

In Re: S.G. Mandre

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Court : Mumbai

Decided On : Oct-10-1951

Reported in : [1952]22CompCas130(Bom)

Judge : Chagla, C.J. and ;P.B. Gajendragadkar, J.

Acts : [Chartered Accountants Act, 1949](#) - Sections 20(2) and 21; Auditors Certificates Rules, 1932 - Rule 14(1); Indian Companies Act - Sections 144(2)

Appeal No. : C.A. Case No. 1 of 1951

Appellant : In Re: S.G. Mandre

Judgement :

Chagla, C.J.

1. The respondent is an incorporated and registered accountant practising in Bombay, and we have before us a report made by the Council of the Institute of Chartered Accountants of India submitting its finding that the respondent has been guilty of misconduct which renders him unfit to be a member of the Institute, and the report has come before us under Section 21 of the Chartered Accountants Act (XXXVIII of 1949).

2. Mr. Khandalawala who appears for the respondent has, in the first instance, raised certain question of law, and in order to dispose of them it is necessary to look at the scheme of the Act which has been recently passed by the Legislature.

The object of the Act is the establishment of an Institute of Chartered Accountants and that Institute is constituted a body corporate with perpetual succession, and among others all persons who were registered accountant are entitled to have their names entered in the register of the Council of the Institute and also its functions. It confers disciplinary jurisdiction upon the Council and provides that where information is received which goes to show that a member of the Institute has been guilty of conduct which if proved would render him unfit to be a member of or on behalf of the Central Government, the Council shall cause an inquiry to be held in such manner as may be prescribed and the finding of the Council shall be forwarded to the High Court. Then on receipt of the finding the High Court has to fix a date for the hearing of the case and after hearing the case the High Court has been empowered to pass final orders on the report of Institute. Then 'misconduct' is defined, and Section 31 or qualified auditor in any other law for the time being in force or in any document whatsoever shall be construed as a reference to a chartered accountant as defined in the Act', and there is a schedule to the Act which sets out various instance which would render a chartered accountant guilty of conduct rendering him unfit to be a member of the Institute.

3. Now, before this Act was passed registered accountants were enrolled by the Central Government and the Central Government exercised all disciplinary powers with regard to registered accountants and Auditors Certificates Rules were framed under Section 144(2) of the Indian Companies Act which provided for the issuing of an auditor's certificate and also empowering the Central Government to remove permanently or temporarily from the register of auditors persons who were found guilty of misconduct.

4. Mr. Khandalawala's first contention is that the complainant with regard to the misconduct which the Institute has inquired into was made on the 11th of June, 1949, and the Act came into force on the 1st of July, 1949, and Mr. Khandalawala contends that inasmuch as the respondent committed the offence prior to the coming into force of the Act he cannot be punished with regard to that offence by means of the machinery set up under the new Act. He also contends that a fresh disability has been created by the Act and the respondent cannot be penalised with regard to that disability which did not exist when this alleged offence took

place. The position with regard to the disciplinary jurisdiction under the Auditors Certificates Rules the Central Government was empowered permanently or temporarily to remove from the register of accountants the name of any person whom the Central Government has declared not to be a fit and proper person to misconduct or dishonesty committed in his professional propriety, provided that before making such declaration the Central Government shall not be cancelled, and shall make such further inquiry as it may consider necessary. Therefore the respondent was liable to be removed from the register of accountants if he was guilty of negligence, misconduct or dishonesty committed in his professional capacity or even for breach of professional propriety, and the only right that he had was that the Central Government had to give him notice to show cause, and as far as the inquiry was concerned it was left to the discretion of the Central Government to make any further inquiry. The position under the Act is that misconduct is defined under Section 22, and the section provides : 'For the purpose of this Act, the expression 'conduct which, if proved will render a person unfit to be a member of the Institute' shall be deemed to include any act or omission specified in the schedule, but nothing in this section shall be construed to limit or abridge in any way the power conferred 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.' Mr. Khandalawala urges upon us to hold that the schedule is exhaustive and the power of the Institute to inquire with regard to misconduct is limited to the instance and circumstances mentioned in the schedule. That contention is obviously fallacious because the schedule is merely illustrative and not exhaustive, and Section 22 in terms provides that nothing in that section should be construed to limit or abridge the power of the Council to inquire into the conduct of any member of the Institute under any other circumstances. All that the schedule does is to point out to the members of the Institute certain circumstances and certain instances which if established would undoubtedly amount to misconduct on the part of the member. But there may be conduct which does not fall under any one of the instances mentioned in the schedule and which might still be construed as misconduct and it will be competent to the Institute to inquire into any conduct which in its opinion renders a member of the Institute unfit to continue as such. Mr. Khandalawala has referred us to sub-

clause (v) of the schedule which provides : 'is guilty of such other act or omission in his professional capacity as may be specified by the Council in this behalf, by notification in the Gazette of India.' Mr. Khandalawala's argument is that sub-clause (v) is a further pointer to the fact that the schedule was left out from the schedule it could be included in it by a notification in the Gazette of India. In our opinion, sub-clause (v) merely sets up a machinery whereby the schedule could be further expanded, but sub-clause (v) does not indicate that the schedule itself is exhaustive. In order to determine the nature of the schedule we have to turn to Section 22 and as I just pointed out Section 22 makes it perfectly clear that the schedule was only intended to be illustrative and not exhaustive.

5. Then as regards the procedure in inquiries relating to misconduct there is an obligation case under Section 21(1) upon the Council to hold an inquiry in such manner as may be prescribed. Therefore under the Act the respondent has obtained a statutory right to an inquiry if he is charged with misconduct. He has received the further right of the findings of the Institute being looked into and considered by the High Court, and he has also a statutory right to be heard by High Court before final orders are passed. Therefore under the present Act far from the rights of the respondent being in any way curtailed or abridged, in place of a purely administrative inquiry by the Central Government an accountant now who is charged with misconduct has the right to have a judicial inquiry. Mr. Khandalawala says that the only tribunal which could deal with the charge of misconduct against this client was the Central Government. He said that he had a right to have his case tried by the tribunal when the alleged misconduct was committed and that right of his cannot be taken away by Act XXXVIII of 1949. Now it is well settled that no one has a vested right to procedure or to any particular tribunal. No substantive right of the respondent has been taken away by Act XXXVIII of 1949. His only right is that before he is punished he should be properly tried and that the rules of natural justice should be observed. That right, as I have just pointed out, has not only been protected by Act XXXVIII of 1949, but that right has been expanded, and therefore the mere fact that a new tribunal has been substituted in place of the old tribunal cannot be held to have deprived the respondent of any vested right. The position would have been different if the case of the respondent had been that the conduct of which he has been held guilty

would not have been misconduct under the Auditors Certificates Rules, 1932. When I will presently deal with the conduct it will appear that the conduct clearly falls within Rule 14(1)(d) of those rules. Therefore if he is guilty of that conduct he could have been removed and he can be equally removed by this court under the new Act for the same misconduct.

6. Then our attention is drawn to Section 20(2) of the Act and that provides that the Council shall remove from the register the name of the any member who has been found by the High Court to have been guilty of conduct which renders him unfit to be a member of this Institute, and it is suggested that the only power that the High Court has is to pass an order ordering that the offending accountant should be removed from the register. That is clearly not so because under Section 21(3) it is left to the High Court to pass final orders in inquiries relating to misconduct of members of the Institute and the power of the High Court is in no way circumscribed. All that Section 20(2) provides is that in the event of the High Court ordering the removal of the name of an accountant who has been guilty misconduct, the Council shall carry out the order of the High Court. It is clear that the only penalty that the High Court can impose is not the penalty of permanently removing the name of an accountant from the register. It is open to the High Court merely to warn the accountant, it is open to the High Court to suspend the accountant from practice, or to pass the extreme penalty of having his name removed from the register.

7. With this background in mind let us turn to the facts of this case, which are not in dispute. The respondent, as an incorporated and register accountant, had the right to train person for becoming incorporated and register accountants, and for this purpose young then could sign articles with the respondent. The respondent offered to train the complainant for becoming an incorporated accountant and also a registered accountant and two articles were signed by the complainant in respect of the course of incorporated accountant and also of registered accountant. In respect of the first, the respondent charged Rs. 2,000 and in respect of the second the respondent charged Rs. 1,260. It is not disputed that under the articles there was an obligation upon the respondent personally to train the complainant and as the respondent was practising in Bombay and there was a

duty and obligation upon the respondent to train the complainant in Bombay. This position was clearly understood by the respondent. But as the complainant was a resident of Bangalore and in fact as he was carrying on a wine business there, the respondent agreed for a further consideration of Rs. 1,000 to allow the complainant to be trained by his brother who was an accountant practising in Bangalore. This is the main charge that has been proved against the respondent by the Council and as I said before really there is no defence to this accusation. The further charge which has also been clearly established is with regard to the preparation of the two documents, which embodied the articles. With regard to the articles relating to the Society of Incorporated Accountants and Auditors, it is attested by S. R. Mandre in Bangalore City. It has been found as a fact that the respondent was not in Bangalore on the 16th December when this document was executed. Therefore S. R. Mandre, his brother, could never have attested his signature and the respondent could never have executed the document in Bombay of S. R. Mandre. With regard to the other articles, it is admitted by the respondent that one Savant attested the document in Bombay before it was executed by the complainant. After Mr. Savant had attested it, the document was sent to Bangalore and the complainant executed it. It was executed by the respondent also in Bombay. In Savant's attestation the place Bombay is mentioned and the date is also mentioned, and the whole object of doing it was to show as if the document was executed in Bombay, and the respondent admits that unless the document was executed in Bombay, the Central Government could never have registered the articles. It was therefore to induce the Central Government to register the articles that this device was resorted to and really a false document was prepared conveying the impression that it was executed in Bombay whereas in fact it was executed in Bangalore. Both these charges in our opinion, are very serious charges.

8. Mr. Khandalawala has appealed to us to take a lenient view of the matter as his client has been practising as an accountant for the last fifteen years and has had unblemished record. Mr. Khandalawala also says that his client is about 48 or 49 years of age and that his whole future should not be blasted by reason of one mistake that he has made in his life. When considering the conduct of the respondent we must also bear in mind that the profession of accountants is a very

honourable and learned profession and that our Government for the first time has set up a Council and has conferred upon the Council important powers to deal with disciplinary matters affecting the members of the profession. The standards and traditions of a profession can only be maintained by the members themselves and when such important powers are for the first time vested in the Council it is necessary that the Council should exercise those powers for the benefit and welfare of the profession whose interests are entrusted to its care. It is very important that proper traditions should be laid down in the early days of the Institute and it is also important by those who are on the register of the Council, and therefore we do not agree that we should really take a lenient view of the case that is before us. There is this in favour of the respondent that he agreed to do what he did under the respondent and the respondent was greatly indebted to him, and when a request was made on behalf of the complainant that he should be allowed to remain in Bangalore and yet formally sign articles with the respondent, the respondent should not be permitted to prevail over one's duty or one's obligation to one's profession and in this case unfortunately the respondent might have felt it difficult to resist the request. But friendship should not be permitted to prevail over one's duty or one's obligation to one's profession and in this case unfortunately the respondent was not merely actuated by consideration of friendship. Mercenary motive also entered into the transaction because admittedly the respondent charged Rs. 1,000 more in order to permit the complainant to remain in Bangalore and not insist upon his coming to Bombay and work as articles clerk with the respondent. It is true that it has been disclosed in evidence that he consideration was offered by the complainant and not demanded by the respondent. But even so, the respondent did accept the consideration offered by the complainant, knowing full well that this was a consideration for doing something which was improper and contrary to the tradition of the profession. But in our opinion, the more serious charge against the respondent is with regard to the two documents which he prepared knowing full well that they did not represent the true state of affairs. An educated and trained man like the respondent should have been more conscious of his responsibilities with regard to formal and solemn Government. Really there are no extenuating circumstances with regard to the preparation of these documents except, as Mr. Khandalawala has put it, once you

start going down the road it is very difficult to call a halt and one crime leads to another.

9. Taking everything into consideration, we think the proper order to make in this case is that the respondent should be suspended from practising as an accountant for two years. Sir Jamshedji says that he does not press for costs. Therefore there will be no order as to costs.

10. Order accordingly.

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