
Talluri Srinivas Vs The Institute of Chartered Accountants of India

Writ Petition (C) 8945 of 2011 and C.M. No. 20184 of 2011

Court: Delhi High Court

Date of Decision: March 13, 2012

Acts Referred:

Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 " Rule 18, 18(2), 18(4), 19, 9(2)#Chartered Accountants Act, 1949 " Section 21, 21(5), 21A(3), 21B, 21B(1)#Constitution of India, 1950 " Article 226#Penal Code, 1860 (IPC) " Section 120B, 406, 420, 467, 471

Citation: (2012) 4 AD 268

Hon'ble Judges: Vipin Sanghi, J

Bench: Single Bench

Advocate: Neeraj Kishan Kaul, with Mr. R. Sudhinder and Ms. Prerana Amitabh, for the Appellant; Arvind Nigam with Mr. J.S. Bakshi and Mr. Amitesh S. Bakshi, for the Respondent

Judgement

Vipin Sanghi, J.

The petitioner has preferred this writ petition under Article 226 of the Constitution of India to seek a restraint against the

respondent, Institute of Chartered Accountants of India (ICAI) from proceeding to pass any orders against the petitioner in disciplinary enquiry

being held in Information Case No.DD/1/S/INF/09/DC/40/- 09, arising out of the prima facie opinion dated 17.09.2009, without complying with

the principles of natural justice. The petitioner also seek a writ of mandamus to direct the respondent to provide adequate and effective opportunity

to the petitioner to defend himself and to permit him to cross examine the witnesses, who have deposed against him in the aforesaid disciplinary

case. In the year 2000, M/s. Price Water House, Chartered Accounts were appointed as the statutory auditors of Satyam Computers Services

Limited (referred to as ""Satyam""). The petitioner, who was working with M/s Price Water House, submits that for the years 2001-2007, the audit

of Satyam was conducted by one Mr. Gopalakrishnan, and the audit for the financial year 2007-08, and for the quarters ended 30.06.2008 and

30.09.2008 of the financial year 2008-09 were conducted by him.

2. On 07.01.2009, the then Chairman of Satyam, Mr. B. Ramalinga Raju informed the Board of Directors of Satyam of the systematic fudging of

accounts of the said company by him. This disclosure, which was widely publicized, was acted upon as information against the petitioner u/s 21 of

the Chartered Accountants Act, 1949 (CA Act).

3. The CID Hyderabad registered a criminal case u/s 120B read with Sections 406, 420, 467, 471 and 477A IPC as Crime No.02/09 against the

Chairman and Directors of Satyam and other accused persons, including the petitioner. The petitioner was arrested by the police on 23.01.2009.

Thereafter, the case was transferred to the Central Bureau of Investigation (CBI) for investigation, and R.C. No.4(S)/2009 was registered against

the petitioner and eight others by the CBI, Hyderabad.

4. The subject of misconduct of a chartered accountant is dealt with in Chapter V of the CA Act. Section 21 of the said Act reads as follows:

21. Disciplinary Directorate

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline)

and such other employees for making investigations in respect of any information or complaint received by it.

(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.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the

case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the

withdrawal at any stage.

(Emphasis supplied).

5. The Director (Discipline) acted on the information which came to him. The Director (Discipline) arrived at a prima facie opinion dated

17.09.2009 on the occurrence of alleged misconduct falling under the second schedule of the Act against the petitioner. Consequently, the council

of the ICAI constituted a Disciplinary Committee in terms of Section 21B of the Act, which reads as follows:

21B. Disciplinary Committee

(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer

and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from

amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second

Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any

order against him and may thereafter take any one or more of the following actions, namely: -

(a) Reprimand the member;

(b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) Impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

(emphasis supplied).

6. The procedure to be adopted by the Disciplinary Committee is prescribed in Rule 18 of the Chartered Accountants (Procedure of Investigations

of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (referred to as the Rules).

7. Rule 18 of the Rules being relevant, is reproduced herein below:

18. Procedure to be followed by the Committee.-

(1) The Committee shall be guided by the principles of natural justice and shall follow the procedure in dealing with all cases before it, as laid down

in this Chapter.

(2) If the Committee decides to proceed further under clause (b) of sub-rule (2) of rule 9 or if it receives a reference from Board of Discipline

under clause (b) of sub-rule (3) of rule 9, it shall expeditiously cause to deliver to the respondent and the complainant, a copy each of the

following, -

(a) prima facie opinion formed by the Director; and

(b) Particulars or documents relied upon by the Director, if any, during the course of formulation of prima facie opinion.

(3) The Committee shall inform the respondent, as the case may be to file a written statement, within such time as may be specified:

Provided that the Committee may give him additional time for submitting his written statement, on application by the respondent on his adducing

sufficient reasons to the satisfaction of the Committee for seeking additional time:

Provided further that such additional time shall not be given more than once and if the respondent still does not submit a written statement, the

Committee shall presume that he has no further submissions to make and shall proceed to decide the case on merits.

(4) The respondent shall send a copy of his written statement, along with supporting documents and a list of witnesses, to the Director and the

complainant within the stipulated time.

(5) The complainant or the Director may, after receipt of the written statement, submit a rejoinder to the Committee, with a copy to the

respondent, along with supporting documents, if any.

(6) The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date

of receipt of prima facie opinion and the committee shall cause a notice to be sent of such date, hour and place to the Director, respondent and

complainant and require them to appear before it in person to make oral submissions, if any.

Explanation. - For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any

authorized representative, who may be a Chartered Accountant, Cost Accountant or Company Secretary.

(7) During the first hearing, the Committee shall read out the charge or charges to the respondent along with the summary of prima facie opinion

arrived at by the Director, and ask the respondent whether he pleads guilty to the charge or charges made against him:

Provided that if the respondent does not appear for the first hearing even after one adjournment, the reading out of charge or charges along with

the summary of prima facie opinion shall be made in his absence and the case proceeded with in accordance with the provisions of this Chapter.

(8) If the respondent pleads guilty, the Committee shall record the plea and take action as per provisions under rule 19.

(9) If the respondent does not plead guilty, then the Committee shall fix a date for examination of witnesses and production of documents.

(10) The Committee may, on application of the Director, issue notice for appearance to any of his witnesses directing him to attend or to produce

any other document or material evidence.

(11) On the date so fixed, the Committee shall proceed to take all such evidence as may be produced by the Director, including oral examination

of witnesses and production of documents:

Provided that the Committee may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been

examined or recall any witness for further cross-examination.

(12) After the presenting of evidence by the Director is over, the complainant shall be given an opportunity, if present during the hearing, to present

any additional evidence after satisfying the Committee that such evidence is relevant and has not been brought forward during the presentation by

the Director.

(13) The respondent shall be then called upon to enter upon his defence and produce his evidence.

(14) If the respondent applies to the Committee to issue any notice for compelling attendance of any witness for the purpose of examination or

cross-examination, or the production of any document or any material object, the Committee shall issue such notice unless it considers that such

application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground

shall be recorded by it in writing.

(15) The witnesses summoned at the instance of the complainant under sub-rule (12) or the respondent under sub-rule (14) shall not be eligible for

reimbursement of expenses incurred for attending the hearing.

(16) After evidences have been presented, the Director and the respondent shall present their arguments before the Committee:

Provided that after the Director has presented his argument, if the complainant, provided he is present during the hearing, feels that any vital

argument has been left out by the Director, may present the argument, after convincing the Committee of the same.

(17) The Committee shall consider the evidences and arguments produced before it and arrive at a finding on whether the respondent is guilty or

not of any professional or other misconduct.

(18) The Committee may, at the request of any of the parties before it or due to other reasons, and on such terms as it thinks fit, and at any stage

of the proceedings, adjourn the hearing:

Provided that such adjournment shall not be given more than once at any stage of the proceedings.

Explanation. - For the purpose of this rule, inability of the complainant, advocate, authorized representative or witness, to appear shall not be

treated as a valid reason for adjournment of a hearing.

(emphasis supplied).

7. The Disciplinary Committee after considering the prima facie opinion dated 17.09.2009 in its meeting held on 23.09.2009, decided to proceed

further in the matter under Chapter V of the Rules.

8. The respondent sent a letter dated 08.10.2009 to the petitioner, calling upon him to submit his written statement along with supporting

documents, if any, and a list of witnesses, if any, that the petitioner may desire to examine under Rule 18(4) of the Rules. The petitioner did not

respond to the said communication, presumably because he was still behind bars, and was granted bail by the Supreme Court only on 04.02.2010.

10. After the petitioner was released on bail, as aforesaid, he was served with a letter dated 06.04.2010, directing him to appear before the

Disciplinary Committee on 18.04.2010.

11. The petitioner preferred a writ petition being W.P.(C.) No.2505/2010 before this Court against the holding of the disciplinary enquiry,

primarily on the ground that on the same subject matter the petitioner could not be simultaneously proceeded with in criminal proceedings and in

disciplinary proceedings. He claimed that the same would be violative of his fundamental rights under the Constitution of India. This Court vide

order dated 16.04.2010 stayed the aforesaid disciplinary proceedings.

12. During the pendency of the aforesaid writ petition, the Supreme Court directed that the trial in the criminal proceedings be conducted on a day

to day basis. The petitioner's writ petition being W.P.(C.) No.2505/2010 was eventually dismissed by the learned Single Judge on 22.11.2010.

13. On 29.11.2010, the respondent issued a notice to the petitioner requiring him to appear before the Disciplinary Committee on 15.12.2010. In

the meantime, the petitioner preferred a Letters Patent Appeal being LPA No.886/2010. The Division Bench issued notice on the said appeal to

the respondent, and directed the petitioner to appear before the Disciplinary Committee, and to accept, or deny the charges.

14. On 15.12.2010, the petitioner appeared before the Disciplinary Committee at Hyderabad, and denied the charges read out by the Disciplinary

Committee. On 30.05.2011, the petitioner's LPA was dismissed. However, the Division Bench directed that the respondent shall proceed with

the disciplinary enquiry keeping in view the convenience of the petitioner and affording him adequate opportunity to put forth his case.

15. The petitioner was again issued notice by the respondent on 01.06.2011 requiring him to appear before the Disciplinary Committee on

18.06.2011. The petitioner, vide letter dated 11.06.2011, sought an adjournment on the ground that the criminal trial was at a crucial stage and he

was facing genuine difficulty in appearing before the Disciplinary Committee, as he required adequate time and opportunity to face the enquiry. The

request for adjournment was accepted by the respondent.

16. The respondent vide letter dated 15.06.2011 informed the petitioner that the next hearing was fixed on 09.07.2011. The documents including

those relied upon by the Director (Discipline) while forming prima facie opinion viz. SEBI investigation report, CBI main charge sheet, two

supplementary charge sheets, along with the list of witnesses which were likely to be examined on 09.07.2011 were also enclosed with the

aforesaid letter. However, once again, on 04.07.2011, the petitioner sought deferment of the enquiry on the same ground, as aforesaid. This letter

was received by the respondent on 08.07.2011 and the said request was rejected by the respondent on the same day.

17. On 09.07.2011, the petitioner appeared before the Disciplinary Committee through his authorized representative. During the hearing also, the

representative of the petitioner sought deferment of the hearing, which was rejected by the respondent. The respondent proceeded with the

examination of 12 witnesses and thereafter gave the counsel for the petitioner an opportunity to cross examine them. However, the counsel for the

petitioner opted not to participate in the hearing and withdrew himself.

18. The petitioner was again issued notice by the respondent on 18.07.2011 informing him that the next hearing had been fixed for 31.07.2011. In

the meantime, on 25.07.2011, the petitioner preferred a SLP being SLP (C) No.20915/2011 against the judgment in LPA No.886/2010.

Advance copy of the same was served on the respondent. The said SLP was listed before the Supreme Court on 29.07.2011. However, one of

the Hon"ble Judges on the bench recused himself from the matter. The matter was listed before another bench on 01.08.2011.

19. The petitioner then sent a letter dated 29.07.2011 to the respondent seeking deferment of the proceedings fixed on 31.07.2011, as the SLP of

the petitioner was pending in the Supreme Court. The said request of the petitioner was also rejected by the respondent on 30.07.2011, and he

was asked to appear before the Disciplinary Committee on 31.07.2011.

20. On 31.07.2011, the petitioner appeared through his authorized representative before the Disciplinary Committee. The authorized

representative again sought deferment of the proceedings. This request was rejected by the Disciplinary Committee and it went ahead to record the

deposition of one witness, Mr. A.Y.V. Krishna, D.I.G., CBI who was produced to prove the charges against the petitioner. The petitioner's

representative was thereafter given the opportunity to cross-examine the said witness. However, he refused to do so.

21. On 01.08.2011, the Supreme Court disposed of the petitioner's Special Leave Petition, in the following terms:

Learned counsels for the parties are agreed that this petition can be disposed of by directing the respondent - Institute to commence the

disciplinary proceedings from the week commencing 3rd October, 2011. We order accordingly. We may however, add that if by that date trial in

criminal cases No.CC1/10, CC2/10 and CC3/10, in progress in the Court of XXI ACMM, Hyderabad is not completed for any reason, the

respondents shall ensure that the dates of hearing fixed by them do not clash with the dates fixed by the trial court.

22. The respondent issued notice dated 23.09.2011 requiring the petitioner to appear before the Disciplinary Committee on 16.10.2011. On

12.10.2011, the petitioner sent his preliminary reply to the respondent. The petitioner also sought the documents which formed part of the SEBI

investigation report, the main CBI charge sheet and the two supplementary charge sheets, relied upon by the Director (Discipline) for forming the

prima facie opinion. The petitioner also demanded the transcripts of the statements of witnesses whose evidence had been recorded on

09.07.2011 and 31.07.2011.

23. On 16.10.2011, the petitioner was represented through his representative before the Disciplinary Committee. The petitioner requested for

recall of witnesses who had already deposed before the Disciplinary Committee along with copies of ""Notes of Hearings"", wherein examination of

witnesses had taken place. The request for supply of the aforesaid documents was reiterated. The respondent informed the petitioner's

representative that the documents requested for would be supplied and that his submissions would be appropriately considered. However, at the

same time, it rejected the request for cross examination, as it considered that adequate opportunities had been given to the petitioners, which were

not availed of by him.

24. Vide notice dated 02.12.2011, the proceedings were again fixed on 18.12.2011. On 05.12.2011, the petitioner was served with documents

running into more than 3000 pages. The petitioner was also provided transcripts of some of the hearings.

25. On 14.12.2011, the petitioner moved two applications before the Disciplinary Committee - the first to seek permission to cross examine the

witnesses produced by the Director (Discipline) in the enquiry proceedings, and the second for identification of documents supplied by the Director

(Discipline) to the petitioner. On 15.12.2011, the petitioner reiterated the prayers in these applications.

26. On 18.12.2011, the disciplinary proceedings were attended by the authorized representative of the petitioner. It was informed by the Director

(Discipline) during the course of hearing that the only document relied upon by him in forming the prima facie opinion were the CBI charge sheet,

the SEBI investigation report and the statement given by Mr. Ramalinga Raju. The Disciplinary Committee observed that the petitioner had already

been supplied these documents and proceeded to close the case of the petitioner. Consequently, this petition has been preferred.

27. The grievance of the petitioner is that he was not given an opportunity to cross examine the witnesses and to file a detailed reply. His grievance

is that he was disabled from either filing a written statement or from cross examining the witnesses, as he was not provided the relied upon

documents and he was supplied a host of documents belatedly, which prevented him from preparing his defence.

28. The submission of Mr. Neeraj Kishan Kaul, learned senior counsel for the petitioner is that the order of the Supreme Court dated 01.08.2011

was that the institute shall ""commence"" the disciplinary proceedings from the week commencing 03.10.2011. He submits that the Supreme Court

adjourned the disciplinary proceedings, since the petitioner was pre-occupied in defending the criminal trial. It is submitted that the Supreme Court

recognized the petitioner's plight of having to defend the criminal proceedings and the disciplinary proceedings at the same time, both of which

were time and resource consuming. It is also submitted that the ""commencement"" of the disciplinary proceedings meant that the petitioner was

entitled to cross examine the witnesses, who had already been examined by the respondent on two dates, i.e. 09.07.2011 and 31.07.2011.

29. Mr. Kaul submits that the respondent, despite repeated opportunities, did not provide all the documents relied upon by the Director

(Discipline) in forming his prima facie opinion. After repeated requests these documents, running into about 3000 pages, were provided for the first

time on 06.12.2011, i.e. ten days before the date of hearing which was fixed for 18.12.2011. He submits that the petitioner could not understand

the relevance of the said documents as these had not been identified. Consequently, the petitioner moved two applications on 14.12.2011, i.e. to

seek permission to cross examine the witnesses produced by the Director (Discipline) in the earlier enquiry proceedings, and for identification of

documents supplied by the Director (Discipline) to the petitioner.

30. Mr. Kaul submits that Rule 18(2)(b) specifically provides that the Disciplinary Committee, which shall be guided by principles of natural

justice, shall ""expeditiously cause to deliver to the respondent and the complainant, a copy each of the following, -

(a) ...

(b) Particulars or documents relied upon by the Director, if any, during the course of formulation of prima facie opinion,

If the Committee decides to proceed under Rule 9(2) (b), i.e. where the Committee agrees with the prima facie opinion of the Director

(Discipline).

31. Mr. Kaul submits that Rule 18(2)(b) was not complied with as voluminous documents, relied upon for formation of the prima facie opinion,

were not provided earlier, and were provided only after the recording of the evidence of the respondents witnesses.

32. Mr. Kaul further submits that the transcripts of the statement of the witnesses, whose statements were recorded on 09.07.2011 and

31.07.2011 were given to the petitioner only in December 2011. The denial of the same also handicapped the petitioner in effectively participating

in the enquiry proceedings. Mr. Kaul submits that the recording of statement of the witness on 31.07.2011 should have been deferred, since the

SLP of the petitioner, to the knowledge of the respondent, was coming up before the Supreme Court on 01.08.2011. Unfortunately, when the

SLP was listed on 29.07.2011, the same could not be heard, as one of the Hon"ble Judges had decided to recuse and consequently the case was

adjourned to 01.08.2011.

33. The petition is vehemently opposed by the respondent. It is submitted by Mr. Arvind Nigam, learned senior counsel for the respondent that the

petitioner"s sole attempt is to delay and scuttle the disciplinary proceedings. It is submitted that the petitioner has repeatedly approached the Court

to put a spoke in the wheel, so as to see that the enquiry proceedings do not progress.

34. Mr. Nigam submits that the petitioner first preferred W.P.(C.) No.2505/2010 on the ground that since the criminal proceedings is pending

against him, the disciplinary proceedings cannot proceed. This petition was dismissed on 22.11.2010. The petitioner obtained stay in these

proceedings, which continued to operate to stall the disciplinary proceedings between 16.04.2010 and 22.11.2010. Eventually, this writ petition

was dismissed by the learned Single Judge. The petitioner then preferred a Letters Patent Appeal being LPA No.886/2010, and the Court again

granted stay of the disciplinary proceedings, which operated between 14.12.2010 and 30.05.2011, when the LPA was dismissed. Mr. Nigam

submits that the Supreme court while disposing of the petitioner's Special Leave Appeal did not issue any direction to the effect that the petitioner

would be given an opportunity afresh to cross examine those witnesses who had already been examined before the Committee, and in respect

whereof the petitioner had not availed of the opportunity to cross examine them.

35. Mr. Nigam submits that even thereafter the petitioner did not cooperate with and participate in the disciplinary proceedings. He has not filed his

written statement till date, despite expiry of the period within which the same could be filed. The proceedings were fixed on 09.07.2011,

sufficiently in advance, vide notice dated 15.06.2011. Despite that, the petitioner did not participate in the proceedings on that date to cross

examines the witnesses.

36. Mr. Nigam submits that these witnesses are officers who have investigated the case, and they are posted all over the country in different

positions. With great difficulty and at substantial costs, these witnesses could attend the hearing at Hyderabad. He submits that the proceedings

were being conducted at Hyderabad only for the convenience of the petitioner, as he is based in Hyderabad and the criminal trial also is

proceeding at Hyderabad. Mr. Nigam submits that Mr. A.Y.V. Krishna, Chief Investigating Officer in the Satyam trial is presently posted as

D.I.G, Assam. He is not easily available looking to the disturbance in the said State. Even earlier he could appear before the Committee only after

2-3 adjournments. To require him, and the other witnesses to again appear before the Committee for their cross examination could indefinitely

delay the conclusion of the disciplinary proceedings against the petitioner.

37. Mr. Nigam submits that the tenure of the present Disciplinary Committee would expire in February 2012. He submits that the President of the

Disciplinary Committee constituted u/s 21B (1) would demit his office on 11.02.2012. This would lead to further delays, as the new committee

would have to be constituted in terms of Section 21B, which would have to de novo proceed in the matter. He submits that the Disciplinary

Committee has already furnished its report based on the evidence recorded by it, and the submissions made before it on 03.01.2012. A copy of

the said report has been tendered by the respondent in Court during the course of the arguments. It is submitted that the matter is now at the stage

of Section 21B (3) of the C.A. Act. It is also submitted that the petitioner was the team leader which conducted the audit of Satyam at the relevant

time. He submits that another member, Ravindranath, who was a member of the team of which the petitioner was a team leader, has already been

punished u/s 21B.

38. Mr. Nigam submits that the grant of the right to cross examine the witnesses examined by the respondent, at this stage, would mean that these

witnesses, who are all busy with their respective assignments would have to leave their other responsibilities and work, and travel to Hyderabad.

Their lodging and boarding arrangements would have to be made in Hyderabad. Even the respondents would have to arrange for the members of

the Disciplinary Committee and the support staff to travel to Hyderabad from various parts of the country, wherever they are located. Tape

recording and transcript facilities would have to be arranged. All these would entail a huge amount of expenditure and there is no reason why the

respondents should be subjected to the said expenditure all over again, merely because the petitioner chose not to cross examine the witnesses

when they were offered for that purpose to him. Mr. Nigam further submits that the witnesses examined during the course of enquiry had also been

examined during the course of the criminal trial. The petitioner had cross examined these witnesses during the criminal trial. At the highest, the

petitioner may be permitted to rely upon their statements i.e. examination- in-chief and the cross examination of these witnesses recorded during

the criminal trial, as even according to the petitioner, the charges in the criminal case and the disciplinary proceedings are overlapping and

identical.

39. Mr. Nigam submits that the petitioner has been given sufficient opportunity in terms of Rule 18. He further submits that the petitioner has a

statutory right of appeal, in case the Disciplinary Committee decides to impose any of the penalties referred to in sub-section (3) of Section 21A,

and subsection (3) of Section 21B. Mr. Nigam submits that all the issues raised by the petitioner in the present petition can also be raised before

the appellate authority constituted u/s 22A of the C.A. Act. Mr. Nigam submits that the petitioner has an efficacious alternative remedy available to

him and this Court should, therefore, not interfere with either the disciplinary proceedings or the report formulated by the Disciplinary Committee

during the pendency of the writ petition, at this stage. Reliance is placed on the judgments of the Supreme Court in Chanan Singh Vs. Registrar,

Co-op. Societies, Punjab and Others, State of Madhya Pradesh Vs. Nerbudda Valley Refrigerated Products Company Pvt. Ltd. and Others, ;

Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, Kanhaiya Lal vs. State of Maharashtra, Criminal Appeal Nos. 338-

340/2011 and of this Court in Akkhilesh R Bhargava vs. The Institute of Chartered Accountants of India & Anr., W.P.(C)No. 4809/2011;

Jagmal Singh Vs. Delhi Transport Corporation, and Arun Kumar Nigam vs. DIG. GENL. Central Indus. Security Force & Ors., W.P. (C) No.

2646/1990.

40. In his rejoinder, Mr. Neeraj Kishan Kaul, Senior Advocate, on instructions from his client, submits that the petitioner cannot agree to rely upon

the statements of these very witnesses, including their cross examination, as recorded during the criminal trial and would need to cross examine

these witnesses again for the purpose of the disciplinary proceedings. He further submits, on instructions, that the petitioner is willing to bear the

expenses that may be incurred for summoning and examining the witnesses again for their cross examination. Mr. Kaul submits that the mere

existence of an alternate remedy by way of an appeal is no ground to reject the present petition, as according to the petitioner, the present is a case

of violation of principles of natural justice during the conduct of the enquiry proceedings. He relies upon the judgment of the Supreme Court in

Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , to submit that in cases where there is, inter alia, breach of the

principles of natural justice, existence of an alternate remedy would not create a bar to exercise of its jurisdiction by the Court under Article 226 of

the Constitution of India. Mr. Kaul submits that merely because the term of the President of the Disciplinary Committee would come to an end in

February 2012, is no ground to deny the petitioner the right to cross examine the witnesses. He submits that the reconstitution of the Committee

would not lead to the proceedings being undertaken de novo. In this regard he points out that the present Committee (as at the time of hearing of

the final arguments on 18.01.2012) was entirely different from the one that started hearing the case. He has referred to the constitution of the

Committee during the hearings held on 14.12.2009, 30.03.2010 and 15.12.2010.

41. When the arguments were concluded, I had asked Learned Counsel for the respondents to provide to this Court the expenditure that may be

incurred, in case the petitioner was to be permitted to cross examine the witnesses. The respondents have tendered a sheet showing the extent of

expenses that is likely to be incurred in case the 12 witnesses are recalled for their cross examination once again. The said statement reads as

follows:-

A.Expenses on the traveling, boarding and lodging of five members of Disciplinary CommitteeRs.2,50,000

B.Expenses on the traveling, boarding and Lodging of the staff of Disciplinary Directorate Rs.2,00,000

C.Expenses on the traveling, boarding and Lodging of witnesses @ Rs.30,000 per head Rs.3,60,000

D.Other Misc Expenses including recording and Incidental costs Rs.50,000

Rs.8,60,000

42. Having heard Learned Counsel for the parties, perused the provisions of the C.A. Act and the rules framed there under, the record of the case

and considered the submissions of the parties, in the interest of justice, I am inclined to grant one, and only one opportunity to the petitioner to

cross examine all the witnesses examined by the respondent, however subject to the conditions mentioned hereinafter.

43. I may observe at this stage itself that strictly speaking the petitioner is not entitled to the said relief in respect of the witnesses whose

examination-in-chief was recorded on 09.07.2011, and the petitioner is solely responsible for landing himself in the present state. However, since

the petitioner has agreed to bear the expenses that would be incurred for permitting the petitioner to cross examine these witnesses, so as to

provide ample opportunity to the petitioner, even at this stage, I am inclined to grant one and only one opportunity to the petitioner to cross

examine the respondent's witnesses, subject to conditions.

44. Section 21B(3) of the C.A. Act read with Rule 18 of the Rules makes it clear that the Disciplinary Committee is obliged to offer the member,

whose conduct is under examination, an opportunity of being heard and to comply with the principles of natural justice. In the present case, the

period during which the interim stay of the disciplinary proceedings remained in force, the petitioner cannot be faulted for delaying the proceedings.

The petitioner was entitled to agitate his legal rights, and merely because that led to deferment of the disciplinary proceedings, the said fact cannot

be held against the petitioner.

45. However, the Division Bench vacated the stay with the dismissal of the petitioner's LPA No.886/2010 on 30.05.2011. Therefore, for the

period after 30.05.2011, the non-participation of the petitioner in the disciplinary proceedings cannot be viewed lightly. Vide notice dated

01.06.2011, the petitioner was required to appear before the Disciplinary Committee on 18.06.2011. However, the petitioner sought an

adjournment vide letter dated 11.06.2011 on the ground that the criminal trial was at a crucial stage. This request of the petitioner was acceded to.

The developments which took place thereafter are of some significance. The respondent, vide letter dated 15.06.2011 informed the petitioner that

the next hearing had been fixed on 09.07.2011. Therefore, the petitioner had over three weeks' notice of the next hearing. He was also provided

with the documents, including those relied upon by the Director (Discipline) while forming the prima facie opinion, namely, the SEBI investigation

report, the CBI main charge sheet and the two supplementary charge sheets along with the list of witnesses who were likely to be examined on

09.07.2011. The petitioner again sought an adjournment of this hearing vide letter dated 04.07.2011. This request was rejected.

46. On 09.07.2011, though the representative of the petitioner appeared, he refused to participate in the proceedings and to cross the witnesses

whose examination-in-chief was recorded.

47. The submission of Mr. Kaul that the petitioner was not provided with the documents relied upon by the Director (Discipline) while forming the

prima facie opinion dated 17.09.2009 does not appear to be correct. Inter alia, the said documents were provided, as aforesaid, by the

respondent vide letter dated 15.06.2011.

48. Firstly, I may note that it is the categorical case of the respondents that the only document relied upon by the Director (Discipline) while

forming the prima facie opinion were, firstly the charge sheet filed by the CBI and the SEBI investigation report along with the balance sheets.

Pertinently, even at the stage of formation of the prima facie opinion, the petitioner was given repeated opportunities. However, he did not

participate in these proceedings and did not seek any document from the respondent. He repeatedly sought adjournments which only delayed the

proceedings. The submission of the petitioner that the Director (Discipline) had only provided copies of the SEBI investigation report and the CBI

charge sheet and supplementary charge sheets, and not the documents which formed the basis of the said investigation report and the charge sheets

has no merit. The Director (Discipline) had merely to form a prima facie opinion. At that stage it was not necessary for the Director (Discipline) to

have herself conducted a detailed enquiry and investigation into the commission of professional misconduct by the member of the institute. It was

not incumbent on the Director (Discipline) to have also examined or relied upon the documents forming the basis of the SEBI investigation report

or the CBI charge sheet at the stage of forming the prima facie opinion. In fact, a perusal of the prima facie opinion, which has been placed on

record of the writ petition, shows that the same primarily is based upon the letter dated 09.01.2009 of Mr. B. Ramalinga Raju, the erstwhile

Chairman of Satyam and the annual reports and balance sheets of Satyam. The supplementary charge sheets do not even appear to have been

relied upon while forming the prima facie opinion by the Director (Discipline). Even before me, the petitioner has not pointed out any document,

which, according to the petitioner, has been relied upon while forming the prima facie opinion and which was not available with the petitioner. The

supply of a large number of documents at a later stage i.e. on 06.12.2011, which are not the documents relied upon at the stage of formulation of

the prima facie opinion, therefore, does not in any way vitiate the proceedings which took place before the Disciplinary Committee on 09.07.2011.

The non-participation of the petitioner in the proceedings held on 09.07.2011 is wholly unjustified. The petitioner did not participate in those

proceedings at his own risk. It cannot be said that the proceedings held on 09.07.2011 were not in conformity with the order of the Division Bench

dated 30.05.2011 in LPA No.886.2010.

49. The position with regard to the cross examination of the last witness i.e. Shri A.Y.V. Krishna on 31.07.2011, however, stands on a different

footing. The petitioner was not provided the transcripts of the statements of the witnesses whose examination took place on 09.07.2011 and the

said transcripts were provided to the petitioner vide forwarding letter dated 05.12.2011. The three thousand odd pages/documents which were

provided to the petitioner on 06.12.2011 had been exhibited by the witnesses whose examination took place on 09.07.2011 and 31.07.2011. It

is, therefore, apparent that when the petitioner/his representative appeared before the Disciplinary Committee on 31.07.2011, the petitioner was

clearly handicapped, because the petitioner was not possessed of the statements of the witnesses, whose evidence had been recorded on

09.07.2011 and also of the documents which the said witnesses (12 in number) had exhibited. Without the said witnesses statements and copies of

the exhibits, the petitioner could not have effectively cross examined the last witness, Sh. A.Y.V. Krishna on 31.07.2011.

50. To that extent, the grievance of the petitioner appears to be justified and the petitioner should be granted an opportunity to cross examine the

last witness Sh. A.Y.V. Krishna, to prevent the breach of the principles of natural justice.

51. The submission of Mr. Nigam that on account of the expiry of the tenure of the President of the Disciplinary Committee in January 2012, the

proceedings before the Disciplinary Committee would have to commence de novo does not appear to be correct. The petitioner has demonstrated

that, from time to time, the constitution of the Disciplinary Committee has undergone changes. The proceedings in a case continue, irrespective of

the changes that may come about with the passage of time in the Disciplinary Committee. The same phenomenon is experienced even in Courts.

What is relevant is that the Disciplinary committee which finally hears the arguments of the parties should render its decision.

52. The submission of Mr. Nigam that the petitioner has an alternate efficacious remedy by way of an appeal also does not have merit. It is well

settled that a case involving breach of principles of natural justice would be dealt with by the Court while exercising jurisdiction under Article 226

of the Constitution of India and the aggrieved party cannot be non suited merely because of the existence of an alternate efficacious remedy.

Reference may be made to the decision of the Supreme Court in Whirlpool (supra) and to the following extract from the said decision:

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ

petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the

High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar

in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there

has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is

challenged. There is a plethora of case law on this point. ...

53. The judgments relied upon by the respondent deal with entirely different facts and circumstances as opposed to the present case and are not

relevant for the present purposes.

54. In Chanan Singh (supra) and Jagmal Singh (supra) writ petitions had been preferred when the matter was only at the initial stage of show

cause, and for such reasons, the same came to be dismissed as premature. Moreover, these cases did not consider the impact on the

maintainability of the Petition under Article 226 of the Constitution in case of breach of principles of natural justice.

55. In Kanhaiya Lal (supra) writ petition had been preferred against notice issued by the Assistant Registrar, directing the borrower to hand over

of the possession of mortgage properties on account of non-payment of secured debt. Similarly in Nerbududda Valley (supra) writ petition had

been preferred against order passed by the Nazul Officer, rejecting the application for grant of No Objection Certificate (NOC) to raise

construction on the leased land after changing the land use from industrial purpose to commercial purpose. The writ petitions, in both these cases,

came to be dismissed on account of existence of alternate efficacious remedy of appeal. However, it is relevant to note, that in neither of these

petitions, was the plea of violation of the principles of natural justice considered by the Court.

56. In Akkhillesh R Bhargava (supra) this Court, unlike the present case, dealt with the Act as it stood prior to the 2006 amendment wherein the

Council was required to forward the case to the High Court along with its recommendation u/s 21 (5) [as it stood then], when it found any member

of the Institute guilty of Misconduct upon receipt of a report of the Disciplinary Committee. The Petition had been preferred on the ground of

violation of principle of natural justice by the Disciplinary committee. The same came to be dismissed as premature since the Council had till then

not acted upon the report of the committee and tendered its recommendations. It is also pertinent to mention that the High court while passing the

order did not consider the aforementioned decision of the Supreme Court in Whirlpool (supra).

57. In Arun Kumar Nigam (supra), the petitioner assailed an order imposing punishment on ground of violation of principles of natural justice

amongst others. However, since the petitioner could not prove that he was prejudiced by the alleged violation, this Court dismissed the petition.

On similar grounds, the Supreme Court in Haryana Financial Corporation (supra) set aside the order of the High Court, wherein the High Court

allowed the writ petition on ground of violation of principle of natural justice without proof of prejudice. In the present case, however, the petitioner

has been able to establish the prejudice suffered by him vis-à-vis the proceedings of the Disciplinary Committee held on 31.07.2011.

58. Considering the fact that the petitioner is entitled to be granted the opportunity to cross examine Sh. A.Y.V. Krishna, and, for that purpose the

Disciplinary Committee would need to reassemble, in the interest of justice, I am inclined to grant to the petitioner one, and only one, opportunity

to cross examine the other witnesses as well, subject to the following conditions:-

(1) The petitioner deposits with the respondent, an amount of Rs.7.5 lakhs to meet the expenses that may be incurred in the process of summoning

the witnesses and holding the proceedings in Hyderabad for two consecutive days. The same would also cover the transportation, lodging and

boarding expenses of the witnesses and the Committee members and staff for holding the proceedings at Hyderabad. The said amounts shall be

deposited by the petitioner within two weeks from the date hereof. The said amount has been stipulated on the assumption that the petitioner shall

takes steps to summon the witnesses without default and the said witnesses shall be cross examined on the dates they are summoned for and that

the petitioner shall not seek any deferment or adjournment. If the overall expenses exceed the amount of Rs.7.5 lakhs, the same shall be borne by

the respondent. However, if it is less than the said amount, the petitioner shall be refunded the excess amount after adjusting the actual expenses

incurred.

(2) The dates for holding the proceedings shall be mutually agreed upon between the petitioner, the respondent and the witnesses and, in any

event, shall not be later than one month from the date of hereof.

(3) Soon after the cross examination of the witnesses is concluded, the hearing shall take place before the Committee without any adjournment

being sought by the petitioner.

In the light of the aforesaid, the report prepared by the Disciplinary Committee dated 03.01.2012 is set aside. It is, however, made clear that the

Court has not gone into the merits of the case and the Disciplinary Committee may make the fresh report without being influenced by the

observation of this Court in this judgment. However, if the petitioner does not take steps in accordance with this judgment, the report of

Disciplinary Committee dated 03.01.2012 shall stand revived. With these directions, the writ petition stands disposed of.