

Complaints made to the ICAI shall be enquired with an unbiased behaviour and by following the established principles of law

The Hon'ble Madras High Court *in V. Venkata Siva Kumar v. Union of India & Ors. [W.P. No. 32279 of 2013 dated January 21, 2022]* quashed the decision of Disciplinary Board of the ICAI against the Chartered Accountant alleged of committing of misconduct. Held that, the complaint filed is undoubtedly incomplete and cannot be relied upon and was not enquired properly and by following the established principles of law. Further, held that complaints made to the Disciplinary Authority shall be enquired in all aspects with an unbiased behaviour before passing an order and the reasons for forming any opinion is of paramount importance in an enquiry proceedings.

Facts:

V. Venkata Siva Kumar ("**the Petitioner**") is a Chartered Accountant and lawyer by qualification and has been a member of the Institute of Chartered Accountants of India ("**ICAI**") and working as a professor for students pursuing professional courses and in this capacity, the Petitioner has been a member of faculty of leading management and professional institutions.

A leading newspaper published an article alleging that the President of ICAI, is running a coaching centre and the students linked to the President have been placed consistently high in exams conducted by ICAI, thereby, insinuating a lack of integrity.

Subsequently, a complaint was filed by Mr. N.S. Srinivasan ("**the Respondent No. 4**") against the Petitioner alleging publishing of such article in the newspaper, and action was initiated and the disciplinary committee of the ICAI conducted an enquiry, where the Board of Discipline accepted the report of the enquiry committee and passed a resolution based on the findings that the Petitioner was guilty of misconduct. Further, a civil defamation case at Chennai and a criminal case was filed against the Petitioner at New Delhi.

The Petitioner filed also a disciplinary complaint against the Respondent No. 4 for making malicious and frivolous allegations that resulted in the Petitioner being removed from the faculty position, wherein, the Disciplinary Directorate ("**the Respondent No. 3**") accepted the conclusions made by the Board of Discipline and the complaint filed by the Petitioner was rejected.

Being aggrieved, the Petitioner has filed this petition.

The Petitioner contended that the documents, evidences and precedents furnished to the Respondent No. 3 were neither considered nor have been given by the disciplinary committee.

Issue:

Whether the Respondents was correct in rejecting the complaint filed by the Petitioner without considering all the allegations as well as the documents and evidences produced?

Held:

The Hon'ble Madras High Court *in W.P.No.32279 of 2013 dated January 21, 2022* held as under:

- Noted that, the compromise discussion were going on between the Petitioner and Respondent No. 3 and during the discussion the Petitioner was made to believe that the criminal case as well as the defamation case will be withdrawn and the Petitioner will be taken back as a faculty. However, the criminal case alone was withdrawn and other promises were not honoured by the authorities.
- Observed that, the enquiry report reveals that the disciplinary authority recorded the allegations set out in the complaint by the Petitioner as well as the written statement filed by the Respondent No. 4 But, there is no findings or reasons for the purpose of forming an opinion to close the complaint. Merely recording that the Petitioner has not submitted the

evidence is insufficient and the documents filed by the Petitioner as well as the statement are to be scrutinized, considered and appropriate findings are just and necessary, which alone will satisfy the requirements of the fair enquiry to be conducted in accordance with law.

- Further stated that, the Respondent No. 3 has recorded the pleadings and formed an opinion directly that the complaint was made without any evidence. There is no reason to arrive at such conclusion. Reasons for forming an opinion is of paramount importance in an enquiry proceedings. Any enquiry while dealing with complaint is expected to deal with each and every issue raised and consider the documents and evidences filed by all the respective parties and make finding on what basis such evidences can be relied upon or cannot be relied upon. Reasons are the live link for forming an opinion. In the absence of reasons, the enquiry report is undoubtedly incomplete and cannot be relied upon.
- Held that, the complaint filed by the petitioner was not enquired into properly and by following the established principles of law. Further, reasons and the findings in respect of each issue or allegations made are necessary to form an opinion that the enquiry was conducted in a proper manner.
- Quashed the decision of the Board of Discipline passed.
- Remanded the matter back to the Respondent No. 3 and directed to conduct a fresh enquiry and give opportunity to all the parties, considering all the allegations as well as the documents and evidences produced, in a fair and impartial manner, take an appropriate decision and pass orders within 4 months.
- Further, directed the Petitioner to cooperate in conducting a fresh enquiry additionally gave liberty to submit pleadings, documents and evidences including additional documents and evidences, if any for the purpose of establishing the case before the enquiry committee.

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