CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

GURMUKH SINGH PURI,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 2263 of 1963.

1964

September, 18th.

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959)—S. 4—Government selling immovable property on condition that purchaser shall pay the price by instalments and on failure of payment the Government shall be entitled to resume the property—Purchaser defaulting in payment of instalments—Property—Whether can be taken possession of by Government under section 4 of the Act.

Held, that according to the sale-deed, if there is any breach in the payment of the instalments by the purchaser, the Government has the right to resume the factory. On the failure of the purchaser to pay the instalments the Government can have recourse to the ordinary remedies at law but cannot resume possession of the factory by evicting the purchaser, therefrom under section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 as the said premises cannot be said to be public premises as defined in section 2(3) of the Act, having been transferred by the Government to the purchaser who was to hold them as absolute owner. The premises do not, thereafter, belong to, or in any manner vest with, the Government.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order

or direction be issued quashing the order of respondent No. 1 and further praying that operation of the order of respondent No. 1 and the petitioner's dispossession from the premises in question or any part thereof be stayed till the final disposal of this writ petition.

H. S. WASU AND R. N. MITTAL, ADVOCATES, for the Petitioner.

M. R. SHARMA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondent.

ORDER

Mahajan, J.

MAHAJAN, J.—This petition under Article 226 of the Constitution is directed against the following order of the Under-Secretary, Industries, dated 27th November, 1963—

> "A copy is forwarded to the Collector, Ambala, with the above order of resumption, the vendees' possession of the Metallic Work Centre, Yamunanagar, has become unauthorised. Action should, therefore, be taken to resume possession under section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959."

The facts giving rise to this petition are that by sale-deed dated 30th June, 1956 (annexure A.1), the premises in dispute were sold to the petitioner for a sum of Rs. 2,99,937. The petitioner paid a sum of Rs. 45,700-14-6 in cash towards the purchase price as advance. He submitted claims mentioned in the margin of the sale-deed amounting to Rs. 1,06,987-13-0 with interest at 5¼ per cent to be calculated from the date of delivery of possession and actual adjustment of compensation in the work-centre's account. He agreed to pay the balance of the price amounting to Rs. 1,57,248-8-0 with interest at the rate of 5¼ per cent in ten years in half-yearly equated instalments. The first instalment was to be to the tune of Rs. 9,195-1-0 of principal and interest combined. The second and subsequent instalments were to be of Rs. 9,295-1-0. The instalments were to be paid every six months till whole of the amount of Rs. 1,47,248-8-0 and interest was paid. In lieu of the aforesaid consideration the vendor as the sole and absolute owner transferred to the purchaser the property specified in schedule I to the sale-deed with all rights and privileges and appurtenances and was to hold the same as absolute

owner subject to certain specified conditions. It is unnecessary to reproduce all the conditions. For our purposes it will be sufficient to set down conditions Nos. 4, 6 and 7, which are as follows—

"4. And further this deed also witnesses that for the consideration aforesaid and as security for the payment to the vendor of the whole money due to him from the purchaser on account of the sale price and interest and any part thereof according to the terms and conditions thereof the purchaser hereby transfers to the vendor all the property described in schedules I and II hereto of which he is the absolute owner and which he assures to be free from all encumbrances to the intent that the same shall remain and be charged by way of simple mortgage in manner following namely that for the purpose of recovering the sum of Rs. 1,47,248-8-0 (one lac forty-seven thousand, two hundred forty-eight and annas eight only) and interest due thereon at the rate of 5¼ per cent or any such other sum as may be due to the vendor from the purchaser by virtue of this deed the vendor may enforce against the property described in schedules I and II or any part thereof any of the remedies of the holder of a simple mortgage.

(5) * * * * * *

(6) In the event of non-payment of the balance of the price in accordance with the covenants specified heretofore and of non-observance or non-performance by the purchaser of any of the provisions hereof, the vendor shall, without prejudice to other rights and remedies and notwithstanding the waiver of any previous right for re-entry, have the right to enter into and upon the said premises or any part thereof and to resume, repossess, retain and enjoy the same and the machinery entered in schedule II as to his former state and the purchaser shall not be entitled to the refund of the purchase money or any part thereof or to any compensation whatsoever on account of such resumption.

Gurmukh Singh Puri
v.
State of Punjab and another

Mahajan, J.

(7) In the event of any dispute or difference at any time arising between the vendor and the purchaser as to the true intent and meaning of these presents and each and every provision thereof, the property and rights hereby reserved or any of them or in any manner incidental or relating thereto, the said dispute or difference shall be referred to the Secretary to Government, Punjab, Industries Department, acting as such at the time of reference whose decisions thereon shall be final and binding on both the parties.

* * * * *".

This sale-deed is executed on behalf of the Governor of the Punjab by the Director of Industries and signed by the vendee. According to the case of the petitioner, he had been trying to make the department agree to take his verified claims and the verified claims of other associates in payment of the price. As I read the sale deed, the sum of Rs. 1,47,248-8-0 had to be paid in cash by instalments and that amount could not be discharged by putting in the claims of his associates or even his own claims. The sum of Rs. 1,06,987-13-0 could only be paid by adjustment of the claims specified in the margin of the sale deed. Therefore, the stand taken by the petitioner in the petition is not justified in any manner.

According to the sale-deed, if there is any breach in the payment of the instalments which obviously there is in the present case, the Government has the right to resume the factory. The sole question that requires determination is how that resumption is to be effected. The Government has sought to resume the factory by recourse to section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (Punjab Act No. 31 of 1959), whereas according to the petitioner this cannot be done as any dispute arising out of the terms of the sale deed is to be settled by arbitration. This is provided in condition No. 7 in the sale deed. All that I am called upon to determine now is whether the Government has the right to evict the petitioner from the premises under

that would mostly be treated as based on information. In such rare cases the same rule applies that the charges must be specific and clear and must be made known to the member concerned so that he may be able to defend himself by answering the added charges, to rebut the material or evidence in support of the same, and to produce defence with regard to them. If this procedure is not followed, the findings of the Disciplinary Committee will be without jurisdiction and cannot form the basis for punishing the chartered accountant concerned.

Reference under Section 21(5) read with Schedule II of the Chartered Accountants Act, 1949, as amended by the Chartered Accountants (Amendment) Act, 1959, to the High Court for decision on the following point:—

"Whether respondent was guilty of professional misconduct under section 21 of the Chartered Accountants Act, 1949, read with Clauses (7) and (8) of Part I of the Second Schedule to the Act."

S. K. KAPUR AND BISHAMBER LAL, ADVOCATES, for the Petitioner.

VEDA VYASA, R. L. AGGL AND P. N. KHANNA, ADVOCATES, for the Respondent.

JUDGMENT

MEHAR SINGH, J.—This is a reference under section 21(5) of the Chartered Accountants Act, 1949 (Act 38 of 1949), by the Council of the Institute of Chartered Accountants of India accepting the report of the Disciplinary Committee and finding the respondent, V. K. Verma, of Messrs V. K. Verma and Company, Chartered Accountants, Delhi, guilty of professional misconduct under items (7) and (8) in Part I of the Second Schedule to the Act and recommending to the High Court that the name of the respondent may be removed from the membership of the Institute for a period of two years. The professional misconduct described and detailed in items (7) and (8) in part I of the Second Schedule to the Act is this—"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he— (7) is grossly negligent in the conduct of his professional duties; (8) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion." Mehar Singh, J.

Messrs. V. K. Verma and Co.
v.
V. K. Verma

Mehar Singh, J.

The facts and circumstances that have led to the reference are that a letter, dated October 4, 1961, purporting to have been sent by one Ravinder, was received by the Secretary in the Department of Company Law Administration, Government of India, charging the respondent with misconduct in these two respects (a) that the respondents firm as Chartered Accountants were auditors of Messrs B. Dharam Singh and Company Private Limited, with Head Office in Lucknow and a Branch in Delhi, and also of the National Bank of Lahore Limited, of which Mr. S. L. Verma, father of the respondent, was a Director, and the National Bank of Lahore Limited had given a cash credit facility to the extent of seven lakhs of rupees to Messrs B. Dharam Singh and Company Private Limited, so that under the circumstances, the auditors were working in a dual capacity, as auditors of the Bank as well as of the borrowers and as such they could not be fair in the discharge of their duties to either, and (b) that, while assessing the income of Messrs B. Dharam Singh and Company Private Limited, the Income-tax Officer pointed out in the order of assessment, dated May 30, 1960, that from the audited accounts of that company, books of Lucknow office of the company were entirely excluded and on a revised balance-sheet and profit and loss account, after inclusion of the figures of the Lucknow office, having been given, the Income-tax Officer still found the figures in the Delhi accounts according to the books of the company different from those in the audited accounts.

The letter of Ravinder, having been received by the Secretary of the Institute, Ravinder was called upon to file a complaint in form 'P' in accordance with regulation 11(3) of the Chartered Accountants Regulations, 1949, but he made no response. The Secretary of the Institute then proceeded to consider the letter of Ravinder, as an information under section 21(1) of the Act. A copy of it was sent to Messrs V. K. Verma and Company, Chartered Accountants, informing them that the member concerned may send his written explanation to the charges in accordance with regulation 11(6). The respondent gave his written explanation on September 21, 1962. In regard to the first charge he admitted that his father, Mr. S. L. Verma, was a Director of the National Bank of Lahore

The Institute of C
~~Messrs V.K. Verma and Co.~~
v.
V. K. Verma
Mehar Singh, J.

Limited and that his firm were auditors both to that bank and Messrs B. Dharam Singh and Company Private Limited, but he further said that on that account his firm were not debarred from being auditors to both the bank and the company as that was not a disqualification under the provisions of section 226(3) and (4) of the Companies Act, 1956, and further that the appointment of his firm as auditors of the bank was under a special resolution of the bank in accordance with section 314 of the Companies Act, 1956. It appears that the Disciplinary Committee was satisfied with this explanation on this charge and in its report it has said no more on this aspect of the matter. In regard to the second charge the explanation given by the respondent was that he signed the balance-sheet relating to the year ending August 31, 1958, of Messrs B. Dharam Singh and Company Private Limited after the same and the profit and loss account were prepared by that company and checked by his firm with the account-books and records of the company produced at the time of the check and that it was incorrect that the figures of the Lucknow office of the company were not incorporated in the audited accounts, the books of account of the Lucknow and Delhi offices having been duly checked and incorporated in the balance-sheet and the profit and loss account of the company. A difference of Rs. 194.79 was found in the trial balance prepared by the company which was shown on the face of the balance-sheet. This irregularity was brought to the notice of the company and its share-holders. He then criticised the remarks made by the Income-tax Officer in the assessment of the company on the ground that they were not only not justified but were made at the back of his firm. He denied that he had signed the revised balance-sheet and said definitely that he had only signed one balance-sheet showing the difference in the trial balance of the amount as stated, which amount was shown on the face of the balance-sheet. The Disciplinary Committee in regard to this charge has considered that the information in the letter of Ravinder, refers to (i) the respondent having given wrong audited statements of account in so far as the same did not include the figures of Lucknow office transactions and the figures in Delhi account did not agree with the audited accounts, and (ii) that the revised balance-sheet and profit and loss account in connection with the same period covered by the first balance-sheet and the profit and loss account were

Messrs V.K. Verma and Co.
v.
V. K. Verma

Mehar Singh, J.

alleged to have been signed by the respondent and given to the Income-tax Officer. On these matters the Disciplinary Committee has found in favour of the respondent. It says that "it has found that the audited accounts did incorporate the figures relating to Lucknow office transactions", and further it found that it was not clear from the evidence whether the respondent prepared and signed the revised balance-sheet and profit and loss account, so that it was prepared to give benefit of the doubt to the respondent in this respect. In substance, therefore, the charges of misconduct as appearing in the form of information in the letter of Ravinder were found by the Disciplinary Committee not to have been substantiated.

The Disciplinary Committee has, however, found two more instances of professional misconduct against the respondent. Those are (a) that the respondent failed to invite attention to omission in the balance-sheet about information relating to the maximum amount due from the directors and from the companies under the same management, with the result that the auditors' report was incorrect in so far as it stated that the accounts gave the information required by the Companies Act, 1956, and (b) that the respondent failed to carry out his statutory duty as an auditor for he did nothing more but to sign the balance-sheet and the profit and loss account without applying himself to the same in spite of it having been brought to his notice by his assistants that there was divergence in the trial balance prepared by the company and he was satisfied by merely saying that that fact was disclosed on the face of the balance-sheet. In this respect the Disciplinary Committee was prepared to accept the respondent's statement that he had no idea when he signed the report that the books of the company contained so many mistakes as were subsequently found on a recheck even by his office in 1960. But it considered that the question was whether the respondent obtained sufficient information to warrant the expression of an opinion and exercised reasonable degree of care and skill before signing his report. In regard to this it found that although the difference in the trial balance had been noticed, a considerable number of totalling mistakes, covering small amounts up to an amount of a little over Rs. 24,000, were never discerned showing that there was in fact no proper audit of the accounts of the company. The only defence made by the respondent to this

The Institute of Chartered Accountants of
Messrs. V. K. Verma and Co.
v.
V. K. Verma

Mehar Singh, J.

was that he had relied on his assistants. He did not produce audit notes or working papers saying that the same had already been destroyed some six months after the audit report was complete. In the absence of such notes and papers the Disciplinary Committee felt that there was no material to satisfy it about the extent of work carried out by the respondent or about the scope of any enquiries or explanations asked by him from the company. The Committee observed that while the respondent was not expected to vouch for absolute accuracy of the accounts and where the circumstances justified, he could rely on the test checks that provide a fair sampling of the state of the company's books and his failure to discover a few cases by mistake would not necessarily amount to negligence, it was his duty to exercise reasonable care and skill in the conduct of his professional work and in this case it was his statutory duty to obtain sufficient information before making his auditors' report. It found that there was no evidence that the respondent cared to know about the nature and scope of internal control or rather the complete absence of it and that he attempted to exercise any judgment about the scope or adequacy of test checks of totals and postings, and that he did not do anything beyond asking his assistants what they had done about vouching and posting, he himself taking no part in checking and inquiring. In regard to the position on the side of the respondent that he had not acted dishonestly and mere failure to perform his duties ought not to be regarded as misconduct, the Disciplinary Committee applied what it considered an alternative test, whether the respondent acted unreasonably in the circumstances of the case. It concluded that he had done so and that it was satisfied that the respondent failed to obtain sufficient information to warrant the expression of an opinion and was grossly negligent in making the audit report of October 7, 1959. It was on these conclusions that the Disciplinary Committee found the respondent guilty of professional misconduct under items (7) and (8) in Part I of the Second Schedule to the Act. It made its report on September 12, 1963, to the Council of the Institute which, as stated, accepted the report finding the respondent guilty of misconduct according to the report and recommended to this Court that the respondent may be removed from the membership of the Institute for a period of two years.

Messrs. V. K. Verma and Co. v. V. K. Verma

Mehar Singh, J.

The learned counsel for the Institute anticipating an argument on the side of the respondent has contended that although the two charges upon which the finding of misconduct is based against the respondent were no part of any allegation in the letter of information by Ravinder, but at the hearing before the Disciplinary Committee the matter was put in detail to the respondent in the form of questions and his answers were obtained to the same, so that the respondent had ample opportunity of knowing what were the new charges against him and ample opportunity of defence in regard to the same. The learned counsel has referred to the record before the Disciplinary Committee and has pointed out to various questions and answers in this respect. The respondent was asked how was he satisfied that there was nothing wrong with the balance-sheet when he signed it in spite of it having been brought to his notice that the trial balance had a difference so far as the account-books were concerned ? It was the counsel for the respondent who gave the reply that the company having delayed its annual general meeting and having been threatened with prosecution by the Registrar of Companies, it hurried in preparation of the balance-sheet. The respondent deputed two persons for the purpose of audit. Those persons went through the books and checked up all the vouching. The company is a huge concern and they carried this out here and there, in other words, in regard to sample entries. The respondent said that it was after the first audited balance-sheet that the management of the company made adjustments in the account-books. The respondent was then asked that as big differences in certain accounts had been disclosed, some in the balance-sheet and some in the profit and loss account, how did those escape respondent's attention, and again the counsel for the respondent replied that if complete totalling and postings had been done, there could have been no difference in the trial balance. It was then pointed out to the respondent that in regard to sundry creditors there was a posting mistake and how was that item not taken? The respondent replied that he did not know because his assistants were dealing with the matter. The accounts were in Urdu and he did not know Urdu. When asked why he had taken up the audit work without knowing Urdu and without having any senior assistant, he explained that one of his assistants had completed the articles having passed the final

The Institute of
~~Messrs. V. K. Chawla~~
~~Verma and Co.~~ Accountants of India
v.
V. K. Verma

Mehar Singh, J.

examination in one group and the other was an experienced hand in auditing work. In the statement of Krishan Lal Kumar, an accountant of the company, the learned counsel for the Institute pointed out that it was the Income-tax Officer, who could not reconcile certain figures in the books of the company and it was he, who called for a revised account. When asked who checked the first balance-sheet ending August 31, 1958, the respondent replied that two of his assistants named Kaul and Rekhi did so. Another matter that was put to the respondent was whether under the heading 'The amount due in the current account', there was requirement of statement of maximum balances, and while the respondent admitted that there was a requirement, he also admitted that the same were not shown because he depended upon his assistant, who was an experienced person. The learned counsel has then pointed out from the evidence of Rekhi, an assistant of the respondent, that he only checked such of the totals as were pointed out by the management of the company as wrong and had been corrected by them. On re-checking he found that what they said was correct. On a question to the respondent, what part did he take in the audit of the company, the respondent said that after the balance-sheet had been prepared and he discussed that, probably with his assistants, the only thing that was brought to his notice was that there was difference in the trial balance. He explained that he depended upon his assistants. It was pointed out to the respondent that the accounts did not tally and there was no internal check in the account keeping of the company, and he was asked, in the circumstances, what work did he do in the matter of auditing and checking, posting and vouching ? He replied that when he signed the balance-sheet he never thought that the books of account contained so many mistakes and when he made enquiries, he was informed that there was only difference in the trial balance, about which he insisted that the same be shown on the face of the balance-sheet. It appears that the number of mistakes to which reference is made in the report of the Disciplinary Committee were discovered on a subsequent check by the respondent himself. When the members of the Committee pointed out this state of affairs and questioned the respondent about it, his learned counsel gave an explanation in the manner as has already been explained that the annual general meeting had been missed

~~Messrs. V. K. Verma and Co.~~
v.
V. K. Verma

Mehar Singh, J.

and the company was under pressure to complete the accounts as early as possible. These are the parts of the record to which the learned counsel for the Institute has referred and submitted that in respect of the two charges on which the finding of misconduct is based, the respondent has had all the knowledge and information so as to have an adequate hearing with regard to the same. The learned counsel has explained that the respondent has been questioned in detail on the subject of the two charges and has had every opportunity to explain his position. He could have taken whatever stand he wanted to take in defence.

In regard to the charges, the learned counsel for the Institute has first drawn attention to the first balance-sheet in which under the heading 'Loans and advances: (Unsecured)', there is one amount of Rs. 1,89,000 and odd as due in current account for purchases from concerns in which director or directors or relations of directors are interested (considered good) and there is another amount of Rs. 27,600 and odd shown as advances to directors. He has then referred to group III under the heading 'Current Assets: (5) (Sundry Debtors)', and the instructions accompanying it in part I of Schedule VI to the Companies Act, 1956, in accordance with which assets should be made out. In this respect he relies upon these three instructions—

> "Debts due from Directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member to be separately stated.
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> Debts due from other companies under the same management to be disclosed with the names of the companies,—(*vide* Section 370).
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> The maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note."

It is obvious from these instructions that the statement of maximum amount by way of a note is to be shown only

The Institute of Chartered A...
Messrs. V. K. Verma and Co.
v.
V. K. Verma

Mehar Singh, J.

with regard to the last instruction of amount due by directors or other officers of the company at any time during the year, but not with regard to the other two instructions. To support the stand of the Disciplinary Committee in regard to the first charge in this respect the learned counsel for the Institute has then made reference to note (i) in the notes at the end of part I in Schedule VI of the Companies Act, 1956, which note (i) reads—"As regards Loans and Advances (Group IV), amounts due by the managing agents or secretaries and treasurers, either severally or jointly with any other persons, to be separately stated; the amounts due from other companies under the same management should also be given with the names of the companies,—*vide* section 370; the maximum amount due from every one of these at any time during the year must be shown." The learned counsel points out that the last sentence in this note is a rider to the last but one sentence in it, so that even in the case of last but one instruction, as reproduced above, it is the duty of an auditor to state about the maximum amount due from other companies under the same management at any time during the year. There is the revised balance-sheet in which under the heading 'Loans and advances: (Unsecured)', there is first the amount of Rs. 18,800 and odd as due in current account from firms in which directors are interested, there is second amount of Rs. 10,70,300 and odd due from companies under the same management, and there is third the amount of Rs. 27,600 and odd as advances to directors. There are notes to these three items, the first note giving the maximum amount due from the companies under the same management during the year, and the second note showing the maximum amount due from the directors during the same period. It will be seen that item 1st that is now being considered did not find place in the original audited balance-sheet nor did any of the two notes, as they find place in the revised balance-sheet. In regard to the second charge in this respect there is no doubt that all that the respondent did was to note the difference in the trial balance and, while signing the balance-sheet and the profit and loss account, to show the same on the face of the balance-sheet. He did absolutely nothing in the matter of auditing the accounts of the company, having left the whole thing to his assistants without even any kind of supervision. The learned counsel for the Institute refers first to *The Institute of*

Institute of Chartered Accountants of India
~~Messrs. V. K. Verma and Co.~~
v.
V. K. Verma

Mehar Singh, J.

Chartered Accountants of India v. A. C. *Chandiok* (1), in which my Lord, the Chief Justice, observed—"I agree with the view of the Committee that although in this case no professional misconduct be involved in submitting a report under section 227 of the Companies Act, based mainly on the work of another Accountant, as a general rule a statutory auditor would be guilty on this count if he performed his work so recklessly as to give his report without looking into the books of account of the company." The other case upon which the learned counsel relies in this behalf is *Registrar of Companies, Kerala* v. *P. Arunajatai* (2), in which the learned judges pointed out that the true purpose of an audit is to examine the accounts and records maintained by the company with a view to establish whether the former completely reflected the transactions to which they purported to relate. It is part of the duty of an auditor to see whether the transactions referred to in the accounts are themselves supportd by authority. An auditor does not discharge his duty by doing this without enquiry and without taking any trouble to see that the books themselves show the company's true position; he must take reasonable care to ascertain that they do so. It is the duty of the auditor to bring to bear on the work he has to perform that skill and care and caution which a reasonable, competent, careful and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. His duty is to examine the books not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company. An auditor, however, is not bound to do more than exercise reasonable care and skill in making enquiries and investigations. An auditor is not bound to be a detective or to approach his work with suspicions or with a foregone conclusion that there is something wrong. He is a watch-dog but not a blood-hound. The learned Judges found support for these observations in *Re London and General Bank* (3) and *Re Kingston Cotton Mill Co.* (4). The learned counsel for the Institute has urged that these cases support the

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(1) 1964 P.L.R. 906.
(2) A.I.R. 1963 Mad. 99.
(3) (1895) 2 Ch. 673.
(4) (1896) 2 Ch. 279.

The Institute of Charte Accountan Ltd

~~Messrs. V. K. Verma and Co.~~

v.

V. K. Verma

Mehar Singh, J.

conclusion of the Disciplinary Committee with regard to the second charge that is the basis of its finding.

The learned counsel for the respondent has referred to *The Irish Woollen Company Limited* v. *Tyson*, of which the report appears at page 541 of Auditing, A practical Manual for auditors, by Dicksee, 16th Edition (1945), that an auditor is not supposed to do everything himself and that the reasonable care and skill that he is expected to bestow on his work can also be done by his deputy. This is with regard to the second charge found against the respondent by the Disciplinary Committee that he failed altogether to attend to the auditing of the company in any manner except to sign the balance-sheet and the profit and loss account and a direction that the difference found in the trial balance be shown on the face of the balance-sheet. The Disciplinary Committee has been of the opinion that his two assistants were not qualified accountants. So that on the facts of the present case, *The Irish Woollen Company Limited* case has really no application. The learned counsel for the respondent has then referred to another case in the same book at page 771, *Pandleburys Limited* v. *Ellis Green and Co.* and he has drawn particular attention to this observation of the learned Judge, at page 81, of this very book—"He (an auditor) is there to see that the shareholders get a true representation of the finance of the company as disclosed by its books; this he must do and in order to determine whether he has displayed reasonable care one must apply rules of common sense. There is all the world of diffrence between a company which has a large body of shareholders numbering, say six or seven hundred, and a company which has only three shareholders, all of whom happen to be the sole directors and the sole debenture-holders. The position of an auditor must be different when his duty is to vouch the information which he gives to a large body of shareholders, as against his position when he is critising the affairs of the company to the three men, who alone are interested in the company and who hold its every pecuniary interest. In the case of the company with a large body of shareholders, he has the responsibility of watching the directors in order that those outside people may be properly informed, for they rely upon him to keep watch on their behalf; but where the interests of a small company

e Institute of
ered Messrs. V. K.
Verma and Co.
ntants of
v.
V. K. Verma

Mehar Singh, J.

are confined to a very few persons, and there are no outside people because all the interests in the company are held by the directors themselves, if the auditor has, in fact, reported to the directors what more could be expected to do?" The learned counsel then points out that in the case of B. Dharam Singh and Company Private Limited the shareholders are in fact three in number and the observations of the learned Judge aptly apply to the present case. However, on the facts found by the Disciplinary Committee in the present case the observations in *Pendleburys Limited case* can hardly be satisfactorily applied if all that the respondent did, as has been found, was to merely sign the balance-sheet and the profit and loss account and, in spite of the difference having been found in the trial balance, he was satisfied merely with a statement of the difference on the face of the balance-sheet. The learned counsel has also referred to the evidence of Kaul, that an enquiry was made from him on telephone that the trial balance was not tallying and he has stressed that it cannot be said in this case that the respondent made no enquiries. This has not been considered sufficient by the Disciplinary Committee. In regard to the first charge of omission in the balance-sheet and profit and loss account to invite attention about information regarding the maximum amount due from the directors and from the companies under the same management, the learned counsel has said that the last of the three instructions, as reproduced above, did require the maximum amount due by directors to be stated, but not any of the other two instructions. He has then said that the amount due from the directors was actually stated. Reference has already been made to the approach of the learned counsel for the Institute that having regard to note (i) in the notes appended with part I in Sohedule VI of the Companies Act, 1956, a note was necessary with regard to the maximum debts due from other companies under the same management. It is, however, not necessary to pronounce upon this matter in view of what is going to be said in regard to the last and the main argument by the learned counsel for the respondent in this case.

The chief argument of the learned counsel for the respondent in this case has been that Disciplinary Committee having found that the two charges in the information letter of Ravinder, were not substantiated,

The Institute of Chartered Accountants of India
Messrs. V. K. Verma and Co.
v.
V. K. Verma

Mehar Singh, J

it had no jurisdiction to proceed with two new charges without reference of the same to it by the Council of the Institute after the latter had formed an opinion that there was a *prima facie* case against the respondent under those charges. The learned counsel has said that the Disciplinary Committee could have referred the case back to the Council which could then have proceeded to consider the charges and, if it was *prima facie* of the opinion that the respondent was guilty of professional or other misconduct, it could then have referred the case on those two charges to the Disciplinary Committee for inquiry. He has pressed that without following this procedure the Disciplinary Committee had no jurisdiction to proceed against the respondent on those two charges and find him guilty of professional misconduct as it has done. He refers to two cases in this respect, the first of which is *S. Ganesan* v. *A. K. Joscelyne* (5), in which although there was no charge of gross negligence against the auditor, it was, however, on facts found to have been substantiated, but the allegation in that respect had been withdrawn, and the learned Judges held that because of the absence of charge of negligence and because of the withdrawal of the particular allegation, they had no right to assume that what was alleged against the auditor actually happened. But that was a case of a clear and complete absence of charge of gross negligence. The second case in this respect is *Kishorilal Dutta* v. *P. K. Mukherjee* (6), a case to which reference will be made in some detail presently. The learned counsel for the Institute has referred to the letter of Ravinder and in it the para quoted from the assessment order, dated May 30, 1960, of the Income-tax Officer with the object of showing that the two new charges find some reference in that quotation, but that only relates to the exclusion of incorporation of the books of the Lucknow office in the audited accounts and a certain discrepancy in the accounts discovered by the Income-tax Officer. The para from the assessment order of the Income-tax Officer quoted in the letter of Ravinder does not provide basis for the new charges of which the respondent has been found guilty.

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(5) A.I.R. 1957 Cal. 33.

(6) (1962) 67 C.W.N. 772,

Messrs. V. K. Verma and Co. v. V. K. Verma

Mehar Singh, J.

In section 21 of the Act, sub-section (1) says—

> "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."

It is thus expressly provided in this sub-section that the foundation for the Disciplinary Committee to hold inquiry is the reference to it by the Council on the latter forming a *prima facie* opinion that a member of the Institute has been guilty of any professional or other misconduct. If there is no such reference, apparently the occasion for the Disciplinary Committee to enter upon an inquiry does not arise. So the formation of a *prima facie* opinion that a member of the Institute has been guilty of any professional or other misconduct by the Council is a pre-condition to the reference of the matter for inquiry to the Disciplinary Committee, and without such reference the Disciplinary Committee has nothing before it upon which to found an inquiry. If the pre-condition does not exist, the basis of the inquiry by the Disciplinary Committee obviously does not exist either. It is in the wake of this that regulation 11(3) says that a complaint under section 21 shall contain (a) the acts and omissions which, if proved, would render the person complained against guilty of professional or other misconduct and (b) the oral and/or documentary evidence relied upon in support of allegations made in the complaint. Then follows regulation 11(5) which is in these words—

> "Ordinarily within sixty days of the receipt of a complaint under section 21, the Secretary shall—
>
> (a) if the complaint is against a member, send a copy thereof to such member at his professional address or his residential address, if he has no professional address, as entered in the Register;

The Institute of Chartered Accountants of
~~Messrs. V. K. Verma and Co.~~
v.
V. K. Verma

Mehar Singh, J.

(b) If the complaint is against a firm, send a copy thereof to the firm at the address of its head office, as entered in the register of offices and firms, with a notice calling upon the firm to disclose the name of the member who is answerable to the charge of misconduct and send a copy of the complaint to him."

Under regulation 11(6) the respondent is given opportunity to put in a written statement in his defence to the allegations in the complaint. Regulation 11(8)(1) then saysthat "if on a perusal of the complaint and the written statement, if any, and other relevant documents, the Council is of opinion that there is a *prima facie* case against the respondent, the Council shall cause an enquiry to be made in the matter by the Disciplinary Committee." Regulation 12 provides that "the procedure laid down in regulation 11 shall, so far as may be, apply to any information received under section 21. It is evident that the substance of regulation 11 is what will apply to any information received under section 21 of the Act, in other words, such information will of course make mention of the acts and omissions which, if proved, would render the person complained against guilty of professional or other misconduct, supported by evidence relied upon in that respect. The information will then be considered by the Council in the wake of regulation 11(8) and it is only when it finds according to regulation 11(8)(i) that there is a *prima facie* case against the respondent, that it is enjoined to have the matter enquired by the Disciplinary Committee. Thus not only is it made clear in section 21 itself that the foundation for reference for inquiry to the Disciplinary Committee is the formation of opinion by the Council about a *prima facie* case against a member of the Institute, but in the regulations made pursuant to section 30(2)(s) of the Act, detailed procedure has been provided, which is to be followed by the Council in forming its opinion whether or not there is *prima facie* case against a member of the Institute that calls for an inquiry into his professional or other misconduct by the Disciplinary Committee. The express provisions of sub-section (1) of section 21 of the Act and the elaborate procedure for the handling of the matter by the Council in regulations 11 and 12, before making reference to the Disciplinary Committee negative the question of any

Messrs. V. K. Verma and Co. v. V. K. Verma

Mehar Singh, J.

inquiry proceedings being before the Disciplinary Committee without a reference made in this behalf of a *prima facie* case found by the Council for inquiry to it. In the present case the reference made by the Council to the Disciplinary Committee is not part of the record. So it has had to be assumed that the reference referred to no other charge than that to be found in the information letter of Ravinder. It would have been more appropriate to have the reference made by the Council to the Disciplinary Committee as a part of the record. The two new charges having never been referred by the Council to the Disciplinary Committee for inquiry, apparently there was no basis upon which the Disciplinary Committee could proceed to inquire on the same against the respondent. What would have been the case if, as suggested by the learned counsel for the respondent, a reference back had been made by the Disciplinary Committee to the Council on those two charges and after consideration of the material with regard to the same the Council had referred for inquiry those two charges under sub-section (1) of section 21 of the Act, is not a matter that is for consideration. The Council might well have proceeded on the report of the Disciplinary Committee in regard to these charges treating it as an information and then followed the procedure as in section 21 (1) and regulations 11 and 12. Nothing of the sort has happened in this case.

This question came up for consideration in *Kishori Lal Dutta's case* and at page 785 of the report P. B. Mukharji. J., observed:"No doubt, under section 21 of the Chartered Accountants Act, the Council may move on receipt of information and receipt of the complaint and there is no question of any limitation as to when it can receive such complaint, but it should be impressed that while the Council can act on any information or on any complaint, it is elementary precaution and wisdom not to move by any and every kind of complaint or information, however frivolous it may be. Great are the responsibilities on the Council and the Disciplinary Committee in this respect 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

The Institute of Chartered Accountants of India
~~Messrs. V. K. Verma and Co.~~
v.
V. K. Verma

Mehar Singh, J.

Accountants in India, if the Council choses to let loose the whole machinery of Disciplinary Committee on any complaint or any information received by it, however old and however stale and whatever its source without examining it with at least some care to see if a *prima facie* case exists or not." The learned Judge has emphasised the preliminary statutory duty imposed upon the Council to form a *prima facie* opinion of the charges of misconduct against a member of the Institute before proceeding further against him. Laik, J. has dealt with this matter specifically and in some detail at page 788 of the report. The learned Judge observes—"On receipt of the complaint or information as to the misconduct of an accountant, the Council is not bound to proceed straightway and to cause the enquiry to be held. It would test the *bona fides* of the same from the standpoint as to whether it is frivolous. There is no time limit to receive the complaint or the information but special care should be taken in the cases of old and stale complaints or where the source was not disclosed. If the complaint does not contain full particulars, specially the particulars of oral and documentary evidence sought to be relied upon in support of the allegations, the Council should call for the same from the complainant before forming *prima facie* opinion. A bald statement without such particulars should not be treated as a sufficient compliance under the statute. The Council and/or the Disciplinary Committee must proceed on the complaint or information as appearing on the records and not on a different complaint or information made for the first time before them. Notice of the complaint or of the receipt of the information is to be given to the member concerned. There is no bar for the Council to ask for a written statement or explanation from the Accountant concerned before forming *prima facie* opinion though it is the primary duty of the Council to form such an opinion by way of elementary precaution or wisdom before causing enquiry to be held by the Disciplinary Committee, but then again, no hard and fast test should be laid down as to how such an opinion is to be expressed. The formation of *prima facie* opinion is the condition precedent for direction by the Council for enquiry by the Disciplinary Committee." The learned Judge has emphasized that the Council or the Disciplinary Committee must proceed on the complaint or information as appearing on the record and not on a different complaint or

The Institute of Chartered Accountants of India v. V. K. Verma

Messrs. V. K. Verma and Co. v. V. K. Verma

Mehar Singh, J.

information made for the first time before them. This is what appears to have happened with regard to the new charges against the respondent before the Disciplinary Committee, which charges seem to have become clear and prominent during the course of the proceedings of the enquiry. The learned Judge further emphasizes that the formation of a *prima facie* opinion is the condition precedent for the direction by the Council for enquiry by the Disciplinary Committee. With this, I may say so with respect, I agree and I think I have said as much above. No doubt, the learned Judge further goes on to observe on the question of charges in this manner—"Charges of misconduct must be clear and specific, and must not be vague, undefined and unknown. Specific types of misconduct charging the accountant should be enumerated. Charges might be added by the Council and/or the Disciplinary Committee, but must be based on facts which had already transpired." The learned Judge, however, makes it clear that charges added by the Council or the Disciplinary Committee have to be based on facts which had already transpired, meaning facts that were available in support of the charges, and the further condition is that charges of misconduct have to be clear and specific. In the present case there was no opportunity for the Council to add any charge. The Disciplinary Committee has considered the two new charges, but the charges were not so formed as to be in clear shape and as to be specific, nor were the same made known to the respondent in that shape or form to enable him to answer the charges properly, to meet the material or evidence in support of the charges, and to prepare and produce his defence to the same. It is in these circumstances that the learned counsel for the respondent has pressed that a matter like this brought out during the proceedings in examination of the respondent, without it having been made the subject-matter of a clear and specific charge to the knowledge of the respondent with an opportunity to meet the same and to disprove the same, cannot be, either according to the provisions of the statute or having regard to the principles of natural justice, the basis for an adverse finding against the respondent and the disciplinary action proposed by the Council, and in this he is obviously right.

The consequence is that the Disciplinary Committee could not have proceeded to an enquiry against the

The Institute of
~~Messrs. V. K. Verma and Co.~~ Chartered Accountants
v.
V. K. Verma

Mehar Singh, J.

respondent on the new charges (a) without the same having been made the subject of reference by the Council after the latter had done its duty under sub-section (1) of section 21 of the Act, and (b) without, in any case, even though the Disciplinary Committee could add the charges but then the same had to be clear and specific and made known to the respondent, enabling him to answer the same, to rebut the material or evidence in support of the same, and to produce defence with regard to them, which, as stated, has not happened in this case. The ordinary and the normal procedure is that provided in sub-section (1) of section 21 of the Act and regulations 11 and 12, according to which the occasion for an enquiry by the Disciplinary Committee only arises on a reference to it of a charge or charges against a member of the Institute after the Council has done its preliminary statutory duty of forming an opinion that there exists a *prima facie* case of professional or other misconduct against the member. Without such a reference there could be no proceedings before the Disciplinary Committee. However, there may be cases in which on the material available to the Council or the Disciplinary Committee charges may be added over and above those found in a complaint or information, but then that would mostly be treated as based on information. In such rare cases the same rule applies that the charges must be specific and clear and must be made known to the member concerned so that he may be able to defend himself as explained. It has been pointed out that this is exactly what has not happened in this case. So the findings of the Council based on the report of the Disciplinary Committee as regards professional misconduct by the respondent are quashed in the circumstances of this case. The parties are, however, left to their own costs in this Court.

D. FALSHAW, C. J.—I agree.

Falshaw, C.J.

B.R.T.