

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

% *Date of Decision: August 12, 2016*

+ **CHAT A. REF.2/2012**

COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA Petitioner
Represented by: Mr.Rakesh Aggarwal, Advocate
with Mr.Pulkit Agarwal, Advocate

versus

MAHESH KUMAR GUPTA & ANR.Respondents
Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (ORAL)

1. The reference made to this Court by the Institute of Chartered Accountants under Section 21(5) of the Chartered Accountants Act, 1949 has reached for hearing today. Whereas counsel as above appear for the Institute of Chartered Accountants, the first respondent who is the contesting respondent has not appeared.

2. With the able assistance of Sh.Rakesh Aggarwal, Advocate we have gone through the record commencing from the complaint received against the first respondent till the final recommendation made to this Court by the Council Members at the meeting held on September 20 and 21, 2010 recommending penalty of reprimand, contemplated by Section 21(6)(b) of the Chartered Accountants Act, 1949 to be inflicted.

3. One S.K.Garg made a complaint on January 31, 2006 against the respondent alleging that the complainant had engaged the services of the

respondent to file his personal and his family members income tax returns and as and when called upon to pay professional charges the complainant used to pay the professional charges and was surprised to receive a bill from the respondent on November 10, 2004 demanding a sum of ₹3.8 lacs as professional fee for filing the returns of the complainant for 19 years commencing from the financial year 1985-86 till the financial year 2004-05. The bill was raised @ ₹20,000/- per annum. As per the complainant the bill was accompanied by a threatening written communication which was alleged to be unethical the communication contained a threat to initiate legal action and with a limb informing the complainant that for the year 2004-05 the learned Assistant Commissioner Income Tax desired to verify the details of the loans stated to have been advanced by the complainant's mother Shanti Devi. As per the complainant the learned Assistant Commissioner of Income Tax had not passed any order to said effect. A copy of the communication was alleged by the complainant to have been sent to the CMD of National Hydro Power Corporation. It was further alleged by the complainant that the respondent solicited professional work through personal communications.

4. The complaint was taken cognizance of. A Disciplinary Committee was constituted which heard the complainant and the respondent and the evidence placed on record by the complainant.

5. Noting that there was evidence to establish that the respondent was filing the income tax returns of the complainant and his family members, the Committee noted that the respondent had filed a Civil Suit for recovery of the professional outstanding dues and the issue was sub-judice. The Committee noted that along with the bill dated November 10, 2004 a written communication was sent in which it was written that

if the payment was not made the respondent shall initiated legal proceedings against the complainant and that the Assistant of Income Tax has desired to verify the details of the loans concerning Ms.Shanti Devi.

6. The Committee opined that it was strange that the respondent would raise a bill for 19 years services rendered in the year 2004 and found no explanation from the respondent as to why for each year as and when professional services were rendered a bill was not raised. Finding no proof by the complainant that he had paid professional charges, the Committee did not delve any further on the merits of the dispute concerning ₹3.8 lacs payable towards professional services rendered. Though no reasons have been expressly stated as to why the Committee left it at that, by noting the facts and making prima-facie observations, the reason appears to be that the dispute was a civil dispute and was sub-judice. But, with respect to the written communication appended by way of note to the bill, the Committee opined that the language was threatening and not expected of a Chartered Accountant who is looked upon by the society as a dignified professional. The threat pertaining to the second part of the note was found to be a wee bit aggravating.

7. With respect to the communication concerning soliciting work the Committee found that the writing was on a plain paper and not on the letter head of the firm of the respondent; it bore no signatures and thus was opined to be not indicative of being sent by the respondent. The complainant failed to establish that the communication originated from the respondent. Thus, the Committee absolved the respondent of said charge. The Committee also found that the complainant had not established the respondent having disclosed any information which he had accessed as a Chartered Accountant concerning the complainant to

any other person. The Committee therefore opined that the respondent would be guilty of the first misconduct alleged i.e. annexing a note to the bill dated November 10, 2004 which contains a language not expected from a Chartered Accountant.

8. The Council in its meeting held on September 20 and 21, 2010 recommending penalty of reprimand, contemplated by Section 21(6)(b) of the Chartered Accountants Act, 1949 to be inflicted.

9. Section 22 of the Chartered Accountants Act, 1949 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.”

10. 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.”

11. 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.

12. Now, a professional who threatens a client would certainly commit a misconduct because the act is of a kind which is not expected by members of a civil society to be committed by a professional.

13. We concur with the view taken by the Council and thus dispose of the Reference levying penalty of reprimand upon the respondent; the penalty is envisaged by Section 21(6)(b) of the Chartered Accounts Act, 1949.

13. The reference is disposed of.

14. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 12, 2016

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