

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: August 16, 2016*

+ **CHAT A. REF.4/2012**

COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

.....Relator

Represented by: Mr.Rakesh Aggarwal, Advocate
with Mr.Pulkit Agarwal, Advocate

versus

GURVINDER SINGH & ANR.

.....Respondents

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (ORAL)

1. This is a reference under Section 21(5) of the Chartered Accountants Act, 1949. The penalty proposed is removal of respondent No.1's name from the Register of Members for a period of six months.

2. The complainant Mohit Gupta claimed that respondent No.1, a Chartered Accountant by profession, sold 100 shares of Aban Lyod Chiles Offshore Ltd. to him in November 1999 but he lodged the transfer deed for transfer of the shares on November 04, 2004. In the interregnum, respondent No.1 continued to receive dividends and in July 2004 obtained duplicate share certificates in his name by misrepresenting that the original share certificates were lost. The complainant made good his complaint before the Disciplinary Committee of the Institute of Chartered Accountants. The respondent No.1 claimed not to have sold

any shares to the complainant but settled the dispute with the complainant by agreeing that the owner of the shares would be the complainant.

3. The view taken by the Disciplinary Committee is that the conduct of respondent No.1 evinces that he sold the shares to the complainant and since he continued to receive dividends declared by the company which obviously was because the complainant did not lodge the shares for transfer of shares in his name for five years he thought that he could cheat the complainant. The conduct of respondent No.1 has been found to be unworthy of a Chartered Accountant.

4. We have asked Mr.Rakesh Aggarwal, whether the conduct of respondent No.1 would attract disciplinary proceedings against him because it is not the case of the complainant that respondent No.1 was discharging functions as a Chartered Accountant when he sold the shares to him. Howsoever deplorable may be the conduct of respondent No.1, question would be : Would the conduct be subject to disciplinary control by the Council.

5. Learned counsel states that harmoniously read, Section 21 and 22 of the Chartered Accountants Act, 1949 would make liable the offending act of respondent No.1 as an actionable misconduct.

6. Section 21 of the Act prescribes the procedure to be followed when a complaint concerning misconduct of a member of an Institute is received. Section 22 defines misconduct. It reads as under:-

“22. Professional misconduct defined

For the purpose of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section

shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-Section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.”

7. Part I of the First Schedule enumerates conducts deemed to be professional misconduct. The use of the word ‘deemed’ in Part I of the First Schedule would make it clear that the professional misconducts enumerated therein are inclusive i.e. the ones enumerated in the Schedule would be deemed to be professional misconducts. Sub-Section (1) of Section 21 reads as under:-

“(1) Where on receipt of information by, or for a complaint made to the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.”

8. Thus, a professional misconduct enumerated in the First Schedule of the Act would be a category by itself and other misconduct contemplated by Sub-Section (1) of Section 21 would have to be looked outside Part I of the First Schedule. It would be a conduct which any reasonable member of the society would frown upon. But, would it be all kinds of conduct?

9. It would thus be necessary to examine the scheme of the material provisions of the Act. The Act came into force in 1949 and it was passed because the Legislature thought it expedient to make provision for the regulation of professional accountants and for that purpose it established the Institute of Chartered Accountants.

10. Section 2, Sub-Section (1)(b) defines a Chartered Accountant as meaning ‘*a person who is a member of the Institute and who is in practice*’. Sub-Section (2) of Section 2 provides that a member of the Institute shall be deemed to be in practice when, individually or in partnership with chartered accountants, he, in consideration of the remuneration received or to be received, does any of the acts mentioned in the four clauses of the sub-Section. The four clauses read:-

*“(i) engages himself in the practice of accountancy;
or*

(ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or

(iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or

(iv) renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant and the words “to be in practice” with their grammatical variations and cognate expressions shall be construed accordingly.”

11. In dealing with the question it assumes importance that a member of the Institute would be deemed *to be in practice* when, for remuneration received or to be received the person performs the acts enumerated in the four clauses hereinabove noted. Section 30 of the Act confers power on the Central Government to make regulations. The only relevant regulation we can find on the subject is Regulation 78 which reads:-

"Regulation 78.

Without prejudice to the discretion vested in the Council in this behalf, a Chartered Accountant may act as liquidator, trustee, executor, administrator, arbitrator, receiver, adviser, or as representative for costing financial and taxation matter or may take up an appointment that may be made by Central or State Governments and Courts of law or any Legal Authority, or may act as Secretary in his professional capacity not being an employment on a salary-cum-full time basis."

12. In the decision reported as AIR 1958 SC 72 Council of Institute of Chartered Accountants & Anr. vs. B.Mukhreja, a Chartered Accountant who had been appointed as a liquidator was held liable for professional misconduct on the reasoning that Regulation 78 provided for a Chartered Accountant to act as a liquidator and thus while acting as a liquidator Sh.B.Mukhreja would be deemed to be in practice as a Chartered Accountant. The judgment brings out that the acts of omission or commission must relate to the offender acting as a Chartered Accountant and rendering service for remuneration and must be engaged in an activity which a Chartered Accountant would be entitled to be engaged in, wearing the hat of a Chartered Accountant.

13. For example, a Chartered Accountant may drive rashly and negligently and in the process may kill a human being. This conduct would be an offence, but not a misconduct for the purposes of the Act.

14. In the instant case the respondent was acting as an individual in his dealings with the complainant which were purely commercial. While selling the shares held by him the respondent was not acting as a Chartered Accountant. He was not discharging any function in relation to his practice as a Chartered Accountant.

15. The Reference is accordingly answered by declaring the law as above and not inflicting any penalty upon the respondent.

16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 16, 2016

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