Reserved On : 12/11/2025
Pronounced On : 19/11/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CHARTERED ACCOUNTANT REFERENCE NO. 3 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

==========

Approved for reporting	Yes	No
	✔	

==========

COUNCIL OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Versus
S.N. VALERA, FCA M/S. S.N. VALERA & CO.

==========

Appearance:
MR B S SOPARKAR FOR MRS SWATI SOPARKAR(870) for the Applicant(s) No. 1
MS MEGHA JANI FOR MR ARJUN M JOSHI(11247) for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Present reference under section 21(5)of the Chartered Accountants Act, 1949 (for short "the Act") in respect of the respondent *viz*. Shri S.N.Valera, Chartered Accountant, has been made by the Council of Institute of Chartered Accountants of India(herein after referred as Council).

BRIEF FACTS

2. The respondent was empaneled by the Central Registrar of the Madhavpura Mercantile Cooperative Bank Ltd., Ahmedabad (for short "the Bank"), which is registered under the Multi State Cooperative Societies Act, 1984. There was a huge scam, which is well known as MMCB scam in the year 2001. The Registrar of Cooperative Societies, Gujarat State upon instructions from the Central Registrar had allotted re-audit of the bank for the year 1999-2000. During the re-audit, it was found that the respondent had not disclosed and reported serious irregularities in the accounts of the Bank and he failed to disclose the material misstatements known to him in the financial statement. It was alleged that the respondent failed to report material misstatements known to him to appear in the financial statements of the Bank, with which he is concerned in his professional capacity, and thus, had shown gross negligence in performing his professional duties. The charges levelled against the respondent, as per the complaint were very serious in nature. The relevant dates in the present reference are as under:

Date	Event
19.09.1999	Respondent was appointed as Auditor of Madavpura Mercantile Cooperative Bank (MMCB) for FY 1999-00 u/s 67 of the Multi state Co-operative Societies Act and order of Registrar

Early 2001	Re-audit of MMCB was carried out under the order of Registrar dated 20.04.2001 which revealed severe irregularities.
06.03.2002	Jt. registrar Co-operative Societies made complaint against the Respondent
08.04.2002	Complaint was sent by the Council to the Respondent for his response
06.07.2002	Respondent filed written statement and submission
17.08.2002	Complainant submitted rejoinder
06.01.2003	Respondent submitted his comments
2-5.02.2003	ICAI framed prima facie opinion finding the Respondent as guilty
07.05.2003 to 25.10.2004	Proceedings took place before the Disciplinary Committee Questions put to parties and their replies thereto
16.11.2004	Disciplinary Committee submitted its report to the Council
31.12.2004	report of the Committee forwarded to both parties
17.01.2005 20.01.2005	Submission by the Complainant
17.03.2005	Respondent submitted written representation
24.03.2005	Council arrived at the finding and made recommendation to the Hon'ble High Court for removal of name of the respondent for a period of 5 years

3. There were 16 charges framed against the respondent and out of them, the disciplinary committee submitted its report on 16.11.2004 holding the respondent guilty in 08 charges. The details of which are as under:

Sr. No.	Charge	Verdict by the Council	Second Schedule Part 1 Clause
1	Bank did not maintain CRR and SLR ratio	Not Guilty	
2	Bank did not invest 15% of SLR funds into Govt. Securities as per RBI circular	Not Guilty	
3	Irregularities in advances against hypothecation	Not Guilty	
4	**Necessary documents not obtained by the bank while issuing loans**	**Guilty**	**(5),(6),(7),(8),(9)**
5	**Bank has advanced in excess of Rs.10 lakhs against security of shares in violation of RBI circular**	**Guilty**	**(5),(6),(7),(8),(9)**
6	Margin Money of loanee against shares were outstanding	Not Guilty	
7	Loan amount given more than the limits without additional security	Not Guilty	
8 iv	**Bank has advanced in excess of 20% of paid up capital and reserves in violation of RBI circular**	**Guilty**	**(5),(6),(7),(8),(9)**
9	**Excess loans granted against FD**	**Guilty**	**(8),(9)**
10	Advances against land and building without verification of documents	Not Guilty	
11	Absence of proper evidence and appreciation of plant and machinery	Guilty	(8)
12	Irregularities in sanctioning vehicle loans	Not Guilty	
13	**irregularities in sanctioning loans to NBFC**	**Guilty**	**(5),(6),(7),(8)**
14	**Loans granted for share trading without any kind of lien or hypothecation**	**Guilty**	**(5),(6),(7),(8),(9)**
15	**Loans granted to directors and their relatives**	**Guilty**	**(7),(8),(9)**

16	Financial irregularities as per Para 26 of re-audit report	Not Guilty	

4. The charges were framed under the 2nd Schedule of the Act. After the disciplinary committee submitted its report, the Council arrived at a finding and made recommendation to the High Court on 24.03.2005 for removal of name of the respondent for a period of five years.

SUBMISSIONS ON BEHALF OF THE COUNCIL

5. Learned advocate Mr.Soparkar appearing for the Council has submitted that the recommendation of removal of the respondent for a period of 05 years is required to be affirmed in view of the categorical findings of the disciplinary committee recorded in its report dated 16.11.2004 and the findings of the Council in its report dated 24.03.2005. It is submitted that the respondent was heard by the disciplinary committee and after considering his defence, the charges as mentioned hereinabove i.e. 08 in number, relating to serious irregularities, have been proved and are affirmed by the Council in its report dated 24.03.2005. He has invited the attention of this Court to each and every finding of the disciplinary committee and has submitted that the respondent in fact, has been unable to satisfactorily discharge the burden of proving

his innocence on the basis of the material, which has been gathered and supplied to these to him.

6. While referring to the provisions of section 21(3) of the Act, learned advocate Mr.Soparkar has submitted that on receipt of the report by the disciplinary committee, if 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-section i.e. sub-section 5, which pertains to the misconduct enumerated in Schedule 2 of the Act. It is submitted that under the provisions of sub-section 5 to section 21, the applicant-Council has found the respondent guilty of the misconducts, and accordingly, has forwarded the case to the High Court i.e. its recommendation to be decided by the High Court under the provisions of sub-section 6 of section 21 of the Act.

7. Learned advocate Mr.Soparkar has also referred to the provisions of Regulation 14(3) of the Chartered Accountant Regulation, 1988 (for short "the Regulations") and has submitted that the Council has to consider the report of the disciplinary committee and the representation in writing of the respondent, if any and record its finding. It is submitted that in the present case, the respondent was afforded an opportunity

of hearing by the disciplinary committee as well as the applicant-Council, though it is uncalled for at the stage of section 21(5) of the Act and hence, the misconduct, which has been proved by the disciplinary committee and affirmed by the Council are required to be upheld by removing the name of the respondent from the Register of Members for a period of 05 years.

8. It is contended that one colleague of the respondent *viz*. Shri Manubhai Panchal was also embroiled in the MMCB scam and against whom the Council had recommended to remove him from the Register of Members for a period of 02 years and the Reference, which was made to the High Court was upheld by the High Court in its decision dated 03.11.2017 passed in Chartered Accountant Reference No.2 of 2006. It is submitted that in the present case, the Notings of the disciplinary committee would exposit that the respondent was also assisted by C.A Shri Manubhai Panchal in the proceedings, however he was prevented by the committee, and hence, similar order may be passed upholding the recommendation of the applicant-Council in the case of the present respondent. It is submitted that the Special Leave Petition filed by Shri Manubhai Panchal being SLP No.165 of 2018 was dismissed by a reasoned order by the Apex Court on 12.01.2018.

9. Learned advocate Mr.Soparkar, while placing reliance on the judgement of the Apex Court in the case of Union of India and Ors. vs. P.Gunasekaran, (2015) 2 S.C.C. 610 and State Bank of India and Ors. VS Ramadhar Sao, 2025 SCC Online SC 1752, has submitted that the scope of interference by the High Court in the findings of disciplinary committee is very restricted and the Council is not required to record detail reason, when it agrees with the findings recorded by the disciplinary committee. Hence, it is urged that the recommendation of the Council may be accepted. He has also placed reliance on the judgement of the Apex Court in the case of C A Rajesh vs. Disciplinary Committee, (2012) 28 taxmann.com 100 (Gujarat).

SUBMISSIONS ON BEHALF OF THE RESPONDENT

10.In response to the aforesaid submissions and in view of the recommendations of the applicant-Council in the present reference, learned advocate Ms.Jani at the outset, has submitted that the report of the Council is required to be quashed and set aside on the ground of non-application of mind since there are no independent findings recorded by it. She has submitted that in fact, the report of the applicant-Council is nothing but a cut-paste job of the findings of the disciplinary committee,

and no independent findings are recorded by the applicant-Council, while recommending the case of the respondent for removing his name from the Register of Members for a period of 05 years. She has submitted that it is mandatory for the Council to apply its mind independently to the representations and the submissions of the respondent, while preparing the report. In this context and in support of the submissions, she has referred to the provisions of section 21(3) of the Act read with Regulation 16(3) of the Regulations. She has submitted that the provisions are self-explanatory and they mandate that the applicant-Council has to consider the report of the disciplinary committee and record its independent finding, after taking into consideration the representation filed by the respondent, which is missing in the present case.

11. In support of her submissions, learned advocate Ms.Jani has placed reliance on the judgement of the Apex Court in the cases of (i) Institute of Chartered Accountants of India vs Price Waterhouse and Anr., 1997 volume 6 S.C.C. 312, (ii) D.K.Agrawal vs Council of the Institute of Chartered Accountants of India, 2021 S.C.C. Online S.C. 903, (iii) Institute of Chartered Accountants of India vs L.K.Ratna and Ors., (1986) 4 S.C.C. 537 and (iv) Kranti Associates

Private Limited and Anr. vs. Masood Ahmed Khan and Ors., (2010) 9 S.C.C. 496.

COUNCIL's SUBMISSION IN RESPONSE

12. In response to the aforesaid submissions canvassed by learned advocate Ms.Jani, learned advocate Mr.Soparkar has submitted that the respondent has not questioned the report of the disciplinary committee relating to the findings of the misconduct and holding him guilty and hence, it is urged that the reference made to the High Court by the Council may be accepted.

ANALYSIS OF SCOPE AND POWER OF THE COUNCIL

13. Before dealing with the submissions of the learned advocates appearing for the respective parties, we may deal with the scope and power of the Council under section 21 of the Act and Regulation 16. Section 21 reads as under:

> *"["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 subsection (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 :-
(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."

14. Chapter 5 of the Act prescribes the procedure in inquiries relating to the misconduct of the Members of the Institute. It is not in dispute that the respondent was subjected to the disciplinary proceedings and 16 charges for irregularities were framed by the disciplinary committee. However, the disciplinary committee has submitted its report to the applicant-Council on 16.11.2004 holding 08 charges as proved, and holding him guilty for the misconduct, as enumerated in the 2nd Schedule of the Act. The intention of section 21 is to investigate the professional and other misconducts of a Chartered Accountant.

15. We may at this stage also incorporate the provisions of Regulation 16, governing the procedure to be adopted by the discipline authority and the Council.

> *"16. report of the Disciplinary Committee.-(1) The Disciplinary Committee shall submit its report to the Council.*
> *(2) Where the finding 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 of 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."

16. The provisions of section 21 of the Act read with Regulation 16 of the Regulations elaborate the role of disciplinary committee as well as the Council. Regulation 16(2) prescribes the action, after the disciplinary committee submits its report to the respondent and it also mandates of giving an opportunity of making the representation in writing to the Council. Further, Regulation 16(3) empowers the Council to consider the report and pass necessary orders for further inquiry, if necessary, after perusing the report of the disciplinary committee. Regulation 16(4) directs the Council to record its findings, after consideration of the report and the representation in writing of the respondent and ultimately, Regulation 16(5) further directs the Council to communicate its finding to the complainant and the respondent.

17. A close reading of the provisions of section 21 (3) of the Act read with the provisions of Regulation 16 (2) and (4) indubitably establish two facets i.e. (i) inquiry conducted by the

disciplinary committee and (ii) the consideration of its report by the Council.

18. The provisions of section 21(3) of the Act uses expression "it shall record a finding accordingly" that means the Council has to record a finding of professional or other misconduct on the receipt of the report of the disciplinary committee and similarly, Regulation 16 (2) provides that after the finding of the disciplinary committee is recorded, holding the respondent as guilty of professional or any other misconduct, a copy of the report has to be furnished to the respondent and he has to be given the opportunity of making the representation in writing to the Council. Regulation 16(4) also uses the expression "on the consideration of the report and the representation and record its findings".

19. Thus, the provisions of section 21(3) of the Act read with Regulation 16(2) and (4) of the Regulations mandate the Council to record its findings, after considering the representation and the report of the disciplinary committee. The term "finding" used in section 21(3) and Regulation 16(4) cannot be an empty formality and there has to be an application of mind by the Council to the findings recorded by the disciplinary committee in its report and it has

to arrive at its independent finding; after considering the defence/representation of the respondent and ultimately, prepare the report and send the same with recommendation to the High Court.

20. The provision of section 21 and Regulation 16 provides four tier exercise to be undertaken in case of misconduct by a Chartered Accountant. The first stage is *prima facie* opinion under section 21(1) by the Council, the second stage is by the disciplinary authority which has to prepare a report, the third stage is the findings of Council on the disciplinary committees report and the defence or representation of the member, and the fourth stage is consideration of the recommendation sent by the Council along with the report by the High Court in case the member is recommended to be removed from the Register for more than five years or permanently. The powers of the High Court under section 21(5) are wide enough to enable the High Court to adopt any course to do complete justice.

21. Thus, there are two stages of recording the findings of guilt of the respondent, (i) by the disciplinary committee in its report and (ii) by the Council however, the Council is also further required to consider the defence or the points

raised by the respondent in his representation presented before it.

ANALYSIS OF report OF THE COUNCIL

22. The following features emerge from the record of the Reference:

A. Under Section 21(1), the Council formed a *prima facie* opinion finding the respondent guilty of misconduct and referred the case to the disciplinary committee on 5.02.2003.

B. Section 21(2) is not attracted in the present case and hence, not relied upon by the either of the parties.

C. Under Section 21(3), the Council received the report of the disciplinary Committee on 16.11.2004. The provision mandates that on the receipt of the report in case the Council finds that the Member of the Institution 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*" i.e. sub-sections 4, 5 and 6. The report of the disciplinary committee was forwarded to both the parties.

D. Clause (b) of section 21(4) stipulates the removal of the name of the member from the Register for such period, not exceeding 05

years, whereas the proviso of sub-section 4 clarifies that in case, the Council is of the opinion that the member is to be removed from the Register for a period exceeding 05 years or permanently, it shall not make any order referred to Clause (a) or Clause (b) but shall forward the case to the High Court with its recommendation thereon

E. In the present case, the provision of section 21(5) has been invoked by the Council. The provisions of sub-section 5 are self-explanatory, which mandates the Council to forward the case with its recommendations to the High Court in case the misconduct of a member falls under the category of misconduct as referred in sub-section 4 i.e under First Schedule.

F. Section 21(6) fixes the role of the High Court on receipt of the reports under sub-section 4 or sub-section 5, which in turn culminates into three eventualities, as mentioned in Clauses (a), (b), (c) and (d), which is either to direct the proceedings to be filed or dismissing a complaint, reprimand the member and removing from membership of the Institute either permanently or for such period and refer the case to the Council for further inquiry and report.

23. At this stage, we may refer to the decision of the Full Bench of the Apex Court in case of Anand Brothers P. Limited Tr.M.D. vs. Union of India, 2014 (9) S.C.C. 212, wherein the Apex Court has examined the meaning of the word "finding", which is as under:

> *"13. It is evident from the above that English language and law dictionaries and the Law Lexicons give a wide range of meaning to the expression 'finding'. The predominant use of the expression is in relation to determination by a Judge, Jury, Administrative Agency, Arbitrator or a Referee. The determination is described either as a finding, decision or conclusion; upon disputed facts. It is also described as a determination of a fact supported by evidence on the record. It is interchangeably used as a conclusion or decision a term used by the legal profession and by Courts. The term "conclusion" is in turn defined by Black's Law Dictionary as under:*
>
> *"The final part of a speech or writing (such as jury argument or a pleading);*
> *a judgment arrived at by reasoning;*
> *an inferential statement;*
> *the closing, settling, or final arranging of a treaty, contract, deal, etc."*
>
> *14. it is trite that a finding can be both; a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of the finding on a legal issue the Arbitrator may on facts that are proved or admitted explore his options and lay bare the process by which he arrives at any such finding. It is only when the conclusion is supported by reasons on which it is based that one can logically describe the process as tantamount to recording a finding. It is immaterial whether the reasons given in support of the conclusion are sound or erroneous. That is because a conclusion supported by reasons would constitute a "finding" no matter the conclusion or the reasons in support of the same may themselves be erroneous on facts or in law. It may*

then be an erroneous finding but it would nonetheless be a finding. What is important is that a finding presupposes application of mind. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the right of the parties. This is true also in the case of a finding of fact where too the process of reasoning must be disclosed in order that it is accepted as a finding in the sense the expression is used in Clause 70."

24. Thus, as held by the Apex Court a legal conclusion qualifies as a 'finding' only when it is supported by stated reasons. Critically, the correctness of these reasons, whether they are sound or erroneous in fact or law, is immaterial. A reasoned conclusion, even if fundamentally flawed, still constitutes an 'erroneous finding' but is a finding nonetheless. The essential point is that a 'finding' requires an application of mind, which is most effectively demonstrated by disclosing the underlying reasoning. This process of recording reasons is the core principle of every judicial proceeding that impacts the rights of the parties.

25. Having examined the provisions of the Act as well as Regulation, and the meaning of the word "findings", as incorporated in the provisions of section 21(3) of the Act and also in the Regulations, we are of the opinion that the report of the applicant-Council fails the settled legal precedent of recording the independent

finding while acting as a quasi-judicial authority, and also fails the provisions of section 21(3) as well as Regulations 16 for the following reasons:

- It is not in dispute and in fact admitted by learned advocate Mr.Soparkar that the report of the Council incorporates the entire report *verbatim* of the disciplinary committee and the findings are only confined to paragraph No.9 of the report of the Council.
- A perusal of the report of Council expose that the respondent had given a written representation on 17.01.2005 and 20.01.2025 from the complainant and written representation dated 17.03.2005 by the respondent and also the oral submissions made by the authorized representative of the complainant and the Council of the complainant before it. This categorical finding has been recorded by the disciplinary committee as well by the applicant-Council in the minutes of 249th meeting of the Council held from 22nd to 24th March, 2005 in the office of the Institute at New Delhi. Thus, before the Council, the respondent had made his written representation dated 17.03.2005 and also the oral submissions on behalf of his authorized representative.

- After recording the aforesaid facts, the Council has merely incorporated the entire report of the disciplinary authorities, and we find that it is a cut-paste job. The report runs from page No.308 to 361.
- After producing/incorporating the report of the disciplinary committee, *verbatim,* ultimately, as canvassed by learned advocate Mr.Soparkar before us, the applicant-Council has recorded its findings, which we incorporate as under:

> *"6. The Complainant submitted his written representations dated 17th January, 2005 and 20th January, 2005, on the report of the Disciplinary Committee. Neither he nor his authorised representative appeared before the Council for making oral submissions.*
>
> *7. The Respondent submitted his written representation dated 17th March, 2005 on the report of the Disciplinary Committee. He along with his authorised representative Shri R. Muralidhar, Chartered Accountant appeared before the Council for making oral submissions.*
>
> *8. The Council considered the report of the Disciplinary Committee along with written representations dated 17th January, 2005 and 20th January, 2005 received from the Complainant and written representation dated 17th March, 2005 received from the Respondent and also the oral submissions made by the authorised representative and the Counsel of the Respondent*
>
> *9. On consideration of the report of the Disciplinary Committee alongwith the written representations dated 17th January, 2005 and 20th January, 2005 received from the Complainant and written representation dated 17th March, 2005*

received from the Respondent and also the oral submissions made by the Counsel for the Respondent before it, the Council decided:

(a) to accept the report of Disciplinary Committee to the extent wherein the Respondent was held NOT guilty of professional misconduct of charge nos. 1, 2, 3, 6, 7, 8(i), 8(ii), 8 (iii), 8 (v), 10 12 and 16.

(b) to accept the report of the Disciplinary Committee wherein the Respondent was held guilty of professional misconduct with respect to following charges and the corresponding clauses given against them.-

(i) Charge Nos. 4, 5, 8(iv) & 14 - Guilty within the meaning of Clauses (5), (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949;
(ii) Charge No. 9 - Guilty within the meaning of Clauses (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and;
(iii) Charge No.11 - Guilty within the meaning of Clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949
(iv) Charge No.13 - Guilty within the meaning of Clauses (5), (6), (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act,
(v) Charge No. 15 - Guilty within the meaning of Clauses (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949;"

26. After recording, the aforesaid so-called 'findings' the Council in paragraph No.10 has decided to recommend the High Court, to remove the name of the respondent from the Register of Members for a period of five years. The entire findings of the Council is restricted in paragraph 9 only. It has very cursorily recorded

that "they had considered the written representation dated 17.03.2005 made by the respondent and also the oral submissions made by the authorized representative and the Council, and on consideration of the report of the disciplinary committee along with such written representations received by the complainant and made by the respondent, has decided to accept the report of disciplinary committee to the extent, wherein the respondent was held not guilty and also to accept the report, wherein the respondent has been held guilty of professional misconduct with the charges as mentioned hereinabove." Except these observations, we do not find any findings or reasons dealing with the representations or the oral submissions advanced on behalf of the respondent. There are absolutely no independent reasons recorded by the Council, and the report is bereft of independent findings on the report of the disciplinary committee by dealing the contentions/submissions raised by the respondent. The Council has done merely a cut-paste job and produced the entire report of the disciplinary committee in its report.

27. We may also refer to the decision of the Apex Court in case of **Price Waterhouse and Anr. (supra)**, wherein the Apex Court, after examining the provisions of Regulation 16 of the

Regulations and the provisions of section 21 of the Act has held as under:

> *"14. … … … Regulation 16 is only an enabling provision to conduct by the Disciplinary Committee which is a fact-finding subordinate delegated body whose finding is not conclusive on the non-guilt of the professional or other misconduct of the member of the Institute. Al combined reading of relevant provisions in Section 21 and Regulation 16 does indicate that the recording of a finding of guilt or non-guilt by the Council is mandatory to take further action or to dismiss the complaint or for further process. The Council is required to consider independently the explanation submitted by the member and the evidence adduced in the enquiry before the Disciplinary Committee and the report of the Disciplinary Committee. It provides an in-built mechanism under which the Council itself is required to examine the case of professional or other misconduct of a member of the Institute or associate member, taking the aid of the report submitted by the Disciplinary Committee, the evidence adduced before the Committee and the explanation offered by the delinquent member. Entire material constitutes the record of the proceedings before the Council to reach a finding whether or not the delinquent member committed professional or other misconduct… … … ."*

28. Thus, as held by the Apex Court, the Council is required to consider independently the explanation submitted by the member and the evidence adduced in the enquiry before the Disciplinary Committee and the report of the Disciplinary Committee. It is held that the Regulation provides an in-built mechanism under which the Council itself is required to examine the case of professional or other misconduct of a

member of the Institute or associate member, taking the aid of the report submitted by the Disciplinary Committee, the evidence adduced before the Committee and the explanation offered by the delinquent member.

29. Similarly, in the case of **D.K.Agrawal(supra)**, the Apex Court in paragraph Nos.21 and 22 has held thus:

> *"21. Needless to say that, the power exercised by the Council under Section 21 quasi-judicial in nature. Perusal of the recommendations of the Council shows that it did not discuss the report of the Disciplinary Committee, the written statement and the oral submissions of the appellant while coming to the conclusion that he is guilty of misconduct. However, the concluding portion of the recommendations of the Council made an incorrect statement that the Council had considered all the materials on record and the written and oral submissions of the appellant. The observations of the Disciplinary Committee cannot by any stretch of imagination be treated as findings. At best, they may be termed as the material which falls within the domain of consideration by the Council. The Council has failed to give its own independent findings. The recommendations made by the Council are not supported by independent reasons. The recommendations, in our opinion, have been made mechanically by the Council.*
>
> *22. Recording of reasons is a principle of natural justice and every judicial/quasi-judicial order must be supported by reasons to be recorded in writing. It ensures transparency and fairness in the decision-making process. The person who is adversely affected wants to know as to why his submissions have not been accepted. Giving of reasons ensures that a hearing is not rendered as a meaningless charade. Unless an adjudicatory body is required to give reasons and make findings of fact indicating the evidence upon which it relied, there is no way of knowing whether*

> *the concerned body genuinely applied itself to and evaluated the arguments and the evidence advanced at the hearing. Giving reasons is all the more necessary because it gives satisfaction to the party against whom a decision is taken. It is a well-known principle that justice should not only be done but should also be seen to be done. An unreasoned decision may be just, but it may not appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of fairness and justice."*

30. At this stage, we may refer to the decision of the Apex Court in case of Chairman, LIC of India and Ors. v. A. Masilamani, (2013) 6 S.C.C. 530, which has explained the word "consider", which is as under:

> *"19. The word "consider", is of great significance. Its dictionary meaning of the same is, "to think over", "to regard as", or "deem to be".*
>
> *Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order."*

31. Thus, the Apex Court has held that the word "consider" is of the great significance and its dictionary meaning is "to think over", "to regard as" and "deem to be" and there has to be active application of mind and the term consider

postulates of all relevant aspects of the matter, and thus, formation of the opinion by the statutory authorities, should reflect intense application of mind with reference to the material available on record. The Council has merely stated that it has "considered" the representation of the respondent, without dealing with the contents, which displays non-application of mind. The provisions of section 21 of the Act casts a grave and weighty responsibility on the Council to determine the guilt of the member in misconduct, and the statute specifically assigns the duty on the governing Council to record its independent finding without thoughtlessly following the findings of disciplinary committee ignoring the representation of the member.

32. In the present case, all the facets of the application of mind and consideration of all the relevant aspects are missing in the report of the Council. Thus, only on this sole ground, the report and the recommendation of Council does not qualify to be accepted.

33. The reliance placed by the Council in the case of Shri Manubhai Panchal, the colleague of the respondent, who was also embroiled in the scam and was also subjected to the disciplinary action, which culminated into the Chartered Accountant Reference No.2 of 2006 decided on

03.11.2017, will not come to the rescue of the Council, since on a threadbare examination of the decision of the Coordinate Bench of this Court dated 03.11.2017 accepting the recommendation of the applicant-Council to remove Shri Manubhai Panchal from the Register of Members for a period of 02 years, reveals that the issue which is raised in the present reference has been neither raised nor dealt with by the Coordinate Bench. Against the aforesaid judgement, the Apex Court has also dismissed the SLP however, the grounds, which have been raised by the respondent with regard to the non-speaking order and non-application of mind by the applicant-Council on the representations and the submissions advanced by him before the applicant-Council, have not been raised in the case of Shri Manubai Panchal and Co. Hence, we do not subscribe to the submissions of learned advocate Mr.Soparkar in this regard.

34. The decision, in the case of Council of Institute of Chartered Accountants of India vs Arun Purushottam Kapadia, (2014) 41 taxmann.com 308 (Gujarat), on which the reliance is placed by learned advocate Mr.Soparkar will also not come to rescue as the same also does not deal with the issues raised in the present reference, and the points canvased by the respondent. Moreover, in that case, nobody appeared on behalf the

respondent and the proceedings were further conducted *ex-parte* by the High Court. So far as the case of **C A Rajesh (supra)** is concerned, the same also does not deal with the contentions raised with regard to non-speaking order and non-application of mind by the applicant-Council as mandated under the Provisions of section 21 of the Act read with the Regulation 16 of the Regulations. The decision in case of **P.Gunsekeran (supra)** and **Ramadhar Sao (supra)** will also not apply in the present reference. Both the cases deal with the power of judicial review while examining the findings of disciplinary authority and appellate authority in service matters of employees, and are not remotely connected to the provisions of section 21 of the Act and Regulation 16 of the Regulations or any *pari materia* provisions. The role attributed to the Council by the provisions of section 21 of the Act and Regulation 16 of the Regulations do not place the Council at the pedestal of appellate authority akin to the role in service matter of employees dealing with the misconduct.

CONCLUSION

35. Thus, while invoking the power under section 21(5) of the Act, We do not find the report and recommendation of the Council worthy of acceptance. The same is set aside and the matter is remitted back to the Council for fresh

consideration and disposal in accordance with law and in light of the observations made hereinabove.

36. Since, the reference is of the year 2006, we direct the Council to consider and dispose of the matter as expeditiously as possible, but not later than three months from the date of receipt of copy of this order. All the contentions of the parties are left open.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI,J)

NVMEWADA/1

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: NEHABEN VINODBHAI MEWADA(HC01571), PRIVATE SECRETARY, at High Court of Gujarat on 19/11/2025 15:01:01