

(2012) 08 AHC CK 0205

Allahabad High Court

Case No: Reference Against Stamp Act (Civil) No. 1 of 1989

In The Matter of The Council of
The Institute of Chartered
Accountants of India

APPELLANT

Vs

R.L. Narula

RESPONDENT

Date of Decision: Aug. 22, 2012

Acts Referred:

- Chartered Accountants Act, 1949 - Section 21, 21(5), 22

Citation: (2012) 10 ADJ 517 : (2013) 1 ALJ 421

Hon'ble Judges: Sunil Ambwani, J; Aditya Nath Mittal, J

Bench: Division Bench

Advocate: Vinod Swarup, for the Appellant; V.K. Singh, A.K. Srivastava, K.K. Shangloo and R.B. Singhal, for the Respondent

Final Decision: Allowed

Judgement

Hon'ble Aditya Nath Mittal, J.

This reference has been filed u/s 21(5) of the Chartered Accountants Act, 1949 (hereinafter called the "Act" for short) in respect of R.L. Narula, Chartered Accountant. The facts of the case are that R.L. Narula, Chartered Accountant, failed to pay stipend due to his articulated clerk, Neeraj Kumar Jain, as required by Regulation 32-B of the Chartered Accountants Regulations, 1964 (hereinafter called the "Regulations" for brevity). The Council of the Institute of Chartered Accountants of India, upon enquiry, came to the conclusion that the respondent was guilty of professional misconduct and, accordingly, referred the case to the Disciplinary Committee.

2. The Disciplinary Committee, after hearing the parties and recording evidence, came to the conclusion that the respondent had violated the provision of Regulation 32B of the Regulations within the meaning of Sections 21 and 22 of the Act read with

clause (1) of part II of the Second Schedule to the Act.

3. Considering the report of the Disciplinary Committee, the Council of the Institute gave its finding and recommended that the name of the respondent be removed from the register of Members for a period of 15 days.

4. After receipt of reference, notice to R.L. Narula, Chartered Accountant, was issued by this Court, who has submitted his objections.

5. We have heard Sri Vinod Swaroop, learned counsel for the Institute of Chartered Accountants of India, and Sri K.K. Shangloo, learned counsel for the respondent.

6. Learned counsel for the respondent has submitted that the report of the Disciplinary Committee is erroneous and the charges are not cogently proved against him. It has also been submitted that the respondent had sent the amount of stipend by hand to the complainant, who refused to accept it. Subsequently, the same was sent by registered post, which was also refused by the complainant. A cheque of Rs. 3,752.50 P. was thereafter sent on 22.6.1987 to the Institute for delivery to the complainant, which shows the efforts of payment by the respondent. It has also been submitted that the Council has blindly concurred with the erroneous report of the Disciplinary Committee and since no stipend was proved to be due any more to the complainant, hence the finding of the Disciplinary Committee is liable to be set aside. It has further been submitted that if any technical violation of Regulation 32B of the Regulations is found by this Court, the respondent is, at the most, liable to be reprimanded for the same. The punishment awarded to the respondent is liable to be set aside and the respondent should be given the benefit of doubt.

7. Learned counsel for the applicant has submitted that the reply of the respondent is incorrect, misconceived and contrary to record. As per Regulation 32-B of the Regulations, the respondent was under obligation to make timely payment of the stipend to the complainant and efforts made by the respondent, subsequent to the complaint made against him, were nothing but an after thought, which could not absolve the respondent from the consequences of violation of Regulation 32-B of the Regulations.

Regulation 32-B of the Regulations provides as under :

32-B.--Stipend to Articled Clerks.

(1) Every member engaging an articled clerk on or after 1st July 1973 shall pay to such clerk a minimum monthly stipend at the rates specified in sub-regulation (2) or in sub-regulation (3) hereof, as the case may be.

(2) If the normal place of service of an articled clerk is situated in Bombay, Calcutta, Delhi, New Delhi, Kanpur or Madras-the following shall be the minimum rates of the stipend payable under Sub-regulation (1) :

- (a) In respect of the first year of articulated training Rs. 60/- per month
- (b) In respect of the second year of articulated training Rs. 100/- per month
- (c) In respect of the remaining period of articulated training ... Rs. 150/- per month

(3) If the normal place of service of an articulated clerk is situated in a place other than the places specified in sub-regulation (2) hereof, the minimum rates at which such employer shall pay stipend under sub-regulation (1) hereof shall be computed at 50% of the respective rates for the various stages of articulated training specified in Sub-regulation (2) hereof :

Provided that nothing contained in this regulation shall entitle an articulated or audit clerk registered with effect from a date prior to 1st July 1973, to any stipend under sub-regulation (2) or (3) hereof.

Explanation.--For the purpose of determining the rate at which stipend is payable under sub-regulation (2) or sub-regulation (3) hereof, the period of articulated training of the clerk under any previous employer or employers (not being any such period prior to the 1st July. 1973) shall also be taken into account.

(4) The stipend under sub-regulation (2) or (3) hereof, as the case may be, shall be paid by the member to an articulated clerk either (a) by a crossed account payee cheque every month against a stamped receipt to be obtained from the articulated clerk; or (b) by depositing the amount every month in an account opened by the articulated clerk in his own name with a branch of the bank to be specified by the member.

8. The complainant started his training with effect from 28.2.1984 and a Savings Bank A/c. No. 3425 was opened with the Punjab National Bank on 22.1.1985. The said account was closed on 19.6.1986. It was alleged in the complaint that R.L. Narula, while getting the above account opened, got issued a cheque book bearing cheque Nos. 895541 to 895550 and got all the cheques blankly signed so that any amount, if deposited in this account, may be withdrawn by R.L. Narula.

9. As per provisions of Regulation 32-B of the Regulations, the monthly stipend was to be paid every month against a stamped receipt to be obtained from the articulated clerk or by depositing the amount every month in an account opened by the articulated clerk in his own name with a branch of the bank to be specified by the Member. Accordingly, the first stipend became due on 31.3.1984 and so on. The respondent has alleged that on 9.5.1987 a draft of Rs. 2,250.50 P. was sent to the complainant but he refused to accept it. Later on, the said draft was sent by registered post on 11.5.1987, which was also refused by the complainant. Subsequently, on 22.6.1987, a cheque of Rs. 3,750.50 P. was sent to the Institute for delivery to the complainant.

10. It is relevant to mention that the complaint was made on 28.7.1986 regarding non-payment of stipend, which was required to be paid on monthly basis. All the

efforts shown by the respondent started in the month of May, 1987, which is much latter even after the complaint. No explanation has been given as to why the stipend was not paid on monthly basis, becoming due since 31.3.1984. Certainly, the respondent could have deposited the amount of stipend in the S.B. A/c. opened by the complainant, regarding which the respondent was having due knowledge. The complainant has also categorically stated that no transaction took place in the said account and an interest of 0.8 paise and 0.12 paise were credited in this account upto the date of closure of the account on 19.6.1986. As mentioned above, the complaint was made on 28.7.1986, i.e. even prior to the date of making complaint the stipend was not either deposited in the S.B. A/c. nor paid in cash against a stamped receipt. Therefore, the alleged attempt of payment of stipend to the complainant is wholly misconceived and devoid of any substance.

11. The proceedings regarding professional misconduct are not a civil proceeding, but a quasi-judicial proceedings. The test applicable to prove the guilt of a charged person should be applied in such proceedings. In the instant case there appears to be no reasonable doubt about the fact that the respondent has not paid the monthly stipend to the complainant in view of Regulation 32-B of the Regulations. The subsequent efforts made by the respondent can only be said to be an after thought with a view to avoid disciplinary proceeding.

12. In [The Council of The Institute of Chartered Accountants of India and Another Vs. B. Mukherjea](#), , the Hon"ble Apex Court, considering the jurisdiction of High Court u/s 21 of the Act, has held as follows :

In hearing references made u/s 21, sub-section (1), the High Court can examine the correctness of the finding recorded by the statutory bodies in that behalf. The High Court can even refer the matter back for further inquiry by the Council and call for a fresh finding. It is not as if the High Court is bound in every case to deal with the merits of the finding as it has been recorded and either to accept or reject the said finding. If, in a given case it appears to the High Court that, on facts alleged and proved, an alternative finding may be recorded, the High Court can well send the case back to the Council with appropriate directions in that behalf. The powers of the High Court u/s 21, sub-section (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.

13. In our opinion, the Council was wholly justified to form the opinion that the respondent was guilty of professional misconduct. The Disciplinary Committee for enquiry had afforded full opportunity of hearing to the respondent and has also recorded statements made by the parties and has taken into consideration the documents produced by the parties. In the enquiry report, the Disciplinary Committee has discussed each and every aspect of the matter at length and has come to the conclusion that the respondent has not at all taken seriously the provision of Regulation 32-B of the Regulations, which required him to pay the

stipend by crossed account payee cheques every month. The Committee has also come to the conclusion that the claim of the respondent that he paid Rs. 4,000/- to the articles clerk for the period from 1.7.1985 onwards was also not acceptable to the Committee.

14. The copy of the report of the Disciplinary Committee was sent to both the complainant and respondent and they were asked to send their written representations, if any. Both the complainant and the respondent had also submitted their written representations dated 25.1.1988 and 5.2.1988 respectively and both of them appeared in person before the Council and also made oral submissions. The report dated 9.9.1987 was considered in 132nd meeting of the Council on 12.2.1988 and the Council, after considering the written and oral submissions of the respondent, did not find any merit. The Council, concurring with the conclusion of the Disciplinary Committee and the reasons given by it, found that the respondent is guilty of professional misconduct within the meaning of Section 21 read with Section 22 of the Act for contravention of Regulation 32-B of the Regulations in respect of the charge of non-payment of stipend to the complainant and recommended to this Court that the name of the respondent be removed from the register of Members of the Institute for a period of 15 days.

15. The intendment and object of the Act is to maintain the standard of the profession of Chartered Accountant at a high level and it prescribes certain code of conduct to the members, which they must follow.

16. In the facts and circumstances, as discussed above, we are of the view that the decision of the Disciplinary Committee as well as of the Council are based on material on record. Both the authorities have taken into consideration all the aspects and explanations submitted before it. The conclusions are drawn by a self-speaking detailed order. We do not find any illegality or perversity in the findings of the disciplinary Committee and the Council. There is no sufficient reason to interfere with the findings recorded against the respondent. The reference is liable to be answered against the respondent.

17. As the matter is pending since long, in the circumstances of the case, the removal of the name of the respondent from the Register of Members for a period of five days would meet the ends of justice. Accordingly, the reference is answered in favour of the applicant and against the respondent with the modification that the name of the respondent shall be removed from the Register of Members for a period of five days only.