

PETITIONER:
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Vs.

RESPONDENT:
M/S PRICE WATERHOUSE

DATE OF JUDGMENT: 11/07/1997

BENCH:
S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. SAGHIR AHMAD. J.
Leave granted.

2. I have gone through the judgment prepared by my Esteemed Brother, Hon. Ramaswamy, J., but for the reasons which I shall shortly indicate, I am unable to agree with the interpretation placed on Section 21 of the Chartered Accountants Act, 1949 (for short, the "Act"), as also on the Regulation 16 framed thereunder. Consequently, I do not also agree with the proposed final decision as, in my opinion, the present appeal is liable to be dismissed and the judgment of the High Court has to be upheld.

3. The facts have been set out in the judgment prepared by Brother Ramaswamy, J., and, therefore, they need not be set out here. Since I differ only on the question of interpretation of Section 21 read with 21 Regulation 16, I quote those provisions hereinbelow:

Section 21. Procedure in inquiries relating to misconduct of members of Institute.

(1) Where on receipt of information by, or of a complaint made to it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or

the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely :

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council

for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I:- In this section "High Court" means the highest civil court of appeal not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into carries on business or has his principal place of business at the commencement of the inquiry;

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall having regard to the ends of Justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II :- For the purposes of this section "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :

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- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit."

"Regulation 16: Report of the Disciplinary Committee:

(1) The Disciplinary Committee shall submit its report to the Council.

(2) Where the findings of the Disciplinary Committee is that the

respondent is guilty of professional and or other misconduct, a copy of the report of the Disciplinary Committee shall be furnished to the respondent and he shall be given the opportunity of making a representation in writing to the Council.

(3) The Council shall consider the report the Disciplinary Committee along with, the representation in writing of the respondent, if any, and if in its opinion a further enquiry is necessary, shall cause such further enquiry to be made whereupon a further report shall be submitted by the Disciplinary Committee.

(4) The Council shall, on the consideration of the report and the further report if any, and the representation in writing of the respondent, if any, record its findings.

Provided that if the report of the Disciplinary Committee is that the respondent is not guilty of any professional or other misconduct, the Council shall not record its findings contrary to the report of the Disciplinary Committee.

(5) The finding of the Council shall be communicated to the complainant and the respondent."

4. The interpretation placed by Brother Ramaswamy, J., on Section 21 read with Regulation 16 is that where a finding of "not guilty" is returned by the Disciplinary Committee, the Council still has the power to call for a further report from the Disciplinary Committee and if the Disciplinary Committee again holds the delinquent Member "not guilty", no option is left to the Council except to accept the findings of the Disciplinary Committee and record a finding of "not guilty". the only question is whether the Council has the power to call for a further report from the Disciplinary Committee in case it submits a report of "not guilty" in respect of the Member against whom proceedings for misconduct, as defined in the Act. were conducted against him.

5. Institute of Chartered Accountants of India (for short, the "Institute"), is defined in Section 6(e) of the Act. Section 3 which provides for the incorporation of the Institute lays down as under :

"3. Incorporation of the Institute:

(1) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted A body corporate by the name of the institute of Chartered Accountants of India, and all such persons

shall be down as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall by its name sue or be sued "

6. Section 4 specifies the persons who shall be entitled to have their names entered in the Register maintained under this Act. Section 6 provides that no Member of the Institute shall be entitled to practice whether in India or elsewhere, unless he has obtained from the Council, a certificate of practice. Section 7 provides that every member of the Institute in practice shall have the right to use the designation of "Chartered Accountant. Section 8 specifies the disabilities for which a person shall not be entitled to have his name entered in or borne on the Register Section 9 which provides for the constitution of the Council of the Institute is as under :

"9. Constitution of the Council of the Institute.

(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

(2) The Council shall be composed of the following persons, namely :

(a) not more than twenty-four persons elected by members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified in this behalf by the Central Government by notification in the Official Gazette;

(b) six persons nominated by the Central Government."

7. Section 12 provides that the Council shall, at its first meeting, elect two of its Members to be President and Vice-President thereof. Sub-section (2) of Section 12 provides that the President shall be the Chief Executive Authority of the Council.

8. Functions of the Council have been specified in Section 15 which include granting or refusal of certificate of practice under the Act, maintenance and publication of a Register of persons qualified to practice as Chartered Accountants, removal of names from the Register and the restoration to the Register of names which have been removed, the regulation and maintenance of the status and standard of professional qualifications of the members and the exercise of disciplinary powers conferred by this Act.

9. Section 17 provides as under :

"Committees of the Council.

(1) The Council shall constitute from amongst its members the following Standing Committees, namely:

(i) an Executive Committee,

(ii) an Examination Committee, and

(iii) a Disciplinary Committee.

(2) The Council may also form such

other committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act, and any committee so framed may, with the sanction of the Council, co-opt such other members of the Institute not exceeding two-thirds of the members of the committee as the committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the committee.

(3) EACH OF THE STANDING COMMITTEES SHALL CONSIST OF THE PRESIDENT AND THE VICE PRESIDENT EX-OFFICIO, AND THREE OTHER MEMBERS OF THE COUNCIL ELECTED BY THE COUNCIL:

Provided that in the case of the Disciplinary Committee, out of the members to be elected, two shall be elected by the Council, and the third nominated by the Central government from amongst the persons nominated to the Council by the Central Government.

(4) The President and the Vice-President of the Council shall be the Chairman and Vice Chairman respectively of each of the Standing Committees.

(5) Every member of the Standing Committee other than the Chairman and the Vice-Chairman shall hold office for one year from the date of his election, but, subject to being a member of the Council, he shall be eligible for re-election.

(6) The Standing Committees shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed."

10. Section 19 provides that the Council shall maintain a Register of the Members of the Institute. Section 20 gives power to the Council to remove from the Register the name or any Member of the Institute for various reasons set out therein. The Council is required to remove from the Register the name of any Member in respect of whom an order has been passed under the Act that his name be removed from the Membership of the Institute.

11. Professional misconduct has been defined in Section 22. Section 21 which has already been quoted above, indicates the procedure which has to be adopted in enquiries relating to misconduct of Members of institute. One of the punishments which can be inflicted upon a Member, on misconduct being established, is the removal of his name from the Membership of the Institute. Section 30 speaks of the power of the Council to make Regulations for various purposes, including exercise of disciplinary powers conferred by the Act. It is in exercise of this power that Regulations, including Regulation 16 quoted above, have been made by the Council.

12. From a perusal of these statutory provisions, it will be seen that the Council has got three Standing Committees,

including a Disciplinary Committee. The President and Vice-President of the Council are the President and Vice-President of each of these Standing Committees, including the Disciplinary Committee. The Disciplinary Committee is, therefore, a high power Committee as the Chief Executive Authority of the Council, namely the President, is also present in the Disciplinary Committee as its President.

13. Let me now proceed to consider the provisions of Section 21 so far as they are relevant for the present case in which the Disciplinary Committee had returned a finding of "not guilty" and when the Council on perusal of that report called for a further report, the matter was brought before the High Court in a Writ Petition and the High Court, by the impugned judgment, held that the Council had no power to call for a further report.

14. Under Sub-section (1) of Section 21, the Council, on receipt of information or of a complaint made to it that any Member of the Institute is guilty of any professional or other misconduct, has to refer the case to the Disciplinary Committee which has to hold an enquiry, in such manner as may be prescribed, and report the result of its enquiry to the Council.

15. Sub-section (2) lays down as to what the Council would do if it finds, on the receipt of the report that the Member is "guilty" of any professional or other misconduct. It has, in that event, to record the finding that the Member is not "guilty" with the direction that the proceedings be filed or the complaint be dismissed.

16. Sub-section (4) and other Sub-sections specify the procedure which is to be adopted by the Council where it finds, after receipt of the report of the Disciplinary Committee that the Member is guilty of professional or other misconduct. So far as the question of "not guilty" is concerned, the relevant provisions of the Regulation 16 made by the Council under Section 30 of the Act may be considered. This is contained in the proviso to Sub-Regulation (4) of Regulation 16. It reads as under :

"Provided that if the report of the Disciplinary Committee is that the respondent is not guilty of any professional or other misconduct the Council shall not record its findings contrary to the report of the Disciplinary Committee."

17. If Sub-section (2) of Section 21 and the Proviso extracted above are read together, it will come out that if the Disciplinary Committee submits report of "not guilty", the Council has to accept this report And close the proceedings as the mandate of law is that the Council shall not record its findings contrary to the report of the Disciplinary Committee. This provision does not affect the primacy of the Council. It does not have the effect of making the Council a body subordinate to the Disciplinary Committee which remains one of the Standing Committees of the Council. Now if the President and Vice-President of the Council, who are also the President and Vice-President of the Disciplinary Committee, have together with other Members of the Committee, decided on the basis of the material on record, that the member against whom disciplinary proceedings were initiated either on the information received by the Council or on a specific complaint made to it, that the Member is "not guilty", the same President and Vice-President sitting in the Council are required not to adopt a contrary finding but to adopt the findings of the

Disciplinary Committee and close the proceedings. In view of this provision the disciplinary proceedings cannot be equated with the disciplinary proceedings conducted against Government servants where the Appointing Authority which is the authority competent to inflict ultimate punishment, including that of dismissal, usually, under this rules made under Article 309 or under executive instructions issued by the Government, appoints an enquiry officer to hold the disciplinary proceedings and submit a report whether or not the employee against whom such proceedings were initiated was guilty or not guilty. There, the authority competent to inflict punishment retains the jurisdiction to accept or not to accept the findings of the enquiry officer. It can ultimately differ with the finding of "not guilty" recorded by the enquiry officer and may give a contrary finding that the delinquent employee was guilty and then proceed to inflict the appropriate punishment according to law.

18. Under the present Act and the Regulations made thereunder, the Disciplinary Committee is a Committee headed by the President of the Council who is the Chief Executive Authority of the Council under Section 12(2) and sits on the Disciplinary Committee along with the Vice-president. The highest authority of the Council, therefore, heads the Disciplinary Committee as also other Standing Committees of the Council. If, therefore, the Regulation says that where the finding of the Committee is that the Member is "not guilty", the Council shall not pass any order contrary to that finding, it is quite understandable as the disciplinary Committee being headed by the Chief Executive Authority of the Council is not expected to overrule itself.

19. Let me now proceed to consider the case where the finding recorded by the Disciplinary Committee is that the Member is "Guilty".

20. Section 21 (3) and (4) require that where the finding recorded by the Disciplinary Committee is that a Member is "guilty", the Council shall afford to the Member an opportunity of being heard before proceeding to inflict punishment upon that Member or referring the case to the High Court under Sub-section (4) or Subsection (5). How the High Court will proceed in the matter has been indicated in Sub-section (6) and (7) of Section 21.

21. Regulation 16(2) provides that where the finding of the Disciplinary Committee is that the Member is "guilty", a copy of the report shall be furnished to the Member and he shall be given an opportunity of making a representation in writing to the Council. The Council shall then consider the report of the Disciplinary Committee along with the representation of the Member and IF IN ITS OPINION A FURTHER ENQUIRY IS NECESSARY, IT SHALL CAUSE SUCH FURTHER ENQUIRY TO BE MADE WHEREUPON A FURTHER REPORT SHALL BE SUBMITTED BY THE DISCIPLINARY COMMITTEE.

22. Regulation 16 (4) provides that the Council, shall on the consideration of the report and the further report, if any, and the representation of the Member, record its findings.

23. This will show that a further enquiry can be ordered only where the Disciplinary Committee has initially found the Member to be "guilty" and has recorded a finding to that effect. An order for further enquiry can be passed only on a consideration of the report of Disciplinary Committee and the representation of the Member made against such report. What is implicit in this provision is that a Member to whom a copy of the finding is furnished may have the occasion to challenge or to accept the findings. On copy being furnished, the Member gets an opportunity to look into the

contents of the report. He may find that the procedure adopted by the Disciplinary Committee was not proper and was not in consonance with the requirements of law or principles of natural justice or that the manner in which the evidence was scrutinised by the Committees was incorrect or that the case required certain material evidence to be brought on record. In such a situation, the President who is the Chief Executive Authority of the Council and if also the President of the disciplinary committee as also other Members will come to know of the grievance of the delinquent Member through his representation. The Council may, on a consideration of the report and the representation, feel that it was a case where further enquiry was to be made by the Disciplinary Committee in the light of the various contentions raised by the delinquent Member. It will then call upon the Disciplinary Committee to hold further enquiry and submit a further report. On the submission of the further report by the Disciplinary Committee, the Council will take the final decision in the matter either itself or refer the case to the High Court together with its recommendations. This exercise is not to be undertaken where the Committee has recorded a finding that the delinquent Member was not "guilty".

24. In order to bring out the point more effectively, I may refer to the provisions of Regulation 14 which have since been replaced by an amendment made in 1988 by the present Regulation 14 is quoted below :

"Report of the Disciplinary Committee.

(1) The Disciplinary Committee shall submit its report to the Council.

(2) The Council shall consider the report of the Disciplinary Committee and if, in its opinion, a further enquiry is necessary shall, cause such further enquiry to be made whereupon a further report shall be submitted by the Disciplinary Committee.

(3) The Council shall, on the consideration of the report and the further report, if any, record its findings.

(4) The findings of the Council shall be communicated to the complainant and the respondent."

25. In the earlier Regulation, there was undoubtedly a power in the Council to order further enquiry even where the finding was recorded by the Disciplinary Committee that the Member was "not guilty". There was no distinction between the finding of "not guilty" and finding of "guilty". Separate procedures were not prescribed and therefore, with regard to unamended provision it could be validly said that even where a report was submitted by the Disciplinary Committee that the Member was "not guilty", the Council could still direct further enquiry. This cannot be said in respect of Regulation 16 as introduced in place of Regulation 14 by an amendment in 1988. Here two separate procedures have been indicated and it has been provided in the proviso appended to Regulation 16(4) that if the report of the Committee was that the Member was "not guilty", the Council would not record its findings contrary to that report. The Council is injuncted from taking a contrary view and has to adopt the report of the Disciplinary Committee

that the Member was "not guilty".

26. If it is held that the Council can still order a further enquiry even in those cases in which a finding of "not guilty" has been recorded, it would amount to altering the provisions of the Act and the Regulations, which is not permissible under law.

27. Brother Ramaswamy, J., has himself indicated that:

"The Council has the power to call for further report from the Disciplinary Committee on non-guilt of the professional or other misconduct of the respondent. in this backdrop the proviso to sub-regulation 24 of Regulation 16 becomes relevant. In case, on the second occasion, the report of the Disciplinary Committee still holds the delinquent member not guilty, there is no option left to the Council except, by operation of proviso to sub-regulation (4) of Regulation 16 read with Section 21 (2), as the Council is enjoined, to record finding of no guilt since the power of calling for further report would started exhausted. Any other view, in our considered opinion, would defeat the object of the Act."

28. What is, therefore, indicated is that the Council has the power to call for further report from the Disciplinary Committee even in those cases where the Committee has recorded a finding of "not guilty", although, if the said finding is repeated by the Disciplinary Committee in its further report the Council has no option but accept it. The helplessness of the Council has, therefore, been postponed as it allows one-time exercise to the Council to call for further report and thereafter to mutely accept the findings if the findings of "not guilty" are repeated by the Disciplinary Committee. Why has this been done when the Statute clearly wants immediate acceptance of the findings by the Council, is not comprehensible. Reading into the provisions that the Council has power to call for a further report even in those cases where the finding given by the Committee is that the delinquent member is "not guilty", would amount to altering the terms of the Statute and introducing a provision which did not exist, unless it is case of casus omissus, which, admittedly it is not.

29. It is said that a Statute is an edict of Legislature. The elementary principle of interpreting or construing a Statute is to gather the mens or sententia legis of the Legislature.

30. Interpretation postulates the search for the true meaning of the words used in the Statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the Legislature cannot be approached as the Legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the Legislature retains the power to amend or repeal the law so

made and can also declare its meaning, but that can be done only by making another law or Statute after undertaking the scale process of law-making.

31. Statute being an edict of the Legislature, it is necessary that it is expressed in clear and unambiguous language. In spite of Courts saying so innumerable times, the draftsmen have paid little attention and they still boast of the old British jingle I am the Parliamentary draftsman. I compose the country's laws. And of half of the litigation, I am undoubtedly the cause", which was referred to by this Court in *Palace Administration Board vs. RVB Thampuran & Ors.* AIR 1980 SC 1187 (1195) = (1980) 3 SCR 187. In *Kirby v. Leather* (1965) 9 All ER 441, the Draftsmen were severely criticised in regard to Section 22 (2) (b) of the (UK) Limitation Act, 1939, as it was said that the Section was so obscure that the Draftsman must have been of unsound mind.

32. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the Statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so." (See FRANKFURTER, Some reflections on the reading of statutes, "Essays on Jurisprudence from the Columbia Law Review, p-51. See also: Justice G. P. Singh's Principles of Statutory Interpretation 6th Edn., 1996, p-15.

33. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a Statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs & Ors.* (1980) 1 All ER 529 (HL) p-551:

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of Law, if Judges, under the guise of; interpretation, provide their own preferred amendments to Statutes which experience of their operation has shown to have had a consequences that members of the court before whom the matter comes consider to be injurious to public interest."

34. Where, therefore, the "language" is clear, the intention of the Legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the Statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception of including that of necessity, which is not the case here. (See: *Gwalior, Rayon Silk Mfg. (Wvg) Co. Ltd. vs. Custodian of Vested Forests Palghat & Anr*, AIR 1990 SC 1747 (1752) = (1990) 2 SCR 401; *Smt. Shyam Kishori Devi vs. Patna Municipal Corporation & Anr.* AIR 1966 SC 1678 (1682) = (1966) 3 SCR 466; *A. R. Antulay vs. Ramdas Srinivas Nayak &*

Anr. (1984) 2 SCC 500 (518, 519) = (1984) 2 SCR 914. Indeed, the Court cannot re-frame the legislation as it has no power to legislate. (See: State of Kerala vs. Mathai Verghese & Ors. (1986) 4 SCC 746 (749) = (1987) 1 SCR 317; Union of, India & Anr. vs. Deoki Nandan Aggarwal AIR 1992 SC 96 (101) = (1991) 3 SCR 873).

35. Applying the above principles to the instant case and applying all the basic principles of interpretation, including the guiding rules, the rule of mischief, the rule of harmonious construction, the rule of internal and external aid to construction, the rule of reading all the provisions together as also the rule of giving effect to a particular part of the Statute so as not to render the other part as otiose together with all other principles, relating to Interpretation of Statutes it cannot but be said that the provisions contained in Section 21 as also those contained in Regulation 16 are not capable of the meaning which is being assigned to those provisions.

36. The decision of this Court in Institute of Chartered Accountants of India vs. L.K. Ratna & Ors. (1986) 4 SCC 537 is not a judgment on the question involved in this case. It was rendered prior to the amendment introduced in the Regulation in 1988. The basic law laid down by this Court in that case that the Council shall have primary and that principles of natural justice are applicable to the proceedings held by the Disciplinary Committee and the Council, is not disputed, but that does not improve the matter and the question whether the Council had the power to call for a further report or order further enquiry in a case where the Disciplinary Committee had returned a finding of "not guilty" was not covered by that decision, specially after amendment of the Regulation.

37. I have already given my own interpretation and I stick to it after having given my thoughtful consideration to the judgment prepared by Brother Ramaswamy, J.

38. In view of the above, the appeal fails and is dismissed with costs.