

(2014) 07 DEL CK 0133

Delhi High Court

Case No: Chat. A. Ref. 5/2012

Council of the Institute of
Chartered Accountants of India

APPELLANT

Vs

Ved Prakash Verma

RESPONDENT

Date of Decision: July 10, 2014

Acts Referred:

- Chartered Accountants Act, 1949 - Section 21, 21(4), 21(6), 21(D), 22
- Companies Act, 1956 - Section 215(1)

Citation: (2014) 6 AD 657 : (2014) 185 CompCas 114 : (2015) 1 CompLJ 456 : (2014) 211 DLT 716

Hon'ble Judges: Badar Durrez Ahmed, C.J; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Rakesh Agarwal and Pulkit Agarwal, Advocate for the Appellant; Anuj Aggarwal and Niti Jain, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Rajiv Sahai Endlaw, J.

The petitioner, having found the respondent No. 1 Chartered Accountant guilty of misconduct other than any such misconduct as is referred to in Section 21(4) of The Chartered Accountants Act, 1949 (hereinafter referred to as "the Act") as it stood prior to the amendment with effect from 17th November, 2006, has forwarded the case to this Court with its recommendations thereon.

2. This Court, in accordance with Section 21(6) of the Act fixed the date of hearing on 3rd December, 2012 and issued notice of the date so fixed to the respondent No. 1 as well as to respondent No. 2-Central Government, affording them an opportunity of being heard. The notice issued to the respondent No. 1 remained unserved with the report that the premises, of which address was given, was found locked. Fresh notice was ordered to be issued to the respondent No. 1, which also remained

unserved with the further report that the respondent No. 1 had sold the property and shifted to some other place. The petitioner filed an affidavit before this Court that it was not in possession of any other address of respondent No. 1 and applied for substituted service of the respondent No. 1 at his last known address. This Court, after recording its satisfaction that the respondent No. 1 could not be served by ordinary process, directed service of the respondent No. 1 by publication in the newspaper Statesman, Delhi Edition. The said publication stands affected. None has appeared for the respondent No. 1 despite that also. The respondent No. 1 is accordingly proceeded against ex-parte. We have heard counsel for the petitioner and have perused the record.

3. The petitioner has made this reference, pleading as follows:-

(i) that the Managing Director of M/s. Anghaila Housing Private Limited, Delhi filed a complaint dated 2nd September, 2004 with the petitioner with the following allegations against the respondent No. 1 having Membership No. 009806 of the petitioner-Institute:

(a) that the respondent No. 1 was the Auditor of the complainant company and in possession of the records of the complainant company;

(b) that the earlier Managing Director of the complainant company had filed a petition before the Institute highlighting the misconduct and unprofessional activities being carried out by the respondent No. 1;

(c) the hearing of the said complaint was fixed by the Disciplinary Committee for 27th April, 1989 when the respondent No. 1 approached the former Managing Director of the complainant company and pleaded for withdrawal of the complaint and assured that he would refrain from carrying on any such activity against the complainant company in future. Believing the said representation of the respondent No. 1, the complaint was withdrawn.

(d) however, the respondent No. 1 continued to engage himself in unprofessional activities against the complainant company, by retaining the records even after he tendered No Objection Certificate dated 26th September, 1992;

(e) that upon the former Managing Director of the complainant company approaching the respondent No. 1, he demanded money in return for the books of accounts and statutory records of the complainant company in his possession and also threatened that if the said consideration was not paid, the complainant company would have to suffer dire consequences. A complaint dated 21st January, 1995 was filed by the complainant company with the police in this regard, but the respondent No. 1 managed to dodge the said complaint and did not return the books of accounts and other records of the complainant company;

(f) that the respondent No. 1, thereafter started to falsify the records of the complainant company and managed to file bogus Form 2, 32, etc. in the office of

Registrar of Companies appointing Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans as Directors of the complainant company and signed the balance sheets as Auditor of the company from 1995-2003 and filed the balance sheets and annual returns of the complainant company in the office of the Registrar of Companies for the years 1995-2003, altogether on 8th March, 2004;

(g) the respondent No. 1 also got opened accounts in the name of the complainant company in a nationalized bank and to which none of the Directors of the complainant company were signatory;

(h) the respondent No. 1 also falsely represented the complainant company and made false attempts to dispose off the assets of the complainant company;

(i) that the complainant company also filed a petition before the Company Law Board challenging the filing of the documents and appointment of the aforesaid persons as Directors and the Company Law Board passed an order against the Directors so appointed by the respondent No. 1;

(j) that the respondent No. 1 appeared before the Company Law Board on behalf of the Directors appointed by him and whose appointment was challenged in the said proceedings;

(ii) that since the aforesaid charges made by the complainant company against the respondent No. 1, if proved, would have rendered the respondent No. 1 guilty of other misconduct u/s 22 read with Section 21 of the Act and Clause (7) of Part I and Clause (1) of Part II of Second Schedule to the Act, a copy of the complaint was forwarded by the petitioner Institute under cover of its letter dated 5th May, 2005 to the respondent No. 1, eliciting the response of the respondent No. 1 thereto, as required by Regulation 12(7) of the Chartered Accountant Regulations, 1988;

(iii) the respondent No. 1 submitted his response dated 21st May, 2005 and to which a rejoinder dated 22nd August, 2005 was filed by the complainant company; the respondent No. 1, however despite repeated opportunities did not submit its comments to the said rejoinder;

(iv) that the petitioner Council, in accordance with Regulation 12(11), in its meeting held in August, 2008, considered the complaint, response, rejoinder aforesaid and formed a prima facie opinion that the respondent No. 1 was guilty of professional and/or other misconduct and decided to initiate an inquiry to be made in the matter by the Disciplinary Committee;

(v) the Disciplinary Committee of the petitioner Institute heard the complainant company as well as the respondent No. 1; the respondent No. 1 pleaded not guilty; the matter was inquired into and the disciplinary proceedings concluded; the Disciplinary Committee vide its report dated 10th February, 2001 was of the opinion that the respondent No. 1 was guilty of professional misconduct on the charges of:-

A. filing of bogus Form 2, 32, etc. in the office Registrar of Companies appointing Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans as Directors of the complainant company and of taking undue and false interest in the matters of the complainant company after his resignation as Auditor thereof in the year 1992, as is evident from his appearance aforesaid before the Company Law Board; and

B. having audited the books of accounts of the complainant company after 1992 and having signed the balance sheets as Auditor of the complainant company from the year 1995-2003 and which were filed with the Registrar of Companies on 8th March, 2004.

the Disciplinary Committee, however held the respondent No. 1 not guilty of professional and/or other misconduct on the charges of, (a) having demanded consideration for return of books of accounts and statutory records of the company; (b) having opened accounts in the Nationalized Banks in the name of the complainant company; and (c) having made attempt to dispose all the assets of the complainant company;

(vi) a copy of the report of the Disciplinary Committee of the petitioner was forwarded to the respondent No. 1 and the respondent No. 1 was given an opportunity to send his written representation, if any, thereagainst and to also appear before the petitioner Council at the time when the said report of the Disciplinary Committee was to be considered;

(vii) no representation was received from respondent No. 1 against the report of the Disciplinary Committee;

(viii) the petitioner Council on a consideration of the report of the Disciplinary Committee and the representation made by the complainant company accepted the report of the Disciplinary Committee and held the respondent No. 1 guilty of professional misconduct as aforesaid within the meaning of Clause (7) of Part I and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949;

(ix) the petitioner Council has recommended to this Court that the name of the respondent No. 1 be removed from the register of members maintained by the petitioner Council for a period of six months.

4. The complaint against the respondent No. 1 having been made prior to the coming into force on 17th November, 2006 of the amendment of the Act, vide Section 21(D) of the Act, is to be governed by the Act as it stood prior to the said amendment.

5. The Disciplinary Committee of the petitioner gave the following reasons for holding respondent No. 1 guilty as aforesaid:-

(I) that the Economic Offences Wing of the Delhi Police, on the complaint of the complainant company had found that Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh.

Binod Rajhans did not figure in the complainant company records before 8th March, 2004, on which date many anti-dated documents were filed in the Registrar of Companies Office claiming that they were Directors of the complainant company since 1993-94; however, the concerned Form 32 was filed in the office of Registrar of Companies only on 8th March, 2004.

(II) that on 8th March, 2004, the respondent No. 1 being the former Chartered Accountant and Auditor of the complainant company, in collusion with Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans filed a series of documents in the office of Registrar of Companies and on the basis whereof Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans were claimed to be the shareholders and Directors of the complainant company since the year 1993.

(III) no additional fees, as required to be paid for late filing of Form 32, had also been paid.

(IV) The Company Law Board had also taken cognizance of the aforesaid facts.

(V) Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans claimed to have become the shareholders of the complainant company on transfer of shares in their favour, but were unable to produce Form No. 2 and there were other discrepancies also in relation to the said transfer and there were other omissions in the share certificates.

(VI) Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans had before the Company Law Board admitted that Sh. Sudhir Gupta was a Director of the complainant company till 4th October, 1999; the said Sh. Sudhir Gupta had deposed that Ms. Mausumi Bhattacharjee was in total control of the affairs of the complainant company holding 94% shares in the company and that the said Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans were not connected with the affairs of the company in any manner whatsoever; Sh. Sudhir Gupta had also denied sending any resignation letter of Ms. Mausumi Bhattacharjee to the Registrar of Companies; Company Law Board had also taken note of the fact that said Ms. Mausumi Bhattacharjee had been filing balance sheets, audit reports and annual returns etc. and had been appearing in the Court cases of the company in Dehradun/Uttaranchal and that the Bank of Baroda, Bhikaji Cama Place, Delhi had issued a certificate that Ms. Mausumi Bhattacharjee was maintaining and operating a current account of the complainant company as authorized signatory thereof. The Company Law Board had further taken note of the fact that the shareholding of Ms. Mausumi Bhattacharjee of 1680 shares out of 3226 shares as per Form No. 2 dated 17th November, 2000 filed with the Registrar of Companies had not been disputed. The Company Law Board had thus declared that Ms. Mausumi Bhattacharjee continued to be the Director of the complainant company and her purported resignation letter dated 1st August, 2001 and Form No. 32 filed with the Registrar of Companies was null and void.

(VII) The respondent No. 1 has appended his signatures at various places on the Shareholders Register where the names of aforesaid Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans appeared and the names of all the said three persons appeared to have been entered in the said Register at one time in the same hand; the appearance of the respondent No. 1's signature on the Shareholders Register could not be co-related with the position of the respondent No. 1 as Statutory Auditor of the company and the respondent No. 1 was unable to explain the same.

(VIII) That the Company Law Board had also concluded that the respondent No. 1 was involved with mala fide intention to assist the aforesaid Sh. Sanjay Daksha, Sh. Sofi-ur-rehman, Sh. Binod Rajhans in filing Form No. 2 and Form No. 32 in the office of the Registrar of Companies appointing them as Directors of the company and that the said act of the respondent No. 1 was unbecoming of a Chartered Accountant.

(IX) That the respondent No. 1 had signed the balance sheets of the complainant company for the years 1995 to 2003 as auditor in the name of a Chartered Accountants firm which was closed with effect from 1st October, 1995.

(X) That the respondent No. 1 filed all the aforesaid balance sheets together with the Registrar of Companies on 8th March, 2004.

(XI) The respondent No. 1 had failed to bring any evidence on record to establish himself as having been duly appointed by the company for the purpose of statutory audit.

(XII) That during the period when the respondent No. 1 filed the balance sheets of the complainant company as Statutory Auditor in the name of a closed Chartered Accountants firm V.S. Verma & Sood, he was the proprietor of the firm V.P. Verma & Company.

(XIII) The respondent No. 1 was not eligible to use the name of the closed Chartered Accountants firm V.S. Verma & Sood and which he was not entitled to and the respondent No. 1 was thus guilty of contravention of Regulation 190(1) of the Chartered Accounts Regulation, 1988.

(XIV) That the respondent No. 1 inspite of repeated opportunity failed to produce the document of his appointment as auditor of the complainant company and from which it was evident that the respondent No. 1 had signed the balance sheets of the complainant company for the years 1995 to 2003 without a valid appointment.

(XV) That from the aforesaid conduct of signing of balance sheets of the company without authority in the name of a closed chartered accounts firm, the respondent No. 1's integrity becomes doubtful.

(XVI) That the aforesaid balance sheets for the years 1995 to 2003 were authenticated on behalf of the complainant company by Sh. Sanjay Daksha as Director and whose appointment as Director had not been proved before the Company Law Board. The signing of the said balance sheets by the respondent No. 1 as auditor also showed that the respondent No. 1, while signing the balance sheets failed to verify that Sh. Sanjay Daksha was actually the Director of the company or not.

(XVII) That the respondent No. 1 while signing the aforesaid balance sheets had also not commented on the fact that the company had not filed annual accounts and annual returns for continuous three financial years.

(XVIII) That the respondent No. 1 had failed to furnish any explanation for the aforesaid lapses.

(XIX) That the respondent No. 1 had thus failed to comply with Section 215(1) of the Companies Act, 1956 and was grossly negligent in conduct of his duties and of professional misconduct.

6. The petitioner Council accepted the aforesaid reasoning of the Disciplinary Committee and held the respondent No. 1 guilty of professional misconduct as aforesaid and has recommended that the name of the respondent No. 1 be removed from the register of members for a period of six months.

7. We are satisfied that the prescribed procedure has been followed in the conduct of the complaint of professional misconduct against the respondent No. 1. We, on perusal of the material placed before us, are also satisfied with the reasoning aforesaid recorded by the Disciplinary Committee of the petitioner institute for holding the respondent No. 1 guilty as aforesaid. We also find the punishment recommended by the petitioner Council to be proportionate to the misconduct of which the respondent No. 1 has been found guilty of.

8. Though the jurisdiction of this Court u/s 21(6) of the Act is wide, without any restriction but in our opinion, the findings of the members of the Disciplinary Committee of the petitioner and the views of the petitioner Council are entitled to great weight in light of the fact that they are the experts with regard to the matters pertaining to profession of chartered accountants and know the intricacies of the profession on account of their personal experience. Moreover, the said bodies have been created to maintain a high standard of conduct and discipline amongst the members of the petitioner institute. Thus, unless gross violation or disregard of the provisions of the Act or the Regulations made thereunder or of the principles of natural justice and fairness is to be found, this Court would be slow to interfere with the finding of such professional bodies. Reliance in this regard can be placed on [Chief Controller of Exports, New Delhi Vs. G.P. Acharya, ,](#) Council of the [Council of The Institute of Chartered Accountants Of India Vs. C.H. Padliya and another](#) and [The Council of The Institute of Chartered Accountants of India and Another Vs. B.](#)

[Mukherjea](#), (though under the old Section 21).

9. We accordingly accept the recommendation of the petitioner institute and remove the respondent No. 1 from the membership of the petitioner institute for a period of six months effective from this date.

10. Reference is disposed of.