

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
M.A. No. 55 of 2010

Date	Order with signature of Judge
1.	For hearing of CMA No. 1453 of 2012.
2.	For hearing of main case

Date of hearing :21stSeptember 2020

Date of decision:21st September 2020

Mr. Kanwar Majid, advocate for appellant.

Mr. Muhammad Ali Talpur, advocate for respondent No.1.

Salahuddin Panhwar,J:- Through the instant Appeal under Section 20K of the Chartered Accountants Ordinance, 1961 (Ordinance X of 1961) against the order passed by the Council of the Institute of Chartered Accountants of Pakistan dated 25.09.2002.

2. The relevant facts of disposal of the instant M.A are that appellant is the Chartered Accountant and is a registered member of Institute of Chartered Accountants of Pakistan (the Respondent) since 1989 and a fellow member since 1994. The profession of chartered accountancy is regulated by the Chartered Accountants Ordinance, 1961 (hereinafter referred to as the Ordinance); that on 04.05.2000, SECP directed an investigation to be held in respect of affairs of Pakistan PVC and appointed M/s Majeed Uddin, Azhar Ullah & Co., Chartered Accountants, as Inspectors. The inspectors carried out their investigation and submitted a report to the SECP. Based on the said report, the SECP vide letter dated 01.02.2001, filed complaint against the Auditor Firm with the Respondent in respect of the allegations mentioned in the aforesaid letter. It further stated that none of the allegations in the complaint had any substance whatsoever, however vide letter dated 11.05.2001 of the Institute, the complaint of the SECP was forwarded to the Auditor Firm for comments and comments were also called from the Appellant; that after filing of the comments and after detailed examination of the matter, the Investigation Committee concluded that no case of any professional misconduct was made out against the Appellant, nevertheless, the Investigating Committee took up suo-moto action to investigate accounts of Pakistan PVC for the year ended June 30, 1999 in sheer violation of the law and a two members Sub-Committee (comprising of Mr. Khaliq ur Rahman and Mr. Asad Ali Shah) was constituted and the Appellant

was required to appear before the sub-committee for the purpose of investigation and after investigation, the sub-committee placed its report before the Investigation Committee wherein the Appellant was not permitted to appear. The Investigation Committee, after recording its finding made a report to the Council. By letter dated 15.04.2002, the Council sought the comments of the Appellant on the report of the Investigation Committee, which were submitted through reply dated 27.04.2002, including his objection and the Council vide Impugned Order held the Appellant guilty of professional misconduct, and imposed on him the penalty of reprimand by name. The Council is now bound, in terms of S.20-I, to publish its findings and decision in the official Gazette and other publications of the Council which would be detrimental to the reputation and name of the Appellant and his firm. Hence this Appeal.

3. Heard learned counsel for the respective parties.

4. At the outset, it is relevant that a categorical procedure for initiation an *inquiry* onto allegation of '*misconduct*' is provided under section 20 of the Ordinance which, being relevant, is reproduced hereunder:-

20A. (1) The Secretary of the Institute shall, and any member or any aggrieved person may, lay before the Investigation Committee any fact indicating that"

(a) a member of the Institute has prima facie been guilty of any professional misconduct specified in Schedule I or Schedule II; or

(b) a student has prima facie been guilty of any professional misconduct specified in Schedule III.

(2) Where a complaint is received by the Institute that any member of the Institute or student is guilty of professional misconduct **referred to in sub-section (1)**, the complaint **shall, with relevant and necessary facts, be laid before the Investigation Committee."**

5. A bare perusal of the above leaves nothing ambiguous that a complaint of '*professional misconduct*' (with relevant & necessary facts) shall have to be laid before the *Investigation Committee* in the manner as *specifically* provided by Section 20-A(2) of the Ordinance and not otherwise?.

6. Taking a pause here, I would *further* add that placement of such '**complaint**' before the **investigation Committee** within meaning of referred

section is *itself* not sufficient for initiation of / holding an *inquiry* unless the **investigation Committee** finds it with substance requiring an *investigation* into allegation / charge. This is evident from section 20-B of Ordinance which reads as:-

“20-B. Enquiry by the investigation Committee. – (1) If on considering the facts or complaint laid before it under section 20-A the investigation Committee is of opinion that such facts or complaint require investigation, it shall, after giving a notice to the member of the institute or student whose conduct is in question, hold an inquiry.”

From joint reading of the above two provisions, it can *safely* be concluded that an *‘investigation’* into allegation of *professional misconduct* shall not be held unless the procedural formalities stood completed which are:-

- 1) “a complaint with all relevant and necessary facts has been laid before the investigation Committee’;
- 2) the investigation Committee forms opinion that such complaint requires investigation;
- 3) has given a notice to such person;

7. Worth adding that the word *‘shall’* is used in both provisions which requires strict adherence to the prescribed procedure. Such ordered investigation / inquiry also has to be done by an *independent* investigation Committee. A departure to prescribed procedure would be against the settled principle of law i.e *‘things required to be done in the manner should be done in the same manner or not at all’*, which is based on *“a communi observantia observantia non est recedendum”*.

8. Having said so, now it would be conducive to refer the impugned order so as to see whether impugned order is in consequence to *strict* adherence to procedural requirement or otherwise?. Same is reproduced as under:-

“Mr. Gohar Manzoor, FCA,
Riaz Ahmed Saqib Gohar & Co.,
Chartered Accountants
5 - Nasim C.H.S. Major Nazir Bhatti Road
Off. Shaheed-e-Millat Road
Karachi.

Dear Sir,

AUDIT OF THE FINANCIAL STATEMENTS OF PAKISTAN P.V.C. LTD., FOR THE YEAR ENDED 30 JUNE 1999

Please refer to your hearing before the Council on 27 April 2002 regarding alleged negligence in the audit of the financial statements of Pakistan P.V.C. Ltd, for the year ended 30 June 1999. The Council considered your views in the matter as well as the report of the Investigation Committee and would advise you as follows:

- (i) The allegations leveled in the SECP's letter dated 01 February, 2001 were considered to have no impact on the fair presentation of the financial statements. Consequently, the Council concluded that **you had not committed any misconduct on account of such allegations.**
- (ii) The Council also considered the allegation that you had not applied appropriate audit procedures to verify the revaluation of fixed assets in accordance with the ISAs, especially the ISA on the subject of "Using the Work of an Expert". The Council concurred with the Investigation Committee's finding, that our reliance on the expert to be inconsistent with your knowledge of the business, the historical financial performance and financial position of the company.

Based on reasons described, the Council found you to be guilty of misconduct of an act or default discreditable to a member of the Institute, under clause (5) of the Part 4 of Schedule I attached to the Ordinance, as you had failed to appropriately modify your opinion in the report to the shareholders."

The Council has reprimanded you by name for the said professional misconduct."

9. Perusal of above reflects that complaint moved by SECP by letter 1st February 2001 was considered and Council was of the opinion that there was no misconduct on the part of petitioner whereas paragraph No.2 which is apparently *sou-moto* exercise by the committee as it nowhere indicates compliance of required *three steps* (detailed above). In absence thereof, neither an *investigation* can be held nor report thereof can be considered because report is submitted within meaning of Section 20-B(3) of Ordinance which says as:-

(3) After the conclusion of inquiry, the investigation Committee shall report the result of the inquiry to the Council.

10. Here, I would refer to relevant portion of the case of Institute of Chartered Accountants of Pakistan through Secretary v. Abu Bakar Bilwani 2009 CLD 735 which reads as:-

“8. The provisions of the Ordinance as provided in Chapter VA heading “Misconduct” from sections 20-A to 20-F show that any member of the institute if he has committed misconduct as defined in the Ordinance **he is to be proceeded against in accordance with these provisions and the enquiry proceedings are to be conducted accordingly through independent Investigation Committee** whose findings require to be independently examined by the Council as a final authority.

For clarity, I would add that if an *investigation* is not initiated / held, as required by Section 20-A(2) and 20-B of the Ordinance the same can't be said to have been *legally* processed hence no *action* in consequence to such action can legally be stamped.

11. According to learned counsel the Secretary or any member or any aggrieved person was competent to indicate any professional misconduct specified in Schedule I or Schedule II, whereas in this case such complaint was moved by SECP and committee reached on the decision that there is no misconduct whereas with regard to paragraph No.2 that exercise was *suo moto* by the authority, is illegal and *ab-initio void* as only Secretary, Member or aggrieved persons were competent to initiate before the concerned investigation Committee. He has relied upon case law reported as 2005 CLD 737 particularly Cite Bar C which is that:

“From perusal of the material on record we are unable to agree with the contention of Messrs I.H. Zaidi and Syed Zaki Muhammad that the proceedings for professional misconduct against the petitioner were initiated in accordance with the provisions of the Ordinance of 1961. There is nothing on record to indicate that the factum of publication of the advertisement was placed or laid by the Secretary of the Institute before the Investigation Committee or that any member or any aggrieved person had brought to the notice of the Investigation Committee the alleged professional misconduct in getting published the advertisement. From the letter dated 11-4-2002 of the Institute it is to be inferred that without resorting to the provisions of section 20A of the Ordinance of 1961, the Manager of respondent No.2 issued the said letter purporting to be a show-cause notice requiring the petitioner to show cause as to why proceedings be not initiated against him by the Investigation Committee under section 20B of the Ordinance of 1961. As a matter of fact, the advertisement in the Daily Business Recorded of

10th April, 2002 was required to be placed before the Investigation Committee by in accordance with the provisions of section 20A of the Ordinance of 1961 but the said requirement was not complied with. Provisions or section 20B were also violated inasmuch as before placing or laying the advertisement before the Investigation committee for holding an inquiry and preparing a report of the result of the inquiry, a show-cause notice was issued the petitioner.

It is a settled principle of law that if a Statute requires a thing to be done in a particular manner or lays down the manner in which it is to be done or accomplished then it is obligatory on the part of the person concerned to allow the provisions of the Statute in letter and spirit and slat all methods/manners in doing or accomplishing the object are followed. It is also a settled principle of law that lie provisions of the statute are to be adhered to strictly and no provision is to be left as surplus, redundant or nauagatory. Respondent No.2 in initiating the disciplinary proceedings against the petitioner committed a grave and serious illegality in overlooking the provisions of section 20A and 20B of the Ordinance of 1961 and in violation thereof, issued a show-cause notice and the investigation Committee proceeded to investigate/ inquire into the guilt of the petitioner. Such conduct/procedure cannot be held to be legal and proper irrespective of the act that the material on record might have made out a prima facie case against the petitioner of being guilty of confessional misconduct. In the circumstances, we are constrained to hold that respondent No.2 had failed to the proceed in accordance with law against the petitioner and he proceedings for professional misconduct initiated against him were defective being in contravention and violation of statutory provisions."

12. To above, I would take only one exception that provision of Section 20-A(1) also includes '**any aggrieved person**' but would prefer in standing with the legal position that '*investigation Committee*' even is not competent to investigate / inquire an allegation / charge of *professional misconduct* unless the *investigation / inquiry* is ordered as specified in foregoing provisions which is lacking in the instant matter. Accordingly, impugned order is set aside to the extent of paragraphs No.2 and 3, whereas, paragraph No. 1, being not challenged, is left as it is. Needless to add that Committee may exercise such power if law permits but strictly in accordance with prescribed procedure and law.

13. In view of above the structure passed by the committee, which is mentioned in the last paragraph of the impugned whereby counsel reprimanded with regard to professional misconduct is removed. Needless to mention that any fresh inquiry, if conducted, shall not be considered as barred by any limitation and laches on the same facts.

JUDGE