

Controller of Insurance Vs. H.C. Das

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Court : Kolkata

Decided On : Jan-04-1957

Reported in : AIR1957Cal387

Judge : Chakravartti, C.J. and ;K.C. Das Gupta, J.

Acts : [Chartered Accountants Act, 1949](#) - Sections 17(3), 17(6), 21, 22 and 30; ;Chartered Accountants Regulations - Regulation 62A(3), 62B(1) and 62C; ;[Insurance Act, 1938](#) - Sections 14, 27(1), 29 and 113; ;[Companies Act, 1956](#) - Section 227

Appeal No. : Matter No. 71 of 1956

Appellant : Controller of Insurance

Respondent : H.C. Das

Advocate for Def. : N.C. Chakrabarti and ;Amiya Lal Chatterjee, Adv.

Advocate for Pet/Ap. : S. Roy, Adv.;Gouri Miller, Adv.

Judgement :

Chakravartti, C.J.

1. This is a Reference under Section 21 of the Chartered Accountants Act, made by the Institute of Chartered Accountants against an Accountant named Mr. H. C. Das who is a member of the firm of Accountants carrying on profession under the

name and style of H. C. Das & Co. That firm acted as auditors of an Insurance Company, called the Bhagya Lakshmi Insurance Company from 1936 up to 1951. The enquiry against the Accountant concerns the audit made by him of the accounts of the Insurance Company on behalf of his firm and the statutory certificates he granted in that connection.

2. It appears that the Central Government came to form the opinion that the administration of the Bhagya Lakshmi Insurance Company wasnot being carried out in a satisfactory manner and consequently by an order made on the 27th of December, 1952, under Section 52A of the Insurance Act, they appointed Mr. S. C. Roy, a person well known in the insurance world, to act as Administrator of the company. On assuming office, Mr. Roy had certain accounts of the company audited by a different firm of Auditors, namely, Mr. Mukherjee & Co., who reported several irregularities. Mr. Roy brought those irregularities to the notice of the Central Government by a letter dated the 30th of September, 1953, which he addressed to the Assistant Controller of Insurance. The report of Messrs. M. Mukherjee & Co. was annexed to Mr. Roy's letter. On receipt of that letter, the Government decided that a complaint should be made against the Auditors to the Institute of Chartered Accountants and they issued the necessary certificate on the 2nd of August, 1954. The actual complaint, however, was not made till the 12th August next.

3. The Controller of Insurance incorporated certain of the allegations made by the new Auditors in his complaint and asked for an enquiry in regard to the alleged irregularities. As the com-plaint was by the Central Government, no preliminary examination of the facts by the Council of the Institute was either possible or permissible. Accordingly, on receipt of the complaint, the Council referred it under Section 21 of the Act to the Disciplinary Committee for the purposes of an enquiry. Prior thereto, the Council had asked Messrs. H. C. Das & Co. to disclose the name of the particular partner of the firm who had been actually concerned in the audit of the Insurance Company. The firm had disclosed the name of Mr. H. C. Das.

4. The allegations made in the petition of complaint were made out by the Disciplinary Committee into five charges. After Mr. K. C. Das had filed his written

statement, a full and exhaustive enquiry was made. At the end of the enquiry, the Disciplinary Committee, by their report dated the 12th of September, 1955, informed the Council that they found the first charge proved in respect of only the year 1951, the fourth charge wholly proved and the fifth charge proved in part and that they had also found that the second and the third charges had not been proved. On receipt of the report, the Council considered the same and accepted the findings of the Disciplinary Committee. Those are the findings which have been forwarded to this Court in order that the Court may make such order as it may deem fit to make. The- Council, after having found that three of the fixed charges have been proved to the extent mentioned, have further found that the Accountant has been guilty of misconduct, as defined in Section 22 of the Chartered Accountants Act in relation to the charges proved against him.

5. This Court has pointed out to the Council on several occasions that merely to say that an Accountant has been guilty of misconduct within the meaning of Section 22 of the Act is not to make a complete finding. The general description of misconduct as contemplated by the Act is 'conduct which, if proved, will render a person unfit to be a member of the Institute,' taut such conduct is said to be constituted by acts or omissions as specified in the Schedule or such further acts of omissions as the Institute may add thereto in exercise of its powers to make regulations. The Schedule sets out a number of specified acts or omissions and ends with a residuary clause. The acts or omissions which the Council have added are also specific. In those circumstances, it is necessary to know, in order that the opinion of the Council in respect of a particular Accountant can be fully appreciated, under which of the several items, as set out in the Schedule, the Council finds the Accountant to have been guilty. Such specification of the actual misconduct which, in the opinion of the Council, the Accountant has committed is not a mere matter of form, because it is clear that very often the same act or omission might amount to misconduct of different degrees of gravity according as some mental or moral turpitude is or is not attached to it. To take the present case, the only two items of the Schedule under which the case of the Accountant before us can possibly come are items (q) and (R). The former contemplates a case where the Accountant is grossly negligent in the conduct of his professional duties. The latter contemplates a case where he fails to obtain sufficient information to

warrant the expression of an opinion. If an Accountant fails to obtain sufficient information to warrant the expression of an opinion, he is obviously guilty of some negligence, but the Schedule seems to contemplate negligence or gross negligence to be a different kind of misconduct. Since the finding of the Council, if accepted by this Court, must result in grave consequences to the Accountant concerned, it is not only desirable in the highest degree, but necessary that the Council should apply its mind to the Schedule or to the further list of enumerated items added by itself and say to this Court expressly what particular type or variety of misconduct the Accountant concerned has in its opinion committed. As I have already stated, I have had previous occasion to draw the attention of the Council to the necessity of making and reporting to this Court complete findings, but so far the direction has not been attended to or carried out. Mr. Mitter, who appears on behalf of the Council on the present occasion, informs us that he will impress upon his client the necessity of carrying out the directions of this Court in future. I shall leave the matter at that.

6. Before dealing with the facts of the case, I might refer to two matters of a preliminary character. Before the Disciplinary Committee Mr. Chakravorty, who represented the Accountant and who has represented him before us as well, took an objection that the complaint upon which the Committee was proceeding was not a valid complaint at all, inasmuch as the certificate granted by the Central Government had been granted not with respect to that complaint, but with respect to something else. The Committee went into that matter in great detail and came to the conclusion that the certificate dated the 2nd of August, 1954, did in fact relate to the very complaint which had been lodged with the Council. That preliminary objection was not repeated before us by Mr. Chakravorty, but he took another. He contended that since an enquiry, as contemplated by the Act, was to be held by the Disciplinary Committee and since under the provisions of the same Act, the Disciplinary Committee consisted of five members, the enquiry held on the present case by four members was not an enquiry by a competent Committee and, therefore, no enquiry in law at all.

7. I am unable to accept the contention of Mr. Chakravorty. It is true that the Disciplinary Committee is one of the Standing Committees, as contemplated by

the Act. It is also true that under the provisions of Section 17(3), the Disciplinary Committee must consist of five members, but the same section says in Sub-section (6) that the Standing Committees shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed. As a matter of fact, the manner to which the Disciplinary Committee shall function has been prescribed and the relevant Regulations are Regulations 62-A and 62-B. Regulation 62-A(3) provides that a notice of every meeting of a Standing Committee shall ordinarily be given to every member of the Committee and Regulation 62-B(1) provides that no business shall be transacted at a meeting of the Standing Committee unless there are present at least three members, including the President or in his absence, the Vice-President. The substance of these two Regulations, read together, obviously is that whereas, at the beginning, a notice of the proposed meeting shall have to be served on every member of a Standing Committee, the meeting can validly proceed to transact business if at least three members, including the President or the Vice-President be present. There is no question in this case that any irregularity caused by the absence of both the President and the Vice-President occurred. It appears to me that four members having attended at the first meeting at which the present matter was taken up and those very members having sat throughout the proceedings, completed the enquiry and made their report, there was no defect in the constitution of the Committee and no irregularity in its proceedings.

8. Mr. Chakravorty, however, contended that Regulations 62-A and 62-B were concerned with meetings, whereas in the present case We are concerned with an enquiry. The distinction sought to be made is plainly not tenable. Regulation 62-C provides in express terms that the business of a Standing Committee shall ordinarily be transacted at a meeting of the Committee. It is quite obvious, and even in the absence of any express provision it would have been obvious, that a Committee can function only at a meeting. There is thus no point in trying to make a distinction between the proceedings of a meeting and the proceedings of a Committee held for the purpose of conducting an enquiry.

9. Mr. Chakravorty next contended that the Council derived its rule-making power from Section 30 of the Act, but that section did not authorise the Council to make

any Regulations for the fixation of a quorum. In substance, he contended that in purporting to fix the quorum for a meeting of a Standing Committee, the Council had exceeded its rule-making powers. The contention appears to me to be wholly without substance, because the main provision contained in Section 30 of the Act, as in similar provisions of all Acts, is that the body empowered to make rules--in this case the Council--shall have power to make Regulations for the purpose of carrying out the objects of the Act. We do not, however, rely upon that general provision. Sub-section (2) of Section 30 which, as is again usual, sets out a number of specific matters in regard to which the Council can make Regulations, contains In item (q) the provision that the Council may provide by Regulation for 'the functions of the Standing and other committees and the conditions subject to which such- functions shall be discharged'. The Disciplinary Committee is a Standing Committee and its function is to conduct an enquiry as to complaints which may be forwarded to it by the Council. Regulations 62-A and 62-B, in so far as they apply to the Disciplinary Committee, obviously provide for the conditions, subject to which the functions of the Disciplinary Committee in conducting the enquiry shall be discharged. I am, therefore, altogether unable to see how it could possibly be contended that in framing Regulations 62-A and 62-B, the Council had exceeded its rule-making powers.

10. In my view, it is necessary under the very provisions of Regulation 62-A that when the Disciplinary Committee proceeds to take up the enquiry in respect of a complaint forwarded to it by the Council, it must, in the first instance, issue a notice to all its members that the matter will be considered on a certain day. At that stage no member can be left out. If, however, in response to such notice, the full complement of five members do not appear, but at least three, including the President or the Vice-president appear, the members attending the meeting can take cognisance of the complaint and commence the enquiry. It is true that once a body of members, whether composed of three or four or five of them, have taken cognizance of a complaint and entered upon the enquiry, the composition of the enquiring body cannot thereafter be changed and the same members must sit throughout to hear the evidence and to make the report. In certain cases, it may happen that evidence given before a Committee differently composed on a prior occasion may be admitted by a subsequent Committee with the consent of the

parties just as evidence given de bene esse is sometimes admitted in Courts of law. But barring that one contingency, the members who enter upon an enquiry at the first sitting must themselves hear all the evidence and make the report. It cannot, however, be contended that any enquiry contemplated by Section 21 can be held only by all the five members of the Disciplinary Committee who are members for the time being and that it cannot be held by a smaller number of members in any event at all, even if the quorum laid down in Regulation 62-B is present at the initial meeting. The objection taken by Mr. Chakravorty must, accordingly, be overruled.

11. Coming now to the facts of the case, it is not necessary to refer to the charges which in the opinion of both the Disciplinary Committee and the Council have not been proved. The charges proved against the Accountant either wholly or in part are only three in number.

12. The first charge, broadly stated, is that in respect of the accounts of the Insurance Company for the years 1948, 1949, 1950 and 1951, the Auditor had issued the statutory certificates provided for in Regulations 7(c) and 7(d)(i) of Part I of the First Schedule to the Insurance Act, In other words he had stated that no part of the assets of the Life Insurance Fund had been directly or indirectly applied in contravention of the provisions of the Act relating to the application and investment of Life Insurance Funds and also stated that he had verified the cash balances and the securities relating to the insurer's loans. In fact, however, loans had been granted by the Insurance Company in contravention of the provisions of the Act and the Auditor had not verified the securities relating to those loans which he had said that he had done. The actual facts alleged against the Insurance Company are that it had granted loans of two sums of Rs. 12,250/- against policies which had already lapsed. The policies concerned were Policies Nos. 13681 and 13682 issued to one S. Debi and Policy No. 13884 issued to one Nirupoma Banerjee.

13. The Disciplinary Committee has found and the Council has agreed with the Disciplinary Committee that the three policies concerned did stand lapsed on the day on which the loans were issued and that in failing to detect the irregularities

and certifying in the face of them that no part of the Insurance fund had been invested in contravention of the provisions of the Insurance Act, the Accountant had failed to exercise reasonable care and skill and in fact issued an irresponsible, if not a false, certificate. The defence of the Accountant taken in the written statement was that by the date on which the loans were granted, the policies concerned had, to the best of his knowledge and belief and information, been revived and that the records of the company would prove such revival. No attempt was made before the Disciplinary Committee to prove that particular defence, but a new defence was set up which was that the Accountant had relied on a statement signed at the end by the management. It appears also to have been contended that the Accountant had referred to the policy bags, but the Disciplinary Committee pointed out that even if he had done so, an examination of the policy bags could not possibly be an adequate discharge of his responsibilities in the matter and that his obvious duty was to refer to the Policy Register which he had failed to do. If he had only referred to that Register, he would have discovered that on the date the loans had been granted, the policies stood lapsed on account of non-payment of premia which had become due on much earlier dates.

14. Before us Mr. Chakravorty wanted to argue that the policies had not lapsed at all. He had nothing by which he could prove that contention except a statement of loans granted on policies and amounts of interest outstanding thereon which set out against each loan and the relevant policy, the surrender value acquired by the latter. It is difficult to see how any question of surrender value could arise in the present case, because under Section 113 of the Insurance Act, a policy acquires a surrender value only after premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer. Apart therefrom, the question in the present case is not whether the loans granted were of amounts within the surrender value of the policies, as required by Section 29(1) of the Act, but whether, at the date of the loans, there was any effective policy in existence at all. The statement of a surrender value against a policy in the books of a company by no means proves that the policy is current at the date of the entry. The dates in the Policy Register in the present case are conclusive that in fact at the date the loans were granted, the policies concerned were no longer alive.

15. Mr. Chakravorty did not wish to contend that his client had discharged his statutory duty by referring to the management of the Insurance Company and obtaining an assurance from them that at the date of the loans the policies were still alive. He frankly conceded that if an Auditor were to rely upon statements of the management even in respect of matters which were capable of direct verification, his appointment by the shareholders to examine the accounts of the company would be perfectly useless and would serve no purpose at all. In the end, therefore, Mr. Chakravorty conceded that since he could not dislodge the finding of the Disciplinary committee that the loans had been granted on lapsed policies he must accept the position that in respect of the year in which the loans had been granted, namely, the year 1951, the first charge had been proved against his client.

13. The next charge found to have been proved is the fourth charge. That charge is that the Accountant had granted the statutory certificate under Section 145(2) of the Companies Act and stated to persons interested in the company that in his opinion the balance-sheet and the profit and loss account for the years covered by his certificate had been drawn up in conformity with law and that the balance-sheet exhibited a true and correct view of the state of the company's affairs according to the best of his information and explanations given to him and that, in his Opinion, the books of account had been kept by the company as required by Section 113. Yet the Revenue Account of the Insurance Company which is required to be in Form D of Part II of the Second Schedule to the Insurance Act had not been drawn up in conformity therewith, inasmuch as first-year premiums received on policies for two or three years had not been shown against the heading assigned in the form to such policies, but had all been rolled together and shown against the heading for policies for twelve years or over. The company had issued in 1948 five policies which were for three years. It had issued in 1949 five further policies for the same period and in 1950 it had issued four policies which were two-years policies. Yet, the first premiums in respect of these policies had been shown in the Revenue Account against the heading, 'for Twelve Years Policies' and thereby it had been made impossible for persons interested in the company to know what the ratio of the expense on the company's new business would be. Thereby a misleading impression about the financial responsibilities of the company had

been created.

17. The defence of the Accountant in respect of this charge as taken in his written statement Was not very intelligible. He stated that the first year's premium income had been shown 'split up in the Revenue Accounts for the years 1948, 1949 and 1950 according to the premium paying periods of policies from the information and papers produced by the Company', It would seem from that statement that the Accountant himself had shown the premium income in the Revenue Accounts, according to the information supplied to him by the company, which could not possibly have been a fact. What he must have meant was that according to the papers produced before him by the company, as far as he could understand and judge them, the policies from which the premium income had been derived were in fact twelve-years policies against which the income had been shown in the Revenue Account. Before the Disciplinary Committee also, the Accountant stated that as regards the splitting up of the first year's premium income in reference to the premium-paying periods, he had relied on the papers supplied by the company. The Committee pointed out very pertinently that if he had referred to the Policy Bags, as was his contention in respect of the first charge, he must have discovered from the policies themselves for what periods they were and, therefore, it was utterly futile for him to say at the same time that he had relied on statements made to him by the management of the company. The Committee added that, in any event, the Accountant could not be said to have employed reasonable care and skill in the discharge of his duties if he had merely relied upon statements made to him by the management of the company, but he should have, if he were to perform his duties as the statute required him to perform them, made at least a test check with regard to the premium-paying periods. We heard nothing from Mr. Chakravorty in the course of his argument before us which could shake the finding of the Committee in respect of this charge to the slightest extent. Indeed, all that Mr. Chakravorty said was that the irregularity, if any, was of a technical character and the failure of the Accountant to detect it and either require the management of the company to rectify the Revenue Account or to include a reservation in a certificate could not be regarded as a very grave dereliction of duty. The finding of the Council that the fourth charge against the Accountant has been proved must, therefore, stand.

18. The fifth charge also relates to the certificate by the Accountant in terms of Section 145(2) of the Companies Act with respect to the balance-sheet for the year ending at the 31st of December, 1951. The charge is that there were two policies, one for Rs. 5,050/- and another for Rs. 1,000/-, which had matured, but in respect of which no payment had been made. The claims in respect of those policies were, therefore, outstanding and should have been included in the balance-sheet against the heading 'Estimated Liability in respect of outstanding claims whether due or intimated.' The balance-sheet, required to be prepared by an Insurance Company, must be in Form A of Part II of the First Schedule to the Insurance Act. The reason why the statutory form contains a heading which I have just quoted, is that under Section 27(1)(a) of the Act, every insurer must invest and at all times keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims. This provision has obviously been made in order to safeguard the interests of holders of life insurance policies who may not promptly realise the amounts that may become due on the policies held by them. The statute requires that whenever any such claim is outstanding, the Insurance Company concerned must keep itself in a state of commercial solvency by investing the requisite amount in assets of sufficient value and keeping such assets available for the discharge of the liability. The insertion of the correct amount of claims outstanding on matured policies in the balance-sheet is designed to inform persons interested in an Insurance Company of the measure of the company's liability in respect of matured claims and to enable them to find out whether a corresponding amount has been kept invested in assets of the value requisite as required by Section 27(1)(a) of the Act, so that the interest of the holders of policies concerned may not be in peril.

19. The charge stated in express terms that the two policies had matured for payment, but the amounts of claims outstanding thereon had not been shown in the balance-sheet against the appropriate heading. It was added that the omission had resulted in "showing reduced amount of outstanding liabilities."

20. The Disciplinary Committee has found that the claims on the two policies were not shown as they should have been against the appropriate heading in the balance-sheet, but that, nevertheless, they were included in a larger amount which

was shown as the liability of the company under a Suspense Account. According to the Disciplinary Committee, while the balance-sheet had not been drawn up in conformity with law and in that regard an irregularity had been committed, the irregularity had not resulted in showing a reduced amount of outstanding liabilities. The Committee's whole finding is,

'That the fifth charge has been proved to the extent that the outstanding claims were shown under the total liabilities but not under the specific heading of 'Estimated Liabilities in respect of outstanding claims, whether due or intimated', as required by Form A of Part II of the First Schedule.'

21. With respect to this finding, Mr. Chakravorty contended that the Disciplinary Committee had in substance found only a technical irregularity in the balance-sheet and if his client was going to be charged with failure to notice a technical breach of the statutory requirements, he could meet the charge with an equally technical answer. Mr. Chakravorty's contention was that the complaint in the charge being that the failure to show the outstanding claims against the appropriate column in the balance-sheet had resulted in showing a reduced amount of outstanding liabilities and the finding of the Committee being that no reduced amount of liabilities had in fact been shown, nothing remained of the charge and in fact, the charge stood disproved.

22. In my opinion, this argument of Mr. Chakravorty is plainly unacceptable. Speaking for myself, I think that the Disciplinary Committee misconstrued the language used in the complaint with respect to this charge and wrongly treated the reference to a reduced amount of outstanding liabilities as referring to the total financial liabilities of the company. What the complainant was obviously thinking of was that the irregularity he was complaining of had occurred in respect of making a true and faithful entry regarding the actual amount of claims outstanding on matured policies and the 'reduced amount of outstanding liabilities' which he had in contemplation was obviously the reduced amount of liabilities under that head and that head alone. He was not concerned with the general financial position of the company, but concerned only with the accuracy of the statement made in the balance-sheet with regard to the outstanding claims on matured policies, because

unless the amount of claims actually outstanding on such policies was correctly shown in the balance-sheet, one would not know whether the company was keeping an equal amount invested in proper assets and one would not benefit in the least by being informed of the total financial liability of the company. The question here was not the financial solvency of the company as a whole, but the question was the security of the claims of policy-holders whose policies had matured, but who had not yet received or asked for payment. I would also add that the statement in the charge, which has been described as 'the complaint', that the irregularity had resulted in 'showing reduced amount of outstanding liabilities' was not really an essential part of the complaint, if by 'complaint' is meant the charge. It was only the opinion of the complainant as regards the consequence of the irregularity alleged by him to have been committed. In any event, I am unable to agree with Mr. Chakravorty that the finding of the Disciplinary Committee, that the omission of the company to show the claims due on the two policies against the appropriate column had not resulted in showing a reduced amount of liabilities, destroys the charge altogether. The irregularity that the two claims had not been shown against the appropriate heading in the balance-sheet and that the certificate of the Auditor that the balance-sheet had been drawn up in accordance with law was not correct in fact, remained.

23. At one stage of his argument, Mr. Chakravorty contended that in fact no claims were outstanding in respect of the two policies concerned. That argument, as the Disciplinary Committee has pointed out, is met by express entries in the Journal folio No. 130. Before referring to that entry, I may point out that certain entries of a very unusual character appear to have been made in the Cash Book with respect to attempted or pretended payments on these particular claims. Those entries have been set out in the report of the Disciplinary Committee and, taken together, they create the impression that whoever was responsible for making these entries, was carrying out something like a magician's sleight of hand whereby cards are despatched from one position to another and ultimately find their original position. As Mr. Roy pointed out in the course of his argument, there is a debit entry against the Imperial Bank which is neutralised by a credit entry for an equivalent amount. Similarly, there is an entry of cash credit which is neutralised by a cash debit and there is a suspense debit which is neutralised by a suspense credit. The entries as

the Disciplinary Committee has pointed out, cancel one another and their net result is nil. Like ourselves, the Disciplinary Committee was completely mystified as to the object with which these entries were made, but after expressing their inability to understand their implications, they proceeded to refer to the entry in the Journal folio No. 130 where cheques, by which payments on these claims had been attempted to be made, are expressly referred to and it is stated that the cheques, not having been cashed in the course of the year, are being credited to the suspense account. In the face of that entry, there can be no question that the holders of the policies had not received any payment in respect of their claims and the claims were really outstanding. Whether the Insurance Company showed their own money in the/balance-sheet under one heading or another was wholly immaterial to the claimants so long as they themselves received no payment and until they were paid, the claims were clearly outstanding. The case was not one where cheques had been issued to third parties and had gone out to them, but had not yet been cashed, but the case was one where in one case the cheque did not leave the company at all and in the other case, immediately after the issue of the cheque, the company had stopped payment by an intimation to the bank. The money, therefore, never left the hands of the company, under whichever head in the accounts or the balance-sheet it might have been shown and, therefore, it is useless to contend that in fact the claims were not outstanding.

24. Mr. Chakravorty next proceeded to contend that, in any event, by failing to detect the existence of these two outstanding claims, his client could not be said to have exhibited a want of due skill and care. The Disciplinary Committee was unable to accept that argument and we find ourselves no more able to accept it. This is a matter which was capable of direct verification and the Auditor had only to refer to the Journal, if he wished to acquaint himself with the real state of affairs. Instead, he, according to himself, relied only on a list of outstanding claims submitted to him by the management of the company and thought his duties as an Auditor fully and properly discharged by accepting without question or scrutiny whatever the company, whose accounts he was expected to audit and examine, said to him. In my opinion, none of the three defences set up on behalf of the Accountant in respect of the fifth charge can succeed.

25. For the foregoing reasons, we must proceed on the footing that the findings arrived at by the Council and forwarded to this Court are correct. As regards the type of misconduct constituted by the omissions and also by the issue of incorrect certificates, it must be admitted that it is not the complainant's case, nor it is the finding, that the Accountant had failed to disclose a material fact known to him, but not disclosed in a financial statement, nor is it a case where he has failed to report a material misstatement known to him to appear in a financial statement with which he was concerned in a professional capacity. The case must come either under item (q) which is 'grossly negligent in the conduct of his professional duties' or item (r) which, so far as material, is, "fails to obtain sufficient information to warrant the expression of an opinion' or both.

26. The next question is what order we ought to make under Section 21(3) of the Act. Mr. Chakravorty submitted that so far as the first charge was concerned, only three cases of loans granted on lapsed policies had been discovered and that the remaining two charges were concerned with the Accountant's failure to detect technical irregularities on the part of the company. He also submitted that so far, his client had had an unblemished record and, therefore, even if we held the omissions charged against him established, we ought to take a lenient view of his lapse.

27. I do not agree that the only charge of any consequence is the first charge. The fifth charge, to my mind, is of equal consequence, because it concerns the safety of the interests of persons who had taken, out policies from the company and whose policies had matured for payment. As I have already pointed out, the whole object of requiring that outstanding claims on matured policies should be shown against a separate heading, is to inform outsiders what the total amount of the company's liability in that regard is and enable them to ascertain whether the company is keeping an equal amount invested in easily realisable assets. It helps no one if the amount of the liability due on matured policies is shown to be less than it really is, and the liability is lumped with other liabilities and shown under a general heading as the total financial liability of the company. With regard to other liabilities, the company is not required to furnish security, as it were, by investing an equal amount in easily realisable assets. I am prepared to concede that so far

as the fourth charge is concerned, the failure of the company to show the premium income against the appropriate heads according to the premium-paying periods of the policies out of which the income derived may not have been a very grave irregularity and the omission of the Auditor to detect the irregularity may not be one that was likely to lead to serious consequences. The position, to my mind, is altogether different with regard to the other two irregularities. It seems to me to be useless to contend that only three cases of loans granted on lapsed policies were discovered and the smallness of the number shows that the want of due care and attention or reasonable care and skill exhibited by the Auditor was not of a very grave or extensive' character. If the Auditor had carried out his task in the manner in which statutory Auditors are expected to carry it out made test checks, called for information and taken all reasonable steps to apprise himself of the true state of affairs of the company and to assure himself of a correspondence between the balance-sheet and the books of the company as also a correspondence between the books and the real state of affairs, his failure to detect one or two instances of irregularities would not constitute misconduct. As has been said, an Auditor is not only not a blood-hound, but he is not also an insurer. He does not certify the absolute accuracy of the accounts which he audits and approves of, but only says that he has taken all possible care and exercised reasonable skill and, having done so, has arrived at the conclusions which are recorded in his certificate. But if, as we find to our regret to have been the position here, an Auditor does nothing at all in the way of scrutinising the books of the company, but only relies upon statements made to him by the management, as his own case is, I find it impossible to hold that he exercised any skill or care of any kind. An Auditor is the servant of the shareholders. In view of the complicated character of modern business, it is impossible for shareholders or, in the case of insurance companies, policy-holders to have any direct connection with those who administer the funds supplied to them and, therefore, the integrity and efficiency of the Auditor whom they employ to examine the books of the company and report to them his findings are the only guarantees of their coming to know how the funds supplied by them are being applied and what the value of their investments is. An Auditor who construes his duty to shareholders or policy-holders too narrowly and who passes and approves of whatever is stated to him by the management of the company,

does not serve the shareholders with the loyalty or efficiency expected of him and constitutes, instead of a source of security to the shareholders, a positive danger to them. As far as I can see from the materials in the present case, the Accountant before us did nothing at all to inform himself of the real affairs of the company or the manner in which the balance-sheet or the accounts had been prepared. No enquiries of any kind appear to have been made and no audit enquiries or any replies made to them were produced. Indeed, his own case is that certain lists or statements were submitted to him by the management and he accepted them without further enquiry.

28. In our opinion, the Accountant has been guilty of the omissions found by the Council to have been proved against him and he has been guilty of misconduct as contemplated by items (q) and (r) of the Schedule to Section 22 of the Act. While we are prepared to be not too severe upon him, we cannot, at the same time, impose a penalty which will be no true measure of our disapproval of his conduct.

29. In all the circumstances of the case, we direct that the Accountant and Auditor, Mr. H. C. Das, be suspended from the membership of the Institute and from practice for a period of one year from today.

30. There will be no order as to costs.

Das Gupta, J.

31. I agree.

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