale on the Original Side and in the same manner as provided in rule 10(b) of Part 11 of Chapter 38 of the Rules and Section 121 Chapter V of the Chartered Accountants Act, 1949.

Laik, J.

17. I agree.

