
(2003) 01 KAR CK 0106

In the Karnataka High Court

Case No : Writ Appeal No. 761 of 2001 (GM-RES) 14 January 2003

Institute of Chartered Accountants of India

APPELLANT

Vs

Ajit Kumar Iddya

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Companies Act, 1956 — Section 224, 225

Citation : AIR 2003 Kar 187 : (2003) 1 KCCR 61 SN : (2003) 128 TAXMAN 13

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J

Bench : Full Bench

Advocate : Jayaram and Naganand, for the Revenue B.V. Acharya, for the Assessee, for the Appellant;

Judgement

N.K. Jain, C.J.

The appellant-Institute of Chartered Accountants of India (hereinafter referred to the ICAI) has filed this appeal against the order dated 15-9-2000 passed by the learned Single Judge in W.P. No. 37189/1995.

2. The necessary facts in brief are that a complaint was filed by the 2nd respondent before the appellant alleging that the 1st respondent-petitioner accepted the statutory auditor ship of a company viz., M/s. Navabharath Flange and Allied Industries Ltd., Bombay without ascertaining compliance of sections 224 and 225 of the Companies Act, 1956 (hereinafter referred to as "the Act") and without issuing a registered notice to the 2nd respondent. On a complaint, the ICAI referred the matter to the Disciplinary Committee to hold enquiry, and the Disciplinary Authority after hearing the parties was of the view that the 1st respondent-petitioner had complied with the requirements under the Chartered Accountants Act 1949 (hereinafter referred to as the CA Act") and his conduct was totally bona fide, and that the lapse, if any, was on the part of the company as it did not comply with the circular of the Company Law Board, and concluded that the 1st respondent-petitioner was not guilty of any professional misconduct under clause (9) of Part I of the First Schedule to the CA Act, vide order dated

14-1-1994. A notice dated 13-2-1995 (Annexure-D) was issued by the ICAI to the 1st respondent-petitioner, stating that the council will consider the report of the Disciplinary Committee along with written representation or oral submissions, if any, and that the oral submissions can be made by him either in person or through a member of the Institute duly authorised by him. It was further stated in the notice that the date, time and venue of the council meeting would be intimated to the 1st respondent-petitioner later on and also that if the 1st respondent-petitioner so desires, may send his representation in writing. The same was replied by the 1st respondent-petitioner vide Annexure-F dated 22-3-1995 stating that as the Disciplinary Committee concluded that he is not guilty of any professional misconduct, he did not wish to appear in person or through a member of the Institute before the council nor to make any written submission. Thereafter, the council of ICAI conveyed its decision, vide order dated 18-9-1995, to the 1st respondent-petitioner stating that neither he nor his authorised representative appeared before the council and on considering the report of the Disciplinary Committee, the Council decided that a further enquiry in the case was necessary to be made by the Disciplinary Committee. The same was challenged by the 1st respondent-petitioner before the learned Single Judge in W.P. No. 37189/1995 and the learned Single Judge, on consideration, quashed the impugned order dated 18-9-1995 and allowed the writ petition, as stated.

3. Sri Jayaram, learned senior advocate for the appellant submits that the 1st respondent-petitioner, despite notice, never appeared before the council nor filed any written statement, and therefore, it was within the competence of the appellant to order for further enquiry and that the council has Dower to do so and that the learned single Judge misdirected himself and erred in approving the finding of the Disciplinary Committee ignoring the case laws particularly the decision in Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, . He further submits that the council has the jurisdiction, authority and power to call for a further report from the Disciplinary Committee under Regulation 16(3) before the council proceeded to record any finding under Regulation 16(4) of the CA Act. He further submits that the learned Single Judge extended the scope of the writ petition by approving the finding of the Disciplinary Committee and erred in holding that the council has no power to call for further enquiry, and therefore, the order of the learned Single Judge has to be set aside and further enquiry has to be conducted by the Disciplinary Committee. He relied on the decisions of the Supreme Court in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, and in Price Water House's case (supra).

4. On the other hand, Sri B.V. Acharya, learned senior counsel for the 1st respondent submits that even though the council has power to do so, but once the Disciplinary Committee found that there was no professional misconduct on the part of the 1st respondent-petitioner, it was not necessary for the council to call for further enquiry, He submits that the main charge is that instead of Registered post the communication was sent under "certificate of posting", and

merely on technical ground it cannot be held that it is not sufficient, more particularly when the information has reached the outgoing auditor and he has knowledge of it. He also submits that this court has already held that sending communication through registered letter is not mandatory. Learned counsel for the petitioner does not dispute the legal position that the council is the ultimate authority and, if necessary, it can at any point of time remit the matter to the Disciplinary Committee for further enquiry, if some material is not considered by the Disciplinary Committee but certainly not in this case without coming to the conclusion that the council is not agreeable to the decision of the Disciplinary Committee. He submits that once no professional misconduct has been proved against the 1st respondent-petitioner and once it is held that there is no violation of requirement of sections 224 and 225 of the Act and the same has been complied with, as per the report of the Disciplinary Authority, it was not necessary to remit the matter to the Disciplinary Committee at all for further enquiry. He also submits that the matter is pending for over 12 years since its initiation and despite the earlier directions of this court " for one or other reason, the matter could not be finalised and the 1st respondent-petitioner is being harassed. Therefore the learned Single Judge has rightly approved the decision of Disciplinary Committee and his order needs no interference.

5. As agreed, we have heard the learned counsel for the parties perused the materials on record and the case laws at admission stage.

6. It is not necessary to go into the details of the case law cited as the legal position is well settled and also not in dispute that the controlling authority is the Council of the ICAI. When the council receives a complaint or information against a member of the ICAI for misconduct, the matter will be referred to the Disciplinary Committee, which will submit its report, and the conclusion of the Committee will be considered by the Council and the "Council" is empowered to find if one is guilty or not. Section 21 deals with the procedural enquiry relating to misconduct of members of the institution and section 22 with professional misconduct. So also under Regulation 16(3) and (4) of the CA Act the council can direct the Disciplinary Committee, which is a fact-finding authority to make further enquiry and submit report, if necessary.

7. So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own.

8. So far as the argument that once the Disciplinary Committee comes to the conclusion that the council is not competent to refer the matter for further enquiry is not acceptable for the reason that the council is the final authority as

per the provisions of the Act. The Apex Court has clearly interpreted and the principles enunciated have not been disputed by the learned counsel for the respondent. Applying the settled position of law and the facts of the given case, on a perusal of the materials on record, it is revealed that the Disciplinary Committee came to the conclusion that there is no professional misconduct on the part of the 1st respondent-petitioner, the report was submitted to the council and while issuing notice (Annexure-D) nothing has been stated whether the council has accepted the report of the Disciplinary Committee or not and it was only stated that the report will be considered, and the date, time and venue of council meeting will be intimated later on; it was also mentioned that if the 1st respondent-petitioner desired, he may send any representation within one month from the date of the receipt of the notice. As the 1st respondent-petitioner did not appear in person nor any written submission was made and replied nor wished to make any submission as misconduct has not been held by the Committee, the council by its order dated 18-9-1995 (Annexure-A) ordered for further enquiry.

9. What is to be seen is whether under the circumstances, the council exercising its power to direct further enquiry was correct or not in the given case even if the council had the power to order for further enquiry. The fact remains that nothing has been disclosed while issuing notice about the acceptance of the decision of the Disciplinary Committee nor it is stated that the finding recorded by the Disciplinary Committee holding that 1st respondent-petitioner is not guilty, is correct or not or that it was necessary to order any further enquiry. Under the circumstances, the decision of the council ordering further enquiry by the Disciplinary Committee without any observation as to non-acceptance of the report of the Disciplinary Committee is not tenable, even though the council as the Controlling Authority has power. It is also settled proposition of law that it is not necessary to communicate the reasons. It is also settled that reasons cannot be supplemented by affidavits, but the same should be in original record. Nothing has been placed before this court. As stated, the order does not disclose disagreement with the finding of the Disciplinary Committee. The further question is whether the petitioner can raise all points before the Disciplinary Committee and whether the Disciplinary Committee should consider, as argued by the learned Senior counsel for the appellant, or the council itself should consider them before referring the case for further enquiry to the Disciplinary Committee. In our view, the matter should be considered by the council itself. The learned Single Judge has considered the report on merit. Under the circumstances appreciating and approving the finding of the Disciplinary Committee by the learned Single Judge, in our view was not necessary and as discussed it should be considered by the council itself. That apart, ultimately the finding is to be given by the council itself. The argument of the 1st respondent-petitioner that there is no merit in the case and no misconduct can be held proved on technical ground, cannot be gone into by this court. Therefore, without going into the merits of the case, we deem it proper that the council, which is

the Controlling Authority, can consider the report afresh and may proceed in accordance with law. It is also made clear that any observation made by the learned Single Judge approving the report of the Disciplinary Committee will not come in the way of the council taking suitable action, if any, and will not prejudice the case of the parties made to that effect.

10. As discussed, we are of the view to modify the order of the learned Single Judge to the extent stated above. Accordingly, it is modified. It is directed that the council shall consider the report of the Disciplinary Committee independently and pass appropriate orders in accordance with law. Since the matter is pending for over 12 years after its initiation, it is expected that the council will consider the same and the respondents will cooperate so as to dispose of the matter at the earliest.

Accordingly, writ appeal is disposed of with the above observations.