(2013) 11 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (C) No. 1043 of 2013

N.C. Bansal APPELLANT

Vs

Board of Discipline of ICAI RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Chartered Accountants (Amendment) Act, 2006 — Section 21
Chartered Accountants Act, 1949 — Section 21

Citation : (2013) 11 DEL CK 0171

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Sameer Bhatnagar and Mr. N.C. Bansal, for the Appellant; Rakesh Aggarwal and Mr. Pulkit Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner before this Court filed a complaint u/s 21 of the Chartered Accountant (Amendment) Act, 2006, against one

Mr. Manoj Gupta, who has not been impleaded as a party to this writ petition. The complaint was examined by the Director (Discipline), in light of

the written statement of Mr. Manoj Gupta and the rejoinder filed by the petitioner to the said written statement. The said Director formed a prima

facie opinion that Mr. Manoj Gupta was not guilty of professional misconduct, within the meaning of clause (2) of Part-IV of the First Schedule

and Clauses (5), (6) & (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants

(Amendment) Act, 2006]. The aforesaid opinion of the Director (Discipline) was considered by the Board of Discipline in its meeting held on

4.10.2011 and the Board, on consideration of the matter, agreed with him. The Board accordingly passed order for closure of the case. Being aggrieved, the petitioner is before this Court seeking the following reliefs:

a) Issue Rule in the above matter.

b) That the writ of mandamus or any other writ or direction or order in the nature of mandamus be issued against the respondent with a direction to

carry out and expedite the investigation into the said complaint in accordance with the provision of ICAI Act and direct the respondent to submit

an appropriate report before this Hon''ble Court. After considering all the relevant facts of the complaint as to how the complaint is disposed of

without calling the complainant and ignoring all the relevant facts and records available with the Committee.

c) Direct the respondent file his affidavit for informing this Hon''ble Court, about the steps taken/directed by him, for investigating of the complaint

filed u/s 21 of ICAI Act.

d) Award the cost of writ petition in favour of the petitioner.

Primarily, the grievance of the complainant is that no opportunity of hearing was given to him before Director (Discipline) formed a prima facie

opinion that there was no misconduct committed by Mr. Manoj Gupta.

2. A perusal of opinion of Director (Discipline) dated 27.12.2011 would show that on receipt of complaint, the same was forwarded to Mr.

Manoj Gupta vide letter dated 16.9.2008. Mr. Manoj Gupta filed a duly verified written statement dated 6.7.2009. The petitioner filed rejoinder

dated 128.2009 to the aforesaid written statement of Mr. Manoj Gupta. On completion of aforesaid stage, as laid down in the relevant rules, the

complaint filed by the petitioner along with Mr. Manoj Gupta was duly considered in terms of 8(5) of Chartered Accountant (Procedure of

Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. No additional documents were, however, called from the

parties. On perusal of aforesaid record, the Director (Discipline) took the following view:

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7.1. As regard allegation that the respondent tampered the copy of financial statement submitted to the court, it has been observed that the said

alleged financial statement was submitted to the Court by the Auditee Company in the matter of case filed by M/s. Future Consultant Ltd. against the Auditee Company. The said financial statement was submitted by the Auditee Company to the Court in the year 2005. Further, there is no

evidence showing that tampering was done by the respondent.

7.2. As regard charge relating to investment held by in the Auditee Company of FCL, it has been noted that total value of investment as on

31.3.1999 was of Rs. 48,44,374/-. Further, it has been noted that in affidavit filed by the Auditee Company, investment was shown as Rs.

43,24,374/-. However, on perusal of working paper filed by the respondent, it is apparent that the Auditee Company had transferred shares worth

Rs. 5,20,000/- to M/s. Jayshree Metal & Const. Ltd. In this regard, it has been noted that the respondent duly carried out his duties while verifying

the details of investment. Further, he cannot be held liable for any discrepancies or forgery done by the company official in financial statement

submitted with Court.

7.3. As regard allegation related to investment held by Auditee Company in the shares of M/s. Jay Shree Metals & Construction Ltd., it has been

observed that the complainant failed to substantiate his charge that shares of M/s. Jay Shree Metals & Construction were sold by the Auditee

Company during 1999-2000. Further, the respondent submitted a copy of letter from M/s. Jay Shree Metals & Construction (W-55) showing

transfer of 50000 equity shares in the name of Auditee Company. Therefore, it is apparent that the Auditee company bought these shares and

transferred the same to M/s. Future Consultant Ltd.

7.4. As regard manipulation in individual entries, it has been noted that the complainant did not any documentary evidence in support of the said

allegation. It has been noted that the said treatment was duly clarified by the respondent. Further, it has been noted that the balance of M/s. Sewa

Agro Tech Ltd. as on 31st March, 1999 was same as appearing in the books of the Auditee company. Considering the nature of evidence

provided by the complainant, its appears that the complainant failed to substantiate the allegations.

7.5. As regard allegation relating to certain documents on which complainant''s signatures had been forged by the respondent, it has been noted

that the complainant failed to provide evidence showing that respondent had forged the documents. On perusal of the documents provided by the complainant, it does not show that the same has been prepared or forged by the respondent. Further, it has been noted that the complainant did

not take any legal action i.e. FIR, Court case against the respondent for forgery. Therefore, this allegation against the respondent is not tenable.

7.6. In view of the above, it has been observed that respondent has taken due care while carrying out audit of the Auditee company for the year

1999-2000 and has not tampered with financial statements of the Auditee company submitted before the Court.

3. Section 21 of the Chartered Accountants Act, 1949 to the extent it is relevant reads as under:

21. Disciplinary Directorate.

...

(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.

4. The question as to whether an opportunity of hearing needs to be given to the complainant before forming a prima facie opinion in such matters

or not came up for consideration before this Court in W.P. (C) No. 6470/2012 Dinesh Gupta versus Shri Vishal Chandra Gupta and another

[decided on 12.10.2012]. A perusal of the aforesaid order would show that the order passed by the Director (Discipline) in that case was

challenged primarily on the ground that no oral hearing was given to the petitioner/complainant. Rejecting the writ petition, the learned Single Judge

of this Court, inter alia, held as under:

12. As regards the last issue with regard to the petitioner not being afforded a personal hearing, in my view, the said submission is also

misconceived. The principles of natural justice require that parties should be afforded a complete opportunity to present their respective case. The

record shows quite clearly that, the Director (Discipline) accorded complete opportunity to the petitioner, and as a matter of fact, after deliberating

on the material placed before her, she sought on her own, information from respondent no. 1, which, according to her was material for adjudicating

the charge, levied against respondent no. 1. It is well settled that hearing does not necessarily mean oral hearing. Much would depend upon the

nature of the proceedings. As was indicated by me, at the very outset, in the regime envisaged under the CA Act, Rules and Regulations framed

thereunder, the scrutiny by the Director (Discipline) is the first stage, at which, a charge is examined when, levied against a member of the ICAI. At

this stage, the Director (Discipline) is required to form an opinion as to whether a prima facie case is made out. In the facts of the present case, no

case was made out based on the material placed before the Director (Discipline). Therefore, the fact that no oral hearing was granted would not

vitiate the proceedings.

5. Being aggrieved from the aforesaid decision, the petitioner in that case filed LPA No. 843/2012, which came to be decided by a Division Bench

of this Court on 20.12.2012 and the following view taken by the Division Bench is relevant in this regard:

10. It would thus be seen that the Rules do not provide for any hearing. The said Rules have to be examined in the context of the situation with

which they deal. The complaints dealt thereunder are of professional misconduct. The respondent no. 2 ICAI, in its concern to maintain high

standards in the profession, has provided for in house mechanism of inquiry. We may highlight that the Rules are not under challenge before us. All

that we are thus required to examine is whether the procedure followed is as per the Rules. The role of Director (Discipline) of the respondent no.

2 ICAI, as noticed by the learned Single Judge also, is merely inquisitorial i.e. whether the complaint is to be closed or to be further investigated.

We repeat, the said stage is inquisitorial rather than adjudicatory. The said stage is intended to prevent the members of the respondent no. 2 ICAI

from being harassed by being required to undergo the entire adjudicatory process qua each complaint which may be made against them. We are thereof of the opinion that the learned Single Judge is correct in holding that there is no error in the procedure followed by the Director (Discipline)

of the respondent no. 2 ICAI.

6. Considering the view taken by this Court in the aforesaid matter, there is no escape from the conclusion that no hearing to the complainant is

envisaged before the Director (Discipline) take a view on the complaint. The petitioner has not brought to the notice of the Court any rule requiring

hearing being given to the complainant before forming a prima facie opinion in terms of Rule 9(2) of the Chartered Accountant (Procedure of

Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. There is no challenge in this petition to the validity of the

aforesaid rule on the ground that it does not provide for any hearing to the complainant before Director (Discipline) forms a prima facie opinion

with respect to the alleged professional misconduct by a Chartered Accountant. For the reasons stated hereinabove, I find no merit in the petition

and the same is hereby dismissed. There shall be no orders as to costs.