

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

C.P. No.89 OF 2013

BETWEEN:

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
ICAI BHAWAN, P B NO.7100, I P MARG  
NEW DELHI 110 002.

... PETITIONER

(BY MR. SRIRANGA S, SENIOR COUNSEL FOR  
MRS. SUMANA NAGANAND A/W  
MS. ANUPAMA SPOORTHY, ADVS.,)

AND:

SHRI. P.P. JOY  
CHARTERED ACCOUNTANT  
HOUSE NO.237, 5TH MAIN  
5TH CROSS, VIVEK NAGAR  
BANGALORE 560047.

... RESPONDENT

(BY MR. H. SHANTHI BHUSHAN, ASGI)

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THIS CIVIL PETITION IS FILED U/S.21(5) OF THE  
CHARTERED ACCOUNTANTS ACT 1949, PRAYING TO PASS  
NECESSARY ORDERS IN ACCORDANCE WITH SECTION 21(6) OF  
THE CHARTERED ACCOUNTANTS ACT, IN THE INTEREST OF  
JUSTICE AND EQUITY.

THIS C.P. COMING ON FOR FINAL HEARING, THIS DAY, ALOK ARADHE J., DELIVERED THE FOLLOWING:

ORDER

This petition under Section 21(5) of the Chartered Accountants Act, 1989 (hereinafter referred to as 'the Act' for short) has been filed by Institute of Chartered Accountants of India (hereinafter referred to as 'the Institute' for short) seeking orders of this court on the recommendation made by the Institute.

2. Facts giving rise to filing of this petition in nutshell are that respondent was employed in M/s Mather and Platt (India) Ltd., a group company and at the relevant time, was working in M.R.Chabaria Investment Companies. The respondent was entrusted with the task of maintaining account and carrying banking functions and income tax matters. The respondent on 06.10.1999 sent his resignation without giving requisite notice of 30 days. The respondent neither handed over the charge nor was relieved from the service officially. He was absconding from the office with effect from 11.12.1999. The respondent carried with him

cash of Rs.13,828.89/- and withdrew funds of the company fraudulently to the tune of Rs.2,75,125/- by fabricating Bank statements.

3. A complaint was filed against the respondent before the Institute alleging misconduct on the part of respondent under Section 21 of the Act, in which following charges were made against the respondent:

(i) The respondent sent his resignation letter on 06.12.1999 and has been absconding from office w.e.f. 11.12.2011.

(ii) The respondent has not given notice of one month as per terms of appointment and not handed over charge and was not relieved from service officially.

(iii) While leaving, the respondent carried with him cash in hand of Rs.13,828.89/- withdrew funds fraudulently to the tune of Rs.2,75,125/-.

(iv) The respondent has fabricated Bank Statements.

4. In accordance with Regulation 12(6) of the Chartered Accountants Regulations, 1988, a copy of the complaint was forwarded to the respondent requesting him

to file written response. However, despite various communications, the respondent did not file his written response. The institute in the absence of any written response, in its meeting held on 05.10.2008, was prima facie of the opinion that respondent is guilty of professional misconduct and decided to call an enquiry in the matter by the disciplinary committee. The hearing was fixed before the disciplinary committee on 29.11.2008 but was adjourned. The proceeding before the disciplinary committee was adjourned to several dates and on 11.06.2010, on the request of the respondent, the hearing before the disciplinary committee was adjourned to 27.01.2011.

5. On the aforesaid date, the complainant and the respondent were present and the charges were explained to the respondent. The respondent however did not plead guilty. Thereupon the committee considered the submissions made by both the parties and issued a report on 10.02.2011 finding respondent guilty of other misconduct within the meaning of Section 22 read with Section 21 of the Act for two charges firstly, that the respondent fabricated the bank

statements by making new bank statements and secondly, that he had fraudulently taken away the funds of the group companies for personal purpose, of which he was custodian. The report of the disciplinary committee was sent to the parties on 12.07.2011 and parties were requested to file their written submissions. The complainant submitted his written submissions on 22.07.2011. Thereupon by a communication dated 30.11.2011, the parties were informed that the report of the disciplinary committee would be considered by the Institute on 15.12.2011. However, on the said date, the report of the disciplinary committee could not be considered. Thereafter, eventually by a communication dated 30.05.2012, the parties were informed that the report of the disciplinary committee would be considered by the Institute on 19.06.2012.

6. The respondent however, neither submitted any written representation nor is authorized representative appeared before the Institute. The Institute on 19.06.2012, inter alia decided to accept the report of disciplinary committee as the respondent had failed to adduce any oral /

documentary evidence in his support. The Institute found the respondent guilty of other misconduct falling within meaning of Section 22 read with Section 21 of the Act and has referred this matter with a recommendation to remove the respondent from the register of members for a period of one month. In the aforesaid factual background, this petition has been filed.

7. Learned counsel for the Institute submitted that the report of the Institute be accepted as the respondent has been found to be guilty of grave misconduct and the penalty has been imposed on the respondent commensurate to the misconduct, which has been proved. None has appeared on behalf of the respondent.

8. We have considered the submission made by learned Senior counsel for the petitioner and have perused the record. The profession of Chartered Accountants is a noble profession and the member of the profession has the onerous responsibility to maintain the dignity and decorum of the profession. The charges leveled against the respondent are very serious. Despite opportunities being afforded to the

respondent, he has not chosen to respond to the notices and has failed to appear before the disciplinary committee as well as the Institute. Therefore, considering the gravity of charges leveled against the respondent, an order of penalty commensurate to the misconduct proved against the respondent has to be imposed on him.

9. We find that the penalty recommended to be imposed by the Institute to remove the respondent from register of members for period of one month is just and proper as he is proved to be guilty of other misconduct within the meaning of Section 22 read with Section 21 of the Act. We therefore, direct the counsel to implement the order within a period of two months from the date of receipt of copy of this order.

In the result, the petition is allowed.

Sd/-  
JUDGE

Sd/-  
JUDGE