

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.30627 OF 2023

Between:

V.Vijay Sai Reddy

... **Petitioner**

And

Union of India & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 30.07.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.30627 OF 2023****% 30.07.2024****Between:****# V.Vijay Sai Reddy****... Petitioner****And****\$ Union of India & others****... Respondents****< Gist:****> Head Note:**

! Counsel for the Petitioner : Sri A.Venkatesh, learned senior
designate counsel

^ Counsel for Respondents : Sri Gadi Praveen Kumar,
Ld.Deputy Solicitor General
for R1

Sri M.S.Prasad, learned senior
designate counsel for R2 to R4

? Cases Referred:

- i) 2004 vol.6 SCC page 254
- ii) 2023 vol.5 SCC page 706
- iii) (2021) 6 SCC 771
- iv) W.A.No.2305 of 1999, dated 27.10.2005
- v) 2022 vol.13 SCC page 329
- vi) AIR 1964 Cal. 131

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.30627 OF 2023

ORDER:

Heard Sri A.Venkatesh, learned designated senior counsel representing Sri N.Naveen Kumar, learned counsel appearing on behalf of the petitioner on record, Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, appearing on behalf of the Respondent No.1 and Sri M.S.Prasad, learned designated senior counsel representing Sri C.V.Rajeeva Reddy, learned counsel appearing on behalf of respondent Nos.2 to 4 on record.

2. The petitioner approached the Court seeking prayer as under:

"...to issue a writ, direction or order or direction more particularly in the nature of Writ of mandamus:

I. declaring the action of the Respondent No.3 in issuing proceedings dt.23.12.2022 "prime facie opinion" in File No.PPR/26/2014/DD/25/INF/2014 without any reasons as arbitrary, violative of principles of natural justice and violative of the provisions of the Chartered Accountants Act, 1949, Chartered Accountants [Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases] Rule,

2007 and apart from being violative of Article 14 and 19(1)(g) of the Constitution of India and consequently set aside the same, II. declaring the action of the Respondent No.4 in concurring with the prime facie opinion dt. 23.12.2022 of Respondent No.3 and issuing further proceedings vide Ref No.PPR/26/2014/DD/25/INF/2014/DC/1743/2023 including issuance of notice of hearing dt.23.10.2023 as arbitrary, violative of principles of fairness, natural justice and violative of the provisions of the Chartered Accountants Act, 1949, Chartered Accountants [Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases] Rule, 2007 and as being violative of Article 14 and 19(1)(g) of the Constitution of India and consequently set aside the same; and III. pass such other Order or Order/s...."

PERUSED THE RECORD :

3. This Court vide its order dated 03.11.2023 passed interim orders in favour of the petitioner and the same is extracted hereunder:

"Heard Mr. A.Venkatesh, the learned Senior Counsel representing Mr.N.Naveen Kumar, the learned counsel on record appearing for the petitioner and Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, appearing on behalf of the 1st respondent.

Notice before Admission.

The learned counsel for the petitioner is permitted to take out personal Notice on respondents Nos. 2 to 4 through registered post and acknowledgment due and file proof of service into the registry.

2.The prayer as sought for by the petitioner in the present writ petition reads as under:

“to issue a Writ, direction or order or direction more particularly one in the nature of Writ of Mandamus:

- I. Declaring the action of the Respondent No.3 in issuing proceedings Dated 23.12.2022 “Prima Facie Opinion” in File No.PPR/26/2014/DD/25/INF/ 2014, without any reasons as arbitrary, violative of principles of natural justice and violative of the provisions of the Chartered Accountants Act, 1949, Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rule, 2007 and apart from being violative Article 14 and 19(1)(g) of the Constitution of India and consequently set aside the same,
- II. Declaring the action of the Respondent No.4 in concurring with the prima-facie opinion dated 23.12.2022 of respondent No.3 and issuing further proceedings vide Ref. No.PPR/26/2014/DD/25/INF/2014/ DC/1743/2023 including issuance of notice of hearing dated 23.10.2023 as arbitrary, violative of principles of fairness, natural justice and violative of the provisions of the Chartered Accountant Act, 1949 Chartered Accountants(Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rule, 2007 and as being violative of Article 14 and 19(1)(g) of the Constitution of India and consequently set aside the same; and
- III. Pass such other order or order/s as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

3. The learned Senior Counsel draws attention of this Court to the Prima Facie Opinions vide (1) dated 17.10.2017, (2)dated 24.09.2021 and (3) 23.12.2022 and contends that, the respondent No.3 being Preliminary Authority was only duty bound to pass a Prima Facie Opinion and place the same before respondent No.4, for

adjudication of the charges alleged against the petitioner but however, the respondent No.3 in arbitrary exercise of powers vested upon him traversed beyond its jurisdiction and observed and concluded that the petitioner was negligent in providing his Professional Services to the Company.

4. The learned Senior Counsel also contended that though the petitioner in response to the Notice, dated 24.05.2023 issued by the 4th respondent submitted his detailed preliminary objections, dated 23.07.2023 contending that the essential requirements of the Professional and other Misconducts falling within the meaning of clause (7) of part I of the Second Schedule to the Chartered Accountants Act, 1949 are neither made out nor attracted in the present case even as per the observations in the Impugned Prima Facie Opinion, dated 23.12.2022, and sought for stay of the Disciplinary Proceedings, the said detailed preliminary objections dated 23.07.2023 had not been considered by the respondent Nos.3 and 4 and the petitioner received the impugned Notice of hearing, dated 23.10.2023 calling upon the petitioner to attend the hearing scheduled to be held on 04.11.2023 at 11.30 AM before the 4th respondent. The learned Senior Counsel further contended that the Impugned Proceedings dated 23.12.2022 passed by the 3rd respondent and the consequential impugned notice dated 23.10.2023 are *ex facie* illegal and therefore, the petitioner is entitled for the interim relief as sought for.

PERUSED THE RECORD

5. The paragraph No.1 and paragraph No.10 of the **PRIMA FACIE OPINION** before the Disciplinary Committee Constituted under Section 21(B) of the Chartered Accountants Act, 1949 in the subject matter, dated 23.12.2022 reads as under:

"Para (1) The Disciplinary Committee at its 423rd Meeting held on 14th June, 2022 considered the prima-facie opinion(s) dated 7th October, 2017 and 24th

September, 2021 of the Director(Discipline) (earlier Prima Facie Opinions are attached herewith) along with the documents and information submitted by the Informant Department as well as the Respondent. The Committee while deliberating on the Prima Facie Opinion noted that the Respondent had been alleged of various misconducts in the capacity of being financial advisor of Sri Y.S. Jagan Mohan Reddy and his group companies and that in the prima-facie opinions he was, inter-alia, held prima-facie guilty of Professional Misconduct falling within the meaning of Clause(7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. It was viewed that the said clause is applicable on professional misconducts performed by members being in practice and that the evidence about the Respondent being involved in the alleged misconducts in the said capacity need to be duly emphasized upon. Accordingly, the Committee decided to refer it back to the Director(Discipline) in terms of Rule (9)(2)(c) of Chartered Accountants(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to re-evaluate the documents submitted and investigate the matter with respect to professional duty alleged vis a vis Clauses applicable in view of evidence available thereof.

Para (10) Thus, it is viewed that though the capacity in which the respondent was associated with the Company at the time of alleged misconduct is not clear, however, there is no doubt that he was assisting the Company in obtaining the manipulated valuation report and raising the funds thereon. During the said period, it was noted that he was holding an active Certificate of Practice with the Institute.

Thus, it is amply clear that he was providing his professional services to the Company. Accordingly, it is viewed that the Respondent was negligent in providing his professional services and considering the mode and manner in which he was helping the Company particularly Jagan Mohan Reddy and his group of companies in its illicit motive, the same is highly unbecoming of a Chartered Accountant. Hence, the Respondent is *prima facie* Guilty of Professional and Other Misconduct falling under Clause (7) of Part I of Second Schedule and Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949."

6. A bare perusal of the relevant paragraph No.1 of the prima facie opinion dated 23.12.2022 (referred to and extracted above), clearly indicates that, the Disciplinary Committee unsatisfied with the 2nd prima facie opinion dated 24.09.2021 contending that the essential requirements of Professional Misconduct falling within the meaning of Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 is not clearly made out remitted the matter back to the Respondent No.3/Disciplinary Directorate to re-evaluate the documents submitted and investigate the matter again, with respect to Professional duty alleged duly observing that the evidence about the petitioner being involved in the alleged misconducts in the said capacity of Chartered Accountant need to be duly emphasized upon.

7. A bare perusal of Paragraph No.10 of the prima facie opinion dated 23.12.2022 (referred to and extracted above), clearly indicates an observation that, the capacity in which the petitioner was associated with the company at the time of the alleged misconduct is not clear, however strangely in the very same para, it is observed that, it is amply clear that the petitioner providing his Professional Services to the company was negligent thereof. In conclusion the PRIMA FACIE opinion dated 23.12.2022 held and concluded that a Prima Facie

opinion has been formed against the petitioner that, the petitioner is GUILTY of Professional and other Misconduct falling within the meaning of Clause (7) of part I of Second Schedule and Clause(2) of Part IV of First Schedule to the Chartered Accountant Act, 1949 read with Section 22 of the said Act.

8. A full bench of the Apex Court in its Judgment dated 05.05.2006 reported in (2006) 6 Supreme Court Cases 94 in "Standard Chartered Bank v. Andhra Bank" at para 63 observed as under:

It is the case of SCB that it had the title to the suit bonds as it obtained the suit bonds under a contractual agreement by paying d consideration for the suit bonds. This transaction is based on documentary evidence on record. The cost memo (Exhibit B) dated 26-2-1992 issued by ABFSL evidences that the suit bonds were offered to SCB at the consideration indicated in the document. The cost memo indicates the details of the transactions such as the description of the bonds, the number of bonds sold, the rate at which they were sold and the total consideration payable. e This is accompanied by a BR. Against this, there is a pay order dated 26-2-1992 issued by SCB in favour of ABFSL in the sum of Rs 42,52,50,000 evidencing that such consideration had been paid. BR No. 23728 dated 26-2-1992 evidences that upon receipt of the agreed consideration, being the cost of the suit bonds sold to SCB, the BR was issued to undertake that bonds of the face value of Rs 50 crores would be delivered when ready, in exchange for the BR duly discharged and that in the meantime the suit bonds would be held on account of SCB. The letter dated 26.02.1992 from ABFSL to SCB show that the LOA of the suit bonds was forwarded to SCB, inter alia, with a request for discharging the corresponding BR NO.23728 on receipt of the LOA. The register of SCB shows that with reference to BR No.23728, the bonds had been received, although, the word "photocopies" appears to have been inserted therein. It is the case of SCB that one of its employees, Mulgaonkar, had acted fraudulently by inserting this word and causing misappropriation of the suit bonds. We find that this part of the case was not part of the pleadings of SCB either in its plaint or in the written statement filed in reply to CMF's petition. There was also

not reference to it at any time when evidence was led by the parties. The first time this part of the case appears is in the copy of the charge-sheet filed by CBI against certain employees of SCB and HPD for several criminal offences. Mr Jethmalani contended that since this charge-sheet was produced on record at the instance of CMF, the averments in the charge-sheet must be taken to have been proved before the court. Even assuming Mr Jethmalani is right in characterising the charge-sheet as a public document within the meaning of Section 35 of the Evidence Act, 1872, we cannot accept all that is stated in the charge-sheet as having been proved. All that we can say is that it is proved that the police had laid a charge-sheet in which such allegations have been made against the accused. We need not delve further into it since the criminal proceedings against HPD and others are still pending and it will be up to the appropriate court to decide the correctness or otherwise of the charges in the charge sheet. All that can be said at this stage is that there were serious allegations that the original LOA went out of the possession of SCB by some nefarious means.

9. This Court opines that considering the charge sheets in CC No. 08 of 2018, CC No.09 of 2012, CC No.10 of 2012, CC No.14 of 2012 and CC No.12 of 2013 as evidence and formulating the Prima Facie Opinion on the charge sheets and further not considering the petitioners detailed preliminary objections dated 23.07.2023 to the *prima facie* opinion dated 23.12.2022 is *ex facie* unreasonable and illegal.

10. Taking into consideration the aforesaid facts and circumstances of the case and duly considering the observations at para 1 and para 10 of prima facie opinion dated 23.12.2022 (referred to and extracted above) the view of the Apex Court in its Judgment dated 05.05.2006 in "Standard Chartered Bank v. Andhra Bank Financial Services Limited" reported in 2006 (6) SCC Page 94 (referred to and extracted above) there shall be stay of all further proceedings on the file of respondent No.4 pursuant to notice of

hearing vide
Ref.No.PPR/26/2014/DD/25/INF/2014/DC/1743/2
023 dated 23.10.2023 issued to the petitioner for a
period of four (04) weeks from today.

List on 28.11.2023."

**4. The counter and vacate stay petition has been filed on
behalf of the respondent Nos. 2 to 4 and in particular para
Nos. 7 and 8 read as under:-**

7. It is respectfully submitted that the present enquiry is at the threshold with the 4 Respondent and after a detailed enquiry in terms of the Act and the Rules, especially Rule 18 of the 2007 Rules, the disciplinary committee shall consider the evidence and arguments produced before it and arrive at a finding as to whether the Respondent is guilty or not of any professional or other misconduct. Admittedly, such enquiry is at the threshold and the committee has not come to any conclusion. If the Disciplinary Committee arrives at a finding that the Respondent (Writ Petitioner herein) is guilty of professional or other misconduct, the Committee shall give the Petitioner further opportunity of being heard before passing any order under Sec.21B(3) of the Act of 1949. As stated supra, Sec.22G gives right to any member of the Institute aggrieved by any order of the disciplinary committee imposing on him any of the penalties, to prefer an Appeal before the Authority and the Authority has got

the power to confirm, modify or set aside the order and the Appellate Authority consists of a person who is or has been a judge of the High Court to be its chairman, two members to be appointed from amongst the members, who have been members of the 2nd Respondent Institute and 2 members to be nominated by the Central Government etc., Therefore, the Writ Petitioner has got enough opportunity to defend and explain his case before the Disciplinary Committee by producing evidence, documents, and by cross-examining the witnesses and further opportunity of submitting an explanation under Rule 19(1) r/w.S.21B(3) of the Chartered Accountants Act, 1949, of being heard before passing any order against him or imposing any penalty. As seen in the Writ Petition, the Writ Petitioner is challenging the prima facie opinion of Respondent No.3, which is not permissible under Law as it is only at the preliminary stage. Further, the 4th Respondent on the basis of the prima facie opinion of the 3rd Respondent concurred with the reasons given and sought the Written Statement along with supporting documents in terms of Rule 18(3) of the above Rules for further detailed enquiry. Thus, the whole issue open to be agitated before the Disciplinary Committee, which conducts its proceedings as per the statutory Rules.

8. Therefore, it is respectfully submitted that the Writ Petitioner is not entitled to challenge the disciplinary proceedings at this nascent stage. The present Writ Petition is filed to stall the disciplinary proceedings pending

before the disciplinary authority therefore, the Writ is premature and ill-conceived and the Writ Petitioner is entitled to raise all issues before the disciplinary committee in terms of the Act and the Rules as stated supra. Therefore, the Writ Petitioner is premature and is liable to be dismissed in limine.

It is submitted that the disciplinary proceedings are at the initial stage and the Petitioner would be given fair and reasonable opportunity to explain the circumstances appearing against him in accordance with the statutory Rules and Principles of Natural Justice. The Disciplinary Committee consists of experts in the field of Chartered Accountancy who have in depth knowledge in commercial transactions. The Petitioner has rushed to this Hon'ble High Court at the initial stage of the start of the disciplinary proceedings even when no order prejudicial to his interest is passed by the Disciplinary Committee. It has not shown by the Petitioner as to how there is infraction of his fundamental and other rights so as to invoke the extraordinary writ jurisdiction of this Hon'ble High Court. Even if an adverse order is passed at the conclusion of the disciplinary proceedings, the Petitioner has an effective and efficacious alternative remedy in form of statutory Appeal in terms of Section 22(G) of the Chartered Accountants Act to file an appeal before the Appellate Authority. Under these circumstances, it is, therefore, respectfully prayed that this Hon'ble High Court may not interfere in the pending disciplinary proceedings at this preliminary stage.

5. The learned senior designate counsel based on the averments made in the counter affidavit filed on behalf of the respondent Nos. 2 to 4 and further relying on the judgments enlisted below contended that the Writ Petition is devoid of merits and hence, needs to be dismissed in limine since the petitioner approached the Court to stall the disciplinary proceedings pending before the Disciplinary Authority when the petitioner is entitled to raise all the issues before the Disciplinary Committee and that the petitioner had reasonable opportunity and further that the impugned prima facie opinion dated 23.12.2022 of the 3rd respondent and the impugned consequential notice of the 4th respondent dated 23.10.2023 issued in concurrence with the prima facie opinion, dated 23.12.2022 of the 3rd respondent are in conformity with the relevant statutory provisions under the Act and also in conformity with the principles of natural justice.

6. The case of the Petitioner in brief as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition is as under :

a) It is the case of the petitioner that, the Petitioner herein is a Chartered Accountant (M.No.024993) having enrolled with the 2nd Respondent and that the Petitioner has been holding a Certificate of Practice since 23.06.1997. While things stood thus, the 3rd Respondent had issued a Communication vide PPR/26/2014-DD/25/INF/2014 dated 18.12.2014 for professional misconduct, stating that communication has been issued by the Central Bureau of Investigation with respect to the Charge sheets filed against the Petitioner herein in the year 2013 and the same has been treated as "Information" against the Petitioner under Section 21 of the Chartered Accountants Act, 1949.

b) In response to the notice dated 18.12.2014, the Petitioner herein has issued a reply dated 07.01.2015 that the disciplinary proceedings have been initiated solely on the basis of the Criminal Proceedings pending against the Petitioner herein, that even as per the communication issued, no independent allegations have been made forming basis for the Professional Misconduct. Furthermore, the Petitioner herein has sought for suspension of the Disciplinary proceedings, by virtue of pending criminal trial and the Disciplinary proceedings were also being

issued on identical allegations involving disputed questions of law.

c) Aggrieved by the action of the 3rd Respondent in initiating the Disciplinary proceedings against the Petitioner in respect of the very same incidents, facts and allegations for which Criminal Proceedings are pending trial, the Petitioner herein has filed W.P.No.1057 of 2015 and that the same is pending for Adjudication. While the Writ Petition is pending adjudication, the 3rd Respondent solely relying on the extracts of the Charge sheet and the allegations thereof, reasoning the request of the Petitioner to suspend the Disciplinary proceedings by virtue of pending Criminal Proceedings cannot be accepted and held that the Petitioner herein is guilty of "Other Misconduct" and "Professional Conduct" falling within the meaning of Clause (7) Part 1 of the Second Schedule to the Chartered Accountants Act, 1949.

d) While things stood thus, the Petitioner herein received another Communication dated 18.05.2018, requesting the Petitioner to furnish the copy of the Financial Statements of all the entities involved for all the years relevant to the Subject

matter contending that the same is being sought as per the directions of the Disciplinary Committee herein and the petitioner replied to the said communication vide letter dated 02.06.2018, contending that the Petitioner has not been engaged as "Chartered Accountant" in any of the entities and therefore, the Petitioner is not in possession of the Financial Statements of the said entities.

e) It is the specific case of the petitioner that, it has been brought to the attention of the Petitioner lately that 1st Prima Facie Opinion dated 07.10.2017 has been placed before the Disciplinary Committee on 26.03.2018 and 27.03.2018, wherein the Committee i.e. 4th Respondent unsatisfied with the opinion has directed the 3rd Respondent to further investigate, upon which the 3rd Respondent has issued a 2nd Prima Facie Opinion dated 24.09.2021, holding the Petitioner prima facie guilty of Professional Misconduct.

f) Further, the Petitioner has not been communicated with respect to remittance of the 1st Prima facie opinion by the Disciplinary committee for further investigation, nor the Petitioner was sought for any explanation or reply before

conducting fresh enquiry and forming the 2nd Prima Facie Opinion dated 24.09.2021. However, the Prima Facie opinions have failed to show any misconduct on the part of the Petitioner as requires under the Chartered Accountants Act, 1949.

g) Later on, the 3rd respondent again, in a mechanical and perfunctory manner reiterated the earlier opinions dated 07.10.2017 and 18.05.2018 holding the Petitioner Guilty of professional and other Misconduct. The conclusion or the observations arrived at by the 3rd respondent is based on no material that the capacity in which the Petitioner was associated with the Company at the time of the alleged misconduct is not clear, which is contradicting the above fact of the 3rd respondent holding that, it is clear that the Respondent was providing his professional services and was negligent thereof.

h) Subsequently, the 3rd respondent had issued proceeding vide File no. PPR/26/2014/DD/25/INF/2014 dated 23.12.2022 in holding the Petitioner guilty of the Professional Misconduct and other Misconduct for the same being in excess of Jurisdiction, bereft of any cogent reasons and gross violation to the principles of natural justice, and concurrence to it by the 4th Respondent as

such being an independent and new cause of action. Moreover, the 3rd respondent in arbitrary exercise of his powers, has not provided any opportunity of hearing or sought for any written communication by the Petitioner before arriving at the impugned prime facie opinion dated 26.06.2018 and dated 23.12.2022, but solely based on the alleged information furnished by the CBI has passed the impugned order and placed the same before the Disciplinary Committee.

i) It is the case of the petitioner that, in furtherance to the prime facie opinion being placed before the Disciplinary/committee i.e. the 4th Respondent, the same being concurred by the Respondent No.4 a notice was issued to the Petitioner seeking Written Statement wherein the Petitioner herein had submitted his preliminary objections dated 29.07.2023 contending that the clauses of the Professional and other Misconduct are not attracted in the present case even as per the observations made in the impugned Prime Facie opinion.

j) Further the act of the 4th respondent in mechanically acting on the prime facie opinion without any independent application of mind is violative of right to practice the profession

of Chartered Accountancy guaranteed under Article 19(1(B) of Constitution of India. Therefore, aggrieved by the proceeding dated 23.12.2022 passed by the 3rd respondent, the present Writ Petition is filed.

DISCUSSION AND CONCLUSION:

7. The learned senior designate counsel Sri A.Venkatesh appearing on behalf of the petitioner filed detailed written arguments along with relevant case law in support of the case of the petitioner and the same had been brought on record and placing reliance on the said detailed written arguments contended that the Writ Petition needs to be allowed as prayed for.

8. The learned senior designate counsel Sri M.S.Prasad appearing on behalf of the respondent Nos. 2 to 4 filed detailed written submissions along with relevant case law in support of the case of respondent Nos. 2 to 4, which are brought on record in the present case and based on the said written submissions contended that the petitioner is

not entitled for the relief as prayed for in the present Writ Petition.

Relevant provisions for adjudication of the present case.

9. Clause(7) of Part I of the Second Schedule and Clause (2) of Part IV of First Schedule of chartered Accountants Act, 1949 reads as under:-

“Second Schedule

PART I: Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”

“First Schedule

PART IV: Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

(2) in the opinion of the council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work”

10. Section 2(2) of the Chartered Accountants Act, 1949 defines the criteria as to when a member is deemed to be in practice which reads as under:

“(2) A member of the Institute shall be deemed, “to be in practice”, when individually or in partnership with chartered accountants [in practice], [or in partnership with members of such other recognised professions as may be prescribed], he , in consideration of remuneration received or to be received-

- (i) Engages himself in the practice or accountancy; or
- (ii) Offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or
- (iii) Renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or
- (iv) Renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant [in practice]

11. Section 21(2) of the C.A.Act, 1949, Section 21B of the C.A.Act,1949

21B. Disciplinary Committee.

(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy: Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -

- (a) reprimand the member;**
- (b) remove the name of the member from the Register permanently 18 or for such period, as it thinks fit;**

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

12. A bare perusal of the above referred provisions clearly indicates that formation of prima facie opinion as to the guilt or non guilt of the member for misconduct under Section 21 of the Act is the basis which accrues jurisdiction to the Disciplinary Committee or the Board of Discipline as the case may be under Section 21B of the Act to initiate disciplinary proceedings against the member if the committee is also of the opinion that the member is guilty of professional or other misconduct. Respondent No.3 based on the information, or the complaint received and after perusing the entire material collected thereof form a prima facie opinion. Such explanation of opinion by the 3rd respondent is a condition precedent for assumption of jurisdiction by the Disciplinary Authority.

13. The operative portion of the impugned prima facie opinion dated 23.12.2022 i.e., para No.10 of the prima facie opinion, dated 23.12.2022 reads as under:-

10. Thus, it is viewed that though the capacity in which the Respondent was associated with the Company at the time of alleged misconduct is not clear, however, there is no doubt that he was assisting the Company in obtaining the manipulated valuation report and raising the funds thereon. During the said period, it was noted that he was holding an active Certificate of Practice with the Institute. Thus, it is amply clear that he was providing his professional services to the Company. Accordingly, it is viewed that the Respondent was negligent in providing his professional services and considering the mode and manner in which he was helping the Company particularly Jagan Mohan Reddy and his group companies in its illicit motive, the same is highly unbecoming of a Chartered Accountant. Hence, the Respondent is prima facie Guilty of Professional and Other Misconduct falling under Clause (7) of Part I of Second Schedule and Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

Accordingly, taking an overall view of the facts on records and in reiteration of the views expressed in earlier prima facie opinions dated 7th October, 2017 and 24th September, 2021, I am of the prima facie opinion that the Respondent is GUILTY of Professional and Other Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule and Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

14. A bare perusal of the operative portion of the impugned prima facie opinion, dated 23.12.2022 clearly indicates that capacity in which, the petitioner was associated with the company at the time of alleged misconduct itself had not been established. This Court opines that in such circumstances, the conclusion of the respondent No.3 in holding petitioner vide the impugned prima facie opinion dated 23.12.2022 guilty more particularly for professional misconduct falling under Clause 7 PART I of Second Schedule Chartered Accountant Act, 1949 is admittedly devoid of any merits since such conclusion against the petitioner had been arrived at by the 3rd respondent in a mechanical manner and not in an objective manner.

15. Rule 9(2)(C) of the Chartered Accountants (procedure of investigations of professional and other misconduct and conduct of cases) Rules, 2007 is extracted hereunder:-

9. Examination of the Complaint

(2) (c) If the Board of Discipline or the Committee, as the case may be, disagrees with the prima facie opinion of the

Director under clause (a) above, it shall either close the matter or advise the Director to further investigation the matter.

16. A bare perusal of the above referred Rule 9(2)(C) clearly indicates that when the matter is placed before the respondent No.4 by the respondent No.3, the respondent No.4 as per the subject Rule is conferred with powers to either agree or disagree with the opinion placed before it by the respondent No.3 and the very fact that such powers conferred on respondent No.4 by the statute clearly indicates that the respondent No.4 has a bounden duty to exercise its jurisdiction independently in examining the prima facie opinion placed before it by the 3rd respondent and to decide if further proceedings are necessary. However, respondent No.4 without independent application of mind has mechanically concurred with prima facie opinion which in its entirety failed to establish the alleged misconduct by the petitioner herein vide its own reasoning. In view of the fact as borne on record that the operative portion para No.10 of the prima facie opinion, dated 23.12.2022 itself indicates a clear observation in favour of the petitioner herein that the role of the petitioner in the said company itself is not established and the capacity in which the petitioner was associated with the company

at the time of alleged misconduct is in itself not clear, hence this Court opines that there is no prima facie satisfaction of the ingredient of professional misconduct in relation to Chartered Accountants practice falling under Clause (7) of PART I of the Second Schedule Chartered Accountant Act, 1949.

17. A bare perusal of Section 21 sub-clause 2 of Chartered Accountants Act, 1949 referred to and extracted below clearly indicates that the respondent No.3 shall arrive at prima facie opinion only upon a receipt of information or complaint along with prescribed fee.

21. Disciplinary Directorate

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

18. A bare perusal of Rule 7 of the Chartered Accountants (procedure of investigations of professional and other misconduct and conduct of cases) Rules, 2007 defines information as under: -

“Any written information containing allegation or allegations against a member or a firm, received in person or by post or courier, by the Directorate which is not in Form-I under Sub Rule-(1) of Rule 3, shall be treated as

information received under Section 21 of the Act and shall be dealt in accordance with the provisions of these Rules. In the present case admittedly, no complaint had been received against the petitioner and the impugned proceedings had been issued on the basis of letter No.Rc.19(A)2011-CBI/Hyderabad, dated 31.07.2013 received from Central Bureau of Investigation, Hyderabad treating the same as Information. But a bare perusal of the letter, dated 31.07.2013 indicates that the said letter is neither a complaint nor it complies with the requirements of information under the Act, but is only response /correspondence to the letter issued by the respondent Authorities, dated 02.07.2013, and the said letter dated 31.07.2013 which is treated as information in fact merely refers to registration of FIR and charge sheet registered against the petitioner and another, but however the respondent No.3 treats the letter, dated 31.06.2012 issued by the CBI, Hyderabad as "Information" under Rule 7 of the Chartered Accountants (procedure of investigations of professional and other misconduct and conduct of cases) Rules, 2007, **and admittedly, the record does not indicate any complaint or any written information containing allegations against the petitioner having been received by the respondents herein and further, the impugned prima facie opinion, dated 23.12.2022 only extracts the allegations in the charge sheet and it is evident on record the said allegations against the petitioners herein are not in respect of the**

petitioner in respect of petitioner's capacity as a Chartered Accountant.

19. A bare perusal of the record also indicates that the earlier prima facie opinion dated 07.10.2017 and 24.09.2021 had been disagreed by the respondent No.4 which resulted in the impugned prima facie opinion dated 23.12.2022 which is the 3rd prima facie opinion and all the three prima facie opinions are identical apart from not satisfying the ingredients of the charges alleged.

20. A bare perusal of the record also indicates an unreasonable and unexplainable delay in arriving at the impugned prima facie opinion, dated 23.12.2023 and in issuing the impugned consequential notice dated 23.10.2023 to the petitioner herein, , this Court takes note of few relevant dates which clearly indicates that the manner of conducting the present disciplinary proceedings by the respondent Authorities is not in consonance with or purport and objective of the Act

a) The respondent No.3 had initiated inquiry proceedings against the petitioner in the year 2014 pursuant letter dated 31.07.2013 and the

disciplinary proceedings came to be issued by the respondent No.4 upon concurring the impugned prima facie opinion in the year 2023 after nine years of the initiation of the proceedings.

- b) The first prima facie opinion dated 07.10.2017 was formed after four years from the date of receipt of the alleged information i.e., 31.07.2017.
- c) The second prima faice opinion dated 24.09.2021 came to be issued by the respondent No.3 after four years of disagreement with the first prima facie opinion dated 07.10.2017.
- d) Notice dated 24.05.2023 came to be issued the respondent No.4 to the petitioner after two years from the date of second prima facie opinion.

The Division Bench of High Court of Kerala at Ernakulum in its judgment reported in 2021 scconline Kerala 2876 dated 26.03.2021 in P.Premalatha Vs. Union of India and in particular para Nos. 8 to 10 observed as under:-

8. It is by now well settled by a series of rulings of the Apex Court and various High Courts including this Court that matters relating to limitation, place of suing etc. are essentially in the realm of procedure, whereas matters in relation to filing of appeal, etc. is a vested substantive right. It is also well established that even if an amendment of the norms is made prospectively, ordinarily the same cannot take away any vested accrued substantive rights. However, where the amendment of the norm is essentially touching a matter of procedure and does not in essence and affect any substantive rights, then even if the amended norm has only prospective effect, the same would regulate not only cases arising on or after the date of the amended norm, but will also regulate matters initiated prior thereto and pending as on the date of amendment. In that regard, reference to decision of the Apex Court as in *K.S. Paripoornan v. State of Kerala* [(1994) 5 SCC 593] etc. may be apposite. The Apex Court has held in paragraph No. 64 of the abovesaid decision reported in *K.S. Paripoornan's case (supra)* ((1994) 5 SCC 593), p.p.634-665 as follows:

"64. A state dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is

a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. But virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings.

9.....There cannot be any dispute that rule making authority like the Union Government, State Governments etc. have the power to frame Rules to regulate the conditions of service of their employees and therefore, the competence of the Union Government to frame a statutory rule in the nature of Central Civil Services (Pension) Rules, 1972 [CCS (Pension) Rules, 1972] cannot be disputed. It is

also by now well established that just as an accused in a criminal proceedings has right to secure expeditious and fair trial, so also a delinquent in a disciplinary proceedings has the right to ensure that the disciplinary proceedings are finalised without any unnecessary delay. Moreover, the concept of reasonableness is an intrinsic component of various provisions in the Constitution like Articles 14, 16, 311 (2), etc. So, if there is unnecessary and undue delay in disciplinary proceedings, it can also lead to the situation of deprivation of reasonable opportunity of defence guaranteed in terms of Article 311(2) of the Constitution of India. In appropriate cases wherever there is undue and unnecessary delay, courts exercising judicial review can also intervene in the matter, depending upon the facts and circumstances of each of the case concerned.Therefore, in recognition of the abovesaid legal position, the rule making authority is perfectly justified.....The timeline stipulated for completion of disciplinary enquiry can only fall within the realm of procedure and not otherwise. The inquiring authority or disciplinary authority cannot contend that any of the substantive rights of the disciplinary authority will be detrimentally affected by the said rule incorporating a time line for completion of a disciplinary enquiry proceedings.

10. On the other hand, the inquiring authority and the disciplinary authority are under the bounden mandate of reasonableness enshrined in Articles 14, 16 and 311 (2) of the Constitution of India to ensure that the disciplinary

enquiry proceedings are initiated and finalised in a fair and reasonable manner and that such disciplinary enquiry proceedings may be finalised within a reasonable time limit. So also a delinquent employee cannot demand that there cannot be any reasonable timeline for conclusion of disciplinary enquiry proceedings....."

21. The learned senior designate counsel appearing on behalf of the respondents mainly raised the pleas of territorial jurisdiction and alternative remedy apart from contending that the respondents 3 and 4 accrued jurisdiction to proceed against the petitioner besides other pleas.

TERRITORIAL JURISDICTION:

22. In so far as territorial jurisdiction is concerned, this Court dealt with the same at the admission stage. Article 226(2) of the Constitution reads as under:-

Article 226(2): Power of High Court to issue certain Writs

Article 226(2): The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power,

notwithstanding that the scat of such Government or authority or the residence of such person is not within those territories.

23. It is settled law that "the cause of action consist of bundle of facts which give costs enforce the legal inquire for redress in a Court of law. It is borne on record that the impugned prima facie opinion, dated 23.12.2022 is in furtherance to registration of FIR, consequential charge sheet and trial pending before the Court of Principal of Special Judge for CBI cases, Hyderabad which is within a territorial jurisdiction of this Court. The entire allegations in the charge sheet which are alleged to be the basis of the disciplinary proceedings admittedly as borne on record are within the territorial jurisdiction of this Court. The firm to which the petitioner is alleged to have been negligent in providing professional services i.e., Jagati Group of Companies is also based out of Hyderabad, hence this Court opines that the pleas of the respondents that the petitioner ought to have approached the High Courts of Chennai or Delhi because the notices are exchanged from the territorial limits of Chennai and Delhi is devoid of any merits. The letter dated 31.07.2013 which had been treated as information against the petitioner i.e., letter dated 31.07.2013 issued by the CBI, Hyderabad is also within the territorial jurisdiction of this Court, being the cause of action

for the initiation of disciplinary proceedings against the petitioner. In the light of the above discussion and duly considering Article 226(2) of the Constitution of India, this Court opines that the objection of territorial jurisdiction raised by the respondents herein is negated.

A. The Apex Court in the judgment reported in 2004 vol.6 SCC page 254 in Kusum Ingots and alloys Ltd., Vs. Union of India and another, dated 28.04.2004 at para Nos. 10, 16 and 26 observed as under:

10. Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, in disputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

“16....In Union of India Vs. Adani Exports Ltd.reported in 2002 vol.1 SCC page 567, it was held that in order to confer jurisdiction on High Court to entertain a Writ Petition, it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

26. "Framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a Court only because of the situs of the office of the maker thereof."

B. The Apex Court in the judgment reported in Union of India Vs. Sanjiv Chaturvedi and Others reported in 2023 vol.5 SCC page 706 at para 13.6, observed as under:-

13.6 It is submitted that this Court in Alchemist Ltd. v. State Bank of Sikkim, noting the development of law in relation to the territorial jurisdiction of the High Courts under Article 226 has held that:

"18. The legislative history of the constitutional provisions, therefore, makes it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises."

"A bare perusal of the relevant provisions of the subject Act referred to and extracted above clearly indicate that as per Section 21(2) of the Act, the Director (Discipline) i.e., the 3rd respondent herein shall arrive at prima facie opinion only upon the receipt of any information of complaint along with the prescribed fee, but in the present case the respondent No.3 treated the letter dated 31.06.2012

issued by the CBI, Hyderabad as "Information" under Rule 7 of the Chartered Accountants (procedure of investigations of professional and other misconduct and conduct of cases) Rules, 2007. In the present case admittedly as borne on record that till as on date there has been no complaint or any written information containing allegations against the petitioner having been received by the respondents herein and hence, this Court opines that the respondent Nos. 3 and 4 accrued jurisdiction wrongly assuming the existence of a jurisdictional fact which in fact does not exist at all.

In so far as the plea of alternative remedy is concerned, the same is answered hereunder:-

24. It is pertinent to refer to the judgment of the Division Bench of Apex Court in a judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, referred to Whirlpool Corporation Vs. Registrar of Trade Marks (reported in (1998) 8 SCC 1) and further the said view had been reiterated by a Full Bench of the Apex Court (3 Judges) in a judgment reported in (2021) SCC Online SC page 801 in Magadh Sugar and Energy Limited

Vs. State of Bihar and Others dated 24.09.2021 and in the said judgment it is observed at para No.28 as under :

28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be

entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

This Court opines that the present case falls under 28 Clause (i) and (iii)(a)(b)(c).

25. The impugned prima facie opinion dated 23.12.2022 and the impugned consequential proceedings dated 23.10.2023 mechanically concurring with the impugned prima facie opinion dated 23.12.2022 is without

jurisdiction, bereft of reasons and in violation of principles of natural justice.

26. The impugned prima facie opinion dated 23.12.2022 in file No.PPR/26/2014/DD/25/INF/2014 is

A. WITHOUT JURISDICTION:

"A bare perusal of the relevant provisions of the subject Act referred to and extracted above clearly indicate that as per Section 21(2) of the Act, the Director (Discipline) i.e., the 3rd respondent herein shall arrive at prima facie opinion only upon the receipt of any information of complaint along with the prescribed fee, but in the present case the respondent No.3 treated the letter dated 31.06.2012 issued by the CBI, Hyderabad as "Information" under Rule 7 of the Chartered Accountants (procedure of investigations of professional and other misconduct and conduct of cases) Rules, 2007. **In the present case admittedly as borne on record that till as on date there has been no complaint or any written information containing allegations against the petitioner having been received by the respondents herein and hence, this Court opines that the respondent Nos. 3 and 4 accrued jurisdiction wrongly assuming the existence of a jurisdictional fact which in fact does not exist at all.**

B. WITHOUT COGENT REASONS AND IN CLEAR VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

A bare perusal of the impugned prima facie opinion dated 23.12.2022 indicates that the respondent No.3 in exercise of his powers under Section 21 of the Chartered Accountants Act, 1949 had issued the impugned prima facie opinion dated 23.12.2022 holding the petitioner guilty of the alleged misconduct without any cogent reasons contradicting its own observation that the capacity in which the petitioner was associated with the company at the time of alleged misconduct is not clear, but however holding that petitioner guilty of professional and other misconduct falling within meaning of Clause (7) of PART I of Second Schedule and Clause (2) of PART IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act **and hence, this Court opines that the same does not satisfy the ingredients of the alleged misconduct to accrue jurisdiction by the respondent Nos. 3 and 4 herein to initiate proceedings against the petitioner, and the prima facie opinion dated 23.12.2022 is devoid of any cogent reasons and the conclusions arrived at by the 3rd respondent is not borne from material on record, hence this Court opines that the manner of adjudication of the**

present disciplinary proceedings is not only in violation of the provisions of the Chartered Accountants Act and regulations but also in clear violation of principles of natural justice.

27. The impugned prima facie opinion dated 23.12.2022 of the 3rd respondent and the consequential impugned notice dated 23.10.2023 of the 4th respondent is without application of mind.

28. This Court opines that formation of an opinion on the basis of relevant material is a condition precedent for conferring power on the disciplinary committee to conduct an inquiry against the petitioner herein, in the present case admittedly as borne on record, there is no complaint or any written information containing allegations against the petitioner and the entire proceedings had been initiated by respondent No.3 based on a reply letter/communication dated 31.07.2013 issued by CBI, Hyderabad informing the registration of FIR against the petitioner.

29. The Division Bench of High Court of Kerala vide its judgment dated 27.10.2005 in W.A.No.2305 of 1999 in case of Narayanan Nambudiri Vs. Institute of Chartered Accountant of India and in particular at para Nos. 6 and 9, observed as under:-

6. Council is also statutorily obliged not to refer the complaint to the Disciplinary Committee if they reach a Prima facie conclusion that the respondent is not guilty of the professional misconduct. Council while exercising its powers under [section 21](#), read with regulation 12(11)(i) has to act objectively. Prima facie satisfaction of the Council on the basis of the materials placed before it is a factor which gives jurisdiction to the disciplinary authority to hold an enquiry. Expression of an opinion by the Council is a sine qua non or a condition precedent for assumption of jurisdiction by the disciplinary authority and is usually a check against frivolous complaints against Chartered Accountants. **When a power is conferred on any authority to refer a dispute or not to refer a dispute and to form a Prima facie opinion to that effect the authority has to form an opinion not mechanically but objectively.** Formation of opinion by the Council under [section 21](#), read with regulation 12 would be discernible from the proceedings, especially in a case where the complainant has withdrawn the complaint after having found that there has been no wilful omission or negligence on the part of the Chartered Accountant.

9. The Calcutta High Court in [Kishorilal Dutta v. P.K. Mukherjee](#) AIR 1964 Cal. 131 held that great are the responsibilities on the Council and the Disciplinary Committee and they must not-so act as to become a convenient tool and an engine of oppression against the members of the profession. They must act with responsibility. **That is why section 21 imposes a preliminary duty on the Council to form a Prima facie opinion before proceeding further. It will be a misfortune for the profession of the Chartered Accountants in India, if the Council chooses to let loose the whole machinery of Disciplinary Committee on any complaint or information received without examining it with care to see that a Prima facie case has been made out.**

30. The Apex Court in the judgment reported in 2022 vol.13 SCC page 329 dated 31.01.2022 in United Bank of India Vs. Biswanath Bhattacharjee and in particular at para Nos.18, 19 and 21 observed as under:-

18. Apart from cases of "no evidence", this court has also indicated that judicial review can be resorted to. However, the scope of judicial review in such cases is limited. In [B.C. Chaturvedi v. Union of India](#) a three-judge bench of this court ruled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in

its power of judicial review does not act as an appellate authority; it does not re-appreciate the evidence. The court held that:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the [Evidence Act](#) nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The

Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In [Union of India v. H.C. Goel](#) [[Union of India v. H.C. Goel](#), (1964) 4 SCR 718], this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

19. Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of evidence, or adherence to the provisions of the [Evidence Act, 1872](#) are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref: [Bank of India v. Degala Suryanarayana](#) a decision followed later in [Punjab & Sind Bank v. Daya Singh](#)). In [Moni Shankar v. Union of India](#) this court outlined what judicial review entails in respect of orders made by disciplinary authorities:

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the [Evidence Act](#) are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the (1999) 5 SCC 762, (2010) 11 SCC 233., (2008) 3 SCC 484 requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality

has not been satisfied, the Tribunal was within its domain to interfere.”

21. The bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under [Article 226](#) of the Constitution. Yet, from H.C. Goel onwards, **this court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under [Article 226](#) of the Constitution are available, and intervention, warranted.** For any court to ascertain if any findings were beyond the record (i.e., no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of “no evidence” or perversity, cannot be rendered sans such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the court under [Article 226](#) of the Constitution would be different; it is not appellate in character.

31. This Court opines that as explained in its detailed interim order dated 03.11.2023 passed in favour of the petitioner which is in force as on date which in fact should be read as part and parcel of the present order as well

and a bare perusal of the same indicates that it has been observed in the said order dated 03.11.2023 that it is borne on record that there is no evidence on record against the petitioner, the charge sheets in CC No. 8 of 2018, CC No.9 of 2019, CC No.10 of 2012, CC No.14 of 2012 and CC No.12 of 2013 are considered as evidence and prima facie opinion is formed on the said charge sheets. This Court opines that the respondent No.3 being preliminary Authority was only duty bound to pass a prima facie opinion and place the same before respondent No.4 for adjudication of the charges alleged against the petitioner, but however the respondent No.3 traversed beyond its jurisdiction and observed and concluded that the petitioner was negligent in providing his professional services to the company, though paragraph No.10 of the prima facie opinion, dated 23.12.2022 clearly indicated an observation that, the capacity in which the petitioner was associated with the company at the time of the alleged misconduct is not clear. Hence, this Court opines that the petitioner herein is entitled for the relief as prayed for by the petitioner herein.

32. This Court opines that the judgments relied upon by the learned senior designate counsel appearing on behalf of the respondent Nos. 2 to 4 do not apply to the facts of the present case.

33. Taking into consideration:

a) The aforesaid facts and circumstances of the case.

b) The averments made in the counter affidavit filed on behalf of respondent Nos. 2 to 4.

c) The view of the Apex Court and the other Courts in the judgments referred to and extracted above.

i) Kusum Ingots and alloys Ltd., Vs. Union of India and another reported in 2004 vol.6 SCC page 254

ii) Union of India Vs. Sanjiv Chaturvedi and Others reported in 2023 vol.5 SCC page 706

iii) M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, reported in (2021) 6 SCC 771

iv) Narayanan Nambudiri Vs. Institute of Chartered Accountant of India, dated 27.10.2005 in W.A.No.2305 of 1999

v) United Bank of India Vs. Biswanath Bhattacharjee reported in 2022 vol.13 SCC page 329

vi) [Kishorilal Dutta v. P.K. Mukherjee](#) reported in
AIR 1964 Cal. 131

d) The interim orders of this Court dated 03.11.2023
which are in force as on date.

e) Duly taking into consideration the operative portion
i.e., para No.10 of the impugned prima facie opinion dated
23.12.2022 of Respondent No.3, wherein it is clearly
observed that the capacity in which the petitioner is
associated with the company at the time of alleged
misconduct is not clear.

The Writ Petition is allowed as prayed for. However,
there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ
Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Dated 30.07.2024
Note: L.R.copy to be marked
b/o
ktm