

THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA

v.

M/S PRICE WATERHOUSE AND ANR.

JULY 11, 1997

[K. RAMASWAMY, S. SAGHIR AHMAD
AND G.B. PATTANAIK, JJ.]

Chartered Accountants Act, 1949-S—21(2) read with Regulation 16 (3) & (4),—The Council being empowered by Parliament and also by virtue of being the ultimate body controlling the conduct of its members can refer a matter to the Disciplinary Committee for further enquiry even when an enquiry has already been conducted and report submitted—If on further enquiry, the report does not support action, then the Council has to give a verdict of not guilty since it does not have any power to direct further enquiry—Council to consider the explanation of the member, the evidence led and the report of the Disciplinary Committee each independently, before coming to a conclusion.

Chartered Accountants Act 1949—Part I, First Schedule Clause (6) & (7)—Solicitation of professional attainments.

Interpretation of Statutes—All provisions are to be read harmoniously so as not to render any provision surplus—Unlike interpreting the Constitution where the Court has wider powers, if the language of a Statute is unambiguous and clear, the Court cannot innovate or alter the statutory provisions.

The appellant Council, on learning that the respondent had professionally helped the Exim Bank prepare a book, issued notice to them for violating the provisions of Part I of the First Schedule to the Chartered Accountants Act, 1949. After receipt of the written statement from the respondent, the Council referred the matter to the Disciplinary Committee. On the Committee submitting a report, the Council asked the Committee to conduct a further enquiry. The Respondent challenged this action of the Council before the High Court. The High Court upheld the contention of the respondent.

In appeal to this Court, it was submitted on behalf of the appellant

A that the High Court erred in as much as the provisions of the Act read with the Regulation gave power to the Council to refer the matter for further enquiry. On the other hand the respondent argued *inter alia*, that the High Court was right since the Council can refer the matter to the Committee for further enquiry only on a finding by the Committee that the member is not guilty and this finding is not acceptable to it; that the Council did not apply its mind, and that the consequences are penal in nature.

B
C Allowing the appeal this Court, per majority (K. Ramaswamy J, for himself and G.B. Pattanaik J)

C
D HELD : 1. The Council has the power to call for further report from the Disciplinary Committee on the non-guilt of the professional or other misconduct of the respondent. In this backdrop, the proviso to sub-regulation (4) of Regulation 16 becomes relevant. In case on the second occasion, the report of the Disciplinary Committee still holds the delinquent member not guilty, there is no option left to the Council except, by operation of proviso to sub-regulation (4) of Regulation 16 read with Section 21 (2), as the Council is enjoined to record finding of no guilt since the power of calling for further report would stand exhausted. Any other view, in the Courts considered opinion, would defeat the object of the Act. A combined reading of the above statutory provisions would indicate that in case the Council finds that the report of the Disciplinary Committee recording "no guilt" is not correct or relevant material was not considered by the Disciplinary Committee, the Council has power to call further report from the Disciplinary Committee. It is difficult to give acceptance to the contention that the report of "no guilt" by the Disciplinary Committee should be given primacy as it would deplete the content of the power to maintain discipline among the members of the Institute. The ultimate control over conduct of members is by the Council. The Disciplinary Committee is a fact finding body which is a body subordinate to the Council as a fact finding authority. If its finding of guilt or non-guilt receives finality, it denudes the Council of the power to direct further appropriate enquiry into the professional or other misconduct not adequately dealt with by the Disciplinary Committee. Similarly, the Council would be disabled to exercise effective vigil and supervision over the professional or other misconduct of the members of the Institute. The Parliament has invested that power with the Council and the construction suggested allows the tail to

wag while the controlling body, the Council lamentably look at it. Such a construction would be deleterious to the maintenance of discipline or the professional conduct on the part of the members of the Institute, as the case may be. It is true that the discipline sought to be maintained is penal in nature; nonetheless, maintenance of discipline or professional or other conduct of the members or associate members is salutary and paramount to maintain public confidence in the members of the Institute and to inculcate sense of discipline and excellence in the performance of the functions as member of the Institute or associate member of the Institute, as the case may be. The contrary view would easily defeat the purpose of the Act and object behind the regulatory measures envisaged in Section 21 of the Act. [287-E-G; 284-B-G]

2. 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. A combined reading of relevant provisions of 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. Otherwise, the primacy accorded to the report of the Disciplinary Committee attains finality denuding the Council of the power of discipline over the members of the Institute that would render deleterious effect on the maintenance of discipline among the members or associate members of the Institute. [284-G-H; 285-D-E]

Institute of Chartered Accountants of India v. L.K. Ratna & Ors., [1986] 4 SCC 537, referred to.

3. Here, it may be illustrated that the effect of giving primacy to the

A finding recorded by the Disciplinary Committee is to make it conclusive. Take for instance, where the Committee records a finding of guilt of professional misconduct. When the matter comes before the Council and the Council finds that the evidence adduced before the Disciplinary Committee in proof of professional or other misconduct is not established, then

B the Committee will not have any power to record a finding except to call for a further finding from the Disciplinary Committee in that behalf which does not appear to be warranted. If the Council reaches the conclusion that professional or other misconduct was not proved, without calling for any further finding, it can straightaway exonerate the delinquent member of the charge of professional or other misconduct and would drop the

C action or dismiss the complaint. On the other hand, if the finding of non guilt recorded by the Disciplinary Committee is not consistent with the evidence on record, then the Disciplinary Committee will be denuded of the power to call for further report, obviously, rendering Regulation 16 (3) as surplusage. [286-G-H; 287-A-C]

D 4. It is settled rule of interpretation that all the provisions would be read together harmoniously so as to give effect to all the provisions as a consistent whole rendering no part of the provision as surplusage. Otherwise, by process of interpretation, a part of the provision or a clause would be rendered otiose. Keeping this legal principles, perspectives, practical

E effect and contents of the power of the Disciplinary Committee or Council the view expressed by the High Court is clearly incorrect and it would defeat the object of the Act of maintaining professional standards of the professional conduct or other conduct consistent with the dignity of the profession of the accountants. [287-C-E]

F 5. That the Council had not applied its mind to the facts of this case is not correct. In fact, the proceedings dated December 21, 1993, viz., "on consideration of the report of Disciplinary Committee and your written statement, the Council decided that further enquiry in the case was necessary to be made by the Disciplinary Committee keeping in view the following

G issues" do indicate the active application of its mind and consideration to various aspects mentioned in the questionnaire based thereon and, therefore, it is not a case of mechanical incantation of the provisions of sub-regulation (3) of Regulation 16. [287-G-H; 288-A; G-H]

H Per S. Saghir Ahmad J. (Dissenting) :

1. Under the Chartered Accountants Act and the Regulation made thereunder, the Disciplinary Committee is a Committee headed by the President of the Council who is the Chief Executive authority of the Council under Section 12 (2) and sits on the Disciplinary Committee along with the Vice-President. The highest authority of the Council, therefore, heads the Disciplinary Committee as also other Standing Committees of the Council. If, therefore, the Regulation says that where the finding of the Committee is that the member is "not guilty", the Council shall not pass any order contrary to that finding, it is quite understandable as the Disciplinary Committee being headed by the Chief Executive Authority of the Council is not expected to overrule itself. [298-C-D]

2. If sub-section (2) of Section 21 and the Proviso extracted above are read together, it will come out that if the Disciplinary Committee submits report of "not guilty", the Council has to accept this report and close the proceedings as the mandate of law is that the Council shall not record its findings contrary to the report of the Disciplinary Committee. This provision does not affect the primacy of the Council. It does not have the effect of making the Council a body subordinate to the Disciplinary Committee which remains one of the Standing Committees of the Council. Now if the President and Vice-President of the Disciplinary Committee, have together with other members of the Committee, decided on the basis of the material on record, that the member against whom disciplinary proceedings were initiated either on the information received by the Council or on a specific complaint made to it, that the member is "not guilty", the same President and Vice-President sitting in the Council are required not to adopt a contrary finding but to adopt the findings of the Disciplinary Committee and close the proceedings. In view of this provision, the disciplinary proceedings cannot be equated with the disciplinary proceedings conducted against Government servants where the Appointing Authority which is the authority competent to inflict ultimate punishment, including that of dismissal, usually, under the rules made under Article 309 or under executive instructions issued by the Government, appoints an enquiry officer to hold the disciplinary proceedings and submit a report whether or not the employee against whom such proceedings were initiated was guilty or not guilty. There, the authority competent to inflict punishment retains the jurisdiction to accept or not to accept the findings of the enquiry officer. It can ultimately differ with the finding of "not guilty" recorded by the enquiry officer and may give a contrary finding that the

A delinquent employee was guilty and proceed to inflict the appropriate punishment according to law.

[297-D-H; 298-A-B]

3. A further enquiry can be ordered only where the Disciplinary Committee has initially found the member to be “guilty” and has recorded a finding to that effect. An order for further enquiry can be passed only on a consideration of the report of the Disciplinary Committee and the representation of the member made against such report. What is implicit in this provision is that a member to whom a copy of the finding is furnished may have the occasion to challenge or to accept the findings. On copy being furnished, the Member gets an opportunity to look into the contents of the report. He may find that the procedure adopted by the Disciplinary Committee was not proper and was not in consonance with the requirements of law or principles of natural justice or that the manner in which the evidence was scrutinised by the Committee was incorrect or that the case required certain material evidence to be brought on record. In such a situation, the President, who is the Chief Executive Authority of the Council and is also the President of the Disciplinary Committee as also other members will come to know of the grievances of the delinquent Member through his representation. The Council may, on a consideration of the report and the representation, feel that it was a case where further enquiry was to be made by the Disciplinary Committee in the light of the various contentions raised by the delinquent Member. It will then call upon the Disciplinary Committee to hold further enquiry and submit a further report. On the submission of the further report by the Disciplinary Committee, the Council will take the final decision in the matter either itself or refer the case to the High Court together with its recommendations. This exercise is not to be undertaken where the Committee has recorded a finding that the delinquent member was not “guilty”. [299-B-F]

4. In the earlier Regulation, there was undoubtedly a power in the Council to order further enquiry even where the finding was recorded by the Disciplinary Committee that the member was “not guilty”. There was no distinction between the finding of “not Guilty” and finding of “guilty”. Separate procedures were not prescribed, and therefore, with regard to amended provision it could be validly said that even where a report was submitted by the Disciplinary Committee that the member was “not guilty”, the Council could still direct further enquiry. This cannot be said in respect of Regulation 16 as introduced in place of Regulation 14 by an Amendment

in 1988. Here two separate procedures have been indicated and it has been provided in the Proviso appended to Regulation 16 (4) that if the report of the Committee was that the Member was "not guilty", the Council would not record its findings contrary to that report. The Council is enjoined from taking a contrary view and has to adopt the report of the Disciplinary Committee that the Member was "not guilty". If it is held that the Council can still order a further enquiry even in those cases in which a finding of "not guilty", has been recorded, it would amount to altering the provisions of the Act and the Regulations, which are not permissible under the law. Reading into the provisions that the Council has power to call for a further report even in those cases where the finding given by the Committee is that the delinquent Member is "not guilty", would amount to altering the terms of the Statute and introducing a provision which did not exist, unless it is a case of Casus Omissus, which, admittedly, it is not. [300-C-E; 301-C-D]

5. It is said that a Statute is an edict of Legislature. The elementary Principle of interpreting or construing a Statute is to gather the Mens or Sententia Legis of the Legislature. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the Legislature cannot be approached as the Legislature, after enacting a law or Act, becomes Functus Officio as far as that particular Act is concerned and it cannot itself interpret it. Statute being an edict of the Legislature, it is necessary that it is expressed in clear and unambiguous language. Where, however, the words were clear, there is in obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the Statutory provisions. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. Applying the above principles to the instant case and applying all the basic principles of interpretation, including the guiding rules, the rule of mischief, the rule of harmonious construction, the rule of internal and external aid to construction, the rule of reading all the provisions together as also the rule of giving effect to a particular part of the Statute so as not to render the other part as otiose, together with all other principles, relating to interpretation of Statutes, it cannot but be said that the provisions contained in Regulation 16 are not capable of the meaning which is being assigned to these provisions. The decision of this Court in *Institute of Chartered Accountants Of India v. L.K. Ratna and Ors.*, [1986] 4 SCC 537 is not a judg-

A ment on the question involved in this case. It was rendered prior to the amendment introduced in the Regulation in 1988.

[301-E; F-G; 302-A; C; 303-D-F]

B *Palace Administration Board v. RVB Thampuran and Ors.*, AIR (1980) SC 1187 (1195) = [1980] 3 SCR 187; *Kirby v. Leather*, [1965] 2 ALL ER 441; *Gwalior Rayon Silk Mfg. (Wvg) Co Ltd. v. Custodian of Vested Forests Palghat & Anr.*, AIR (1990) SC 1747 (1752) = [1990] 2 SCR 401; *Smt. Shyam Kishori Devi v. Patna Municipal Corporation & Anr.*, AIR (1966) SC 1678 (1682) = [1966] 3 SCR 466; *A.R. Antulay v. Ramdas Srinivas Nayak & Anr.*, [1984] 2 SCC 500 (518, 519) = [1984] 2 SCR 914; *State of Kerala v. Mathai Verghese & Ors.*, [1986] 4 SCC 746 (749) = [1987] 1 SCR 317

C and *Union of India & Anr., v. Deoki Nandan Aggarwal*, AIR (1992) SC 96 (101) = [1991] 3 SCR 873, referred to.

D **Frankfurter.** "Some Reflections on the reading of statutes." Essays on Jurisprudence from Columbia Law Review p-51; Justice G.P. Singh's *Principles of Statutory Interpretation* 6th Edn, 1996, p-15-Referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4600 of 1997.

E From the Judgment and Order dated 12.9.96 of the Delhi High Court in C.W. No. 676 of 1994.

C.S. Vaidyanathan, K.K. Jain, Ajay K. Jain, Pramod Dayal and Shashi Bhushan for the Appellant.

F P.P. Rao and N. Ganpathy for the Respondents.

The Judgments of the Court were delivered by

K. RAMASWAMY, J. Leave granted.

G This appeal by special leave arises from the Judgment and Order of the High Court of Delhi, made on September 12, 1996 in Civil Writ No. 676 of 1994.

H The Export-Import Bank of India (for short, the 'EXIM Bank') commissioned the services of the respondent firm to assist it in the preparation of a book entitled "India - Your Software Opportunity". The need for

such booklet was explained by the EXIM Bank at the inside cover of the booklet which reads as under: A

“The information set out in this publication, meant for general guidance, has been compiled by Price Waterhouse (India) at the instance of the Export-Import Bank of India (EXIM BANK). While the booklet is not intended to be an exhaustive treatment of the subject, the information contained is based on sources and interpretations of applicable legal provisions believed to be reliable for which, however, both Exim Bank and Price Waterhouse (India) are unable to assume any liability. For further information, clarifications and assistance, interested parties may communicate with Price Waterhouse offices located at : B C

1102/1107, Raheja Chambers, Nariman Point, Bombay - 400 021.

Telephones : 235138/2870466. Telex : (011) 5791. D

B-102, Himalaya House, 23, Kasturba Gandhi Marg, New Delhi - 110 001.

Telephones : 3313591/3312856. Telex : (031) 63070.” E

The appellant-Council had treated the said publication as amounting to solicitation of professional attainments, violating clauses (6) and (7) of Part I of First Schedule to the Chartered Accountants Act, 1949 (for short, the ‘Act’) and called upon the respondent by proceedings dated December 13, 1990 to send the name of the members who were answerable to the charge of misconduct. On January 28, 1991, respondent No. 2, Shri Amal Ganguli, partner of the first respondent filed his written statement. On consideration thereof, by proceedings dated 5-6th August, 1991, the Council *prime facie* opined that the second respondent was guilty of professional and/or other misconduct and referred the case to the Disciplinary Committee for enquiry and report. The Disciplinary Committee submitted its report on January 16, 1993. The Disciplinary Committee sent a copy of the report to the second respondent informing him that if he so desired, he may send his representation against the said report within 30 days. By further letter dated July 8, 1993, it was communicated to him that the report of the Disciplinary Committee would be considered by the Council in its meeting from August 5 to 7, 1993 and that he can appear in person F G H

A or through a member. On August 5, 1993, he sent a letter stating that the report of the Disciplinary Authority may be accepted. On the even date, the Council, after considering the report dated January 16, 1993 and the written submissions of the second respondent dated 5.8.1993 came to the conclusion that further enquiry was necessary and decided that the further

B enquiry should be made by the Disciplinary Committee. It was communicated to him by letter dated December 21, 1993. On receipt thereof, the from respondent on February 2, 1994, filed the above writ petition in the High Court challenging the power of the Council to refer the matter to Disciplinary Committee for further enquiry. The High Court in the impugned judgment opined that by operation of the Regulation 16 made

C under the Act, the Council was devoid of the power to direct the Disciplinary Committee to hold further enquiry, Accordingly, it quashed the letter dated December 21, 1993 and allowed the writ petition. Thus, this appeal by special leave.

D Shri Vaidyanathan, learned senior counsel appearing for the appellant, contends that the view taken by the Division Bench is not correct in law. Section 21 of the Act read with Regulation 16(3) and (4) gives power to the Council to direct the Disciplinary Committee, which is a fact-finding committee, to make further enquiry and to submit a report. The power

E under Section 21(2) of the Act should be used only after the Council reaches the conclusion that the second respondent was not guilty of professional misconduct or other misconduct. The council would take further action only after consideration of further report to be submitted by the Disciplinary Committee. The view of the High Court, therefore, is incorrect. If the view of the High Court is upheld, the primacy would be given

F to the report of the Disciplinary Committee denuding the power to the Council to maintain discipline among the members of the Institute which is deleterious to maintain discipline among its members. Shri P.P. Rao, learned senior counsel appearing for the respondents, on the other hand, contends that the provisions, being penal in nature, require to be construed strictly. The Disciplinary Committee is a high-power committee constituted

G under the Act. If the Disciplinary Committee finds that the guilt of misconduct has not been proved, the Council is left with no option but to accept the finding of no-guilt and record the same under sub-section (2) of Section 21. In case the finding of the Disciplinary Committee that the member is guilty is not acceptable to the Council, only then, the Council

H has power to remit to the Disciplinary Committee for further enquiry and

the operation of Regulation 16(4) would come into play. In that perspective, on a harmonious interpretation of all the provisions, the finding of the high power committee, namely, the Disciplinary Committee, should always be given primacy and serious consideration by the Council before accepting or calling for further report. From this perspective, the view of the High Court is correct in law. He also contends that the Council has not applied its mind to the imputation of misconduct as reflected in paragraph 10 of the Special Leave Petition. Therefore, it has not applied its mind and mechanically acted upon to refer to the Disciplinary Committee for further enquiry. A reading of the publication itself does not posit of any professional misconduct or other misconduct to be dealt with under the Act. Therefore, there is no case made out warranting interference under Article 136 of the Constitution.

Having regard to the respective contentions, the question that arises for consideration is; whether the view taken by the High Court is correct in law? The High Court in the impugned judgment has held thus :

“The scheme of Regulation 16 is clear and unambiguous that in case of disciplinary committee concluding that a member is not guilty, it is the end of the matter and the disciplinary proceedings have to be dropped by the Council. In case the report of the disciplinary committee finds the member guilty, another opportunity is granted to the member to make representation and on consideration of the report and the representation, if any, the Council can cause further enquiry to be held. The finding of misconduct is a serious matter for a member and casts a stigma on him and, therefore, it appears that Council has been empowered to get a further enquiry conduct on being satisfied on the representation of a member or otherwise even after receipt of a report from the disciplinary committee to the effect that a member is guilty of misconduct. There is, however, no such power when disciplinary committee exonerates a member since. Regulation 16 does not permit further enquiry to be held by the disciplinary committee when it has concluded that the member is not guilty of any professional or other misconduct. When we compare old Regulation 14 with the present Regulation 16, we find a clear departure in the language of Regulation 16. Regulation 14 was wider in its scope and ambit. Under the said Regulation it was

A permissible to cause further enquiry being held even where the report of the disciplinary committee was that the member is not guilty of any professional or other misconduct. Regulation 16 is narrow in its scope and ambit when compared to the old Regulation 14. The change in language of these two Regulation cannot be without any purpose."

B

On that basis, it was held that the report of the Disciplinary Committee being that the respondent was not guilty of any professional misconduct within the meaning of clauses (6) and (7) of Part I of the First Schedule of the Act, the Council had no power to direct Disciplinary Committee to hold further enquiry. With a view to appreciate the correctness of the above view, it is necessary to look into the relevant provisions of the Act and the Regulations made thereunder.

C

D Section 2 (b) defines 'Chartered Accountant' to mean a person who is a member of the Institute. Section 2(c) defines 'Council' to mean the Council of the Institute. Under Section 2(e) 'Institute' means the Institute to Chartered Accountants of India constituted under the Act. 'Registered Accountant' is defined under Section 2 (h) to mean any person who has been enrolled on the register of Accountants maintained by the Central Government under the Auditor's Certificates Rules, 1932. A member of the Institute shall be deemed "to be in practice", when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received, as postulated by sub-section (2) thereof, engages himself in the practice of accountancy or offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording presentation or certification of financial facts or date or renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant in practice and the words 'to be in practice' with their grammatical variations and cognate expressions shall be construed accordingly. The explanation is not relevant for the purpose, hence omitted. Section 5 deals with "Fellows and Associates" of the Institute. Section 6 deals with certificate of practice.

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H Section 7 deals with "Members to be known as Chartered Accountants".

Section 8 concurs “disabilities” of members. Section 9 deals with the “Constitution of the Council of the Institute” for the management of the affairs of the Institute and for discharging the functions assigned to it under the Act, the details thereof are not relevant for the purpose of this case. The “duration and dissolution of the Council” is dealt with under Section 14. Section 19 in Chapter IV deals with the “Register” of Members. Chapter V with the heading ‘Misconduct’ which comprise Sections 21, 22 and 22A. Section 21 is relevant for the purpose of this case which 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 of 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

A period, nor exceeding five years, as the Council thinks fit :

B 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.

C (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.

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

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

(b) reprimand the member;

F (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;

G (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 things 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.

H

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 carried on business, or has his principal place of business at the commencement of the inquiry :

Provided that where the case 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 purpose 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.

"Professional misconduct" is defined in Section 22, which reads as under :

"22. Professional misconduct defined.

For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any

A other circumstances.”

The procedure to enquire into the misconduct on the part of the members of the Institute is dealt with in Section 21. Sub-sections (1), (2), (3), (4) and (5) are relevant for the purpose of this case.

B By exercise of the power under Section 30, the Council is empowered to make Regulations to carry out the object of the Act. Sub-section (2) postulates that in particular and without prejudice to the generality of the foregoing power, “such regulations may provide for all or any of the following matters”. Section 30(2)(s) speaks of “the exercise of disciplinary powers conferred by the Act” and Section 30(2)(L) of “any other matter which is required to be or may be prescribed under the Act”. Regulation 16 which was amended in 1988 reads as under :

“Report of the Disciplinary Committee.

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

E (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.

F (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.

G (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.

H 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.” A

Section 21 read with Regulation 16 would indicate that where the Council, upon receipt of information by, or of a complaint made to it, is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct defined under Section 22 of the Act, it is enjoined to refer the case to the Disciplinary Committee. The Disciplinary Committee shall, thereupon, hold such enquiry and in such a manner as may be prescribed and shall report the result of its enquiry to the Council. If on receipt of such report, the Council finds that the member of the institution is not guilty of any professional or other misconduct, it shall record a finding under sub-section (2) thereof and accordingly direct that the proceedings shall be filed or complaint shall be dismissed, as the case may be. B C

As seen earlier, under Regulation 16(1), it shall be the duty of the Disciplinary Committee to submit its report to the Council under clause (1) thereof. In case, the finding of guilt of a member of professional misconduct/other misconduct is reported by the Disciplinary Committee, a copy thereof shall be furnished to the delinquent member and he shall be given an opportunity to make representation in writing to the Council. This would be done under sub-regulation (2) of Regulation 16. Thereon, by operation of sub-regulation (3), the Council shall consider the report of the Disciplinary Committee along with the representation in writing of the delinquent member, if any. If on consideration thereof, the Council is of the opinion that the further enquiry is necessary, it shall direct such further enquiry to be made, whereupon a further report shall be submitted by the Disciplinary Committee. Sub-regulation (4) of Regulation 16 envisages that the Council shall, on the consideration of the report and the further report, if any, and the representation in writing of the respondent record its findings. Under the proviso thereto, 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. Sub-section (3) also envisages that 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, namely, sub-sections (4), (5) and (6) in awarding appropriate D E F G H

A punishment or may refer to the High Court, under sub-section (6), for award of higher penalties which the High Court may deal with under sub-section (7) thereof.

A combined reading of the above statutory provisions would indicate that in case the Council finds that the report of the Disciplinary Committee recording "no-guilt" is not correct or relevant material was not considered by the Disciplinary Committee, the Council has the power to call further report from the Disciplinary Committee. Though *prima facie* the arguments of Sri P.P. Rao is attractive, on deeper probe, it is difficult to give acceptance to the contention that the report of "no-guilt" by the Disciplinary Committee should be given primacy as it would deplete the content of the power to maintain discipline among the members of the Institute. The ultimate control over conduct of the members is by the Council. The Disciplinary Committee is a fact-finding body which is a body subordinate to the Council as a fact-finding authority. If its finding of guilt or non-guilt receives finality, it denudes the-Council of the power to direct further appropriate enquiry into the professional or other misconduct not adequately dealt with by the Disciplinary Committee. Similarly, the Council would be disabled to exercise effective vigil and supervision over the professional or other misconduct of the members of the Institute. The Parliament has invested that power with the Council and the construction suggested allows the tail to wag while the controlling body, the council lamentably look at it. Such a construction would be deleterious to the maintenance of discipline or the professional conduct on the part of the members of the Institute or Associate Members of the Institute, as the case may be. It is true that the discipline sought to be maintained is penal in nature; nonetheless, maintenance of discipline or professional or other conduct of the members or associate members is salutary and paramount to maintain public confidence in the members of the Institute and to inculcate sense of discipline and excellence in the performance of the functions as member of the Institute or associate member of the Institute, as the case may be. The contrary view would easily defeat the purpose of the Act and the object behind the regulatory measures envisaged in Section 21 of the Act. 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. A 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 proceeding before the Council to reach a finding whether or not the delinquent member committed professional or other misconduct. Otherwise, the primacy accorded to the report of the Disciplinary Committee attains finality, denuding the Council of the power of discipline over the members of the Institute; that would render deleterious effect on the maintenance of discipline among the members or associate members of the Institute. In this behalf, it is necessary to consider the view of this Court prior to the amendment of the Regulations in 1988. In *Institute of Chartered Accountants of India. v. L.K. Ratna and Ors.*, [1986] 4 SCC 537, this Court, in paragraph 11, summed up the legal position as under :

“It is apparent that in the scheme incorporated in Section 21 of the Act there are separate functionaries, the Disciplinary Committee, the Council and, in certain cases, the High Court. The controlling authority is the Council, which is only logical for the Council is the governing body of the Institute. When the Council receives information or a complaint alleging that a member of the Institute is guilty of misconduct, and it is *prima facie* of opinion that there is substance in the allegations it refers the case to the Disciplinary Committee. The Disciplinary Committee plays a subordinate role. It conducts an inquiry into the allegations. Since the inquiry is into allegations of misconduct by the member, it possesses the character of a quasi-judicial proceeding. The Disciplinary Committee thereafter submits a report of the result of the inquiry to the Council. The Disciplinary Committee is merely a Committee of the Institute with a function specifically limited by the provision of the Act. As a subordinate body, it reports to the Council, the governing body. The report will contain a statement of the allega-

A tions, the defence entered by the member, a record of the evidence
and the conclusions upon that material. The conclusions are the
conclusions of the Committee. They are tentative only. They cannot
be regarded as 'findings'. The Disciplinary Committee is not vested
by the Act with power to render any findings. It is the Council
B which is empowered to find whether the member is guilty of
misconduct. Both Section 21(2) and Section 21(3) are clear as to
that. If on receipt of the report the Council finds that the members
is not guilty of misconduct. Section 21(2) requires it to record its
finding accordingly, and to direct that the proceedings shall be
C filed or the complaint shall be dismissed. If, on the other hands,
the Council finds that the member is guilty of misconduct, Section
21(3) requires it to record a finding accordingly, and thereafter to
proceed in the manner laid down in the succeeding sub-sections.
So, the finding by the Council is the determinative decision as to
the guilt of the member, and because it is determinative the Act
D requires it to be recorded. A responsibility so grave as the deter-
mination that a member is guilty of misconduct, and the recording
of that finding, has been specifically assigned by the Act to the
governing body, the Council. It is also apparent that it is only upon
a finding being recorded by the Council that the Act moves forward
E to the final stage of penalisation. The recording of the finding by
the Council is the jurisdictional springboard for the penalty
proceeding which follows."

And in paragraph 13, it was held that "at this point, it is necessary
to advert to the fundamental character of the power conferred on the
F Council. The Council is empowered to find a member guilty of misconduct.
The penalty which follows is so harsh that it may result in the removal from
the Register of member for substantial number of years." In that case, the
question was : whether the delinquent member was entitled to a hearing
before the Council reached the conclusion of the guilt of professional
G misconduct. In that perspective, this Court read into it the principle of
natural justice and held that an opportunity of hearing is a facet of fair
procedure and accordingly the delinquent member was entitled to a hear-
ing before the Council, prior to the Council recorded the finding of guilt
of professional misconduct. Here, it may be illustrated that the effect of
giving primacy to the finding recorded by the Disciplinary Committee is to
H make it conclusive. Take for instance, where the Committee records a

finding of guilt of professional misconduct. When the matter comes up before the Council and the Council finds that the evidence adduced before the Disciplinary Committee in proof of professional or other misconduct is not established, then the Committee will not have any power to record a finding except to call for a further finding from the Disciplinary Committee in that behalf which does not appear to be warranted. If the Council reaches the conclusion that professional or other misconduct was not proved, without calling for any further finding, it can straightaway exonerate the delinquent member of the charge of professional or other misconduct and would drop the action or dismiss the complaint. On the other hand, if the finding of not guilt recorded by the Disciplinary Committee is not consistent with the evidence on record, then the Disciplinary Committee will be denuded of the power to call for further report, obviously, rendering Regulation 16(3) as surplusage. It is settled rule of interpretation that all the provisions would be read together harmoniously so as to give effect to all the provisions as a consistent whole rendering no part of the provision as surplusage. Otherwise, by process of interpretation, a part of the provision or a clause would be rendered otiose. Keeping this legal principles, perspectives, practical effect and contents of the power of the Disciplinary Committee or Council in the backdrop of our above consideration, we are of the considered view that the view expressed by the High Court is clearly incorrect and it would defeat the object of the Act of maintaining professional standards of the professional conduct or other conduct consistent with the dignity of the professional of the accountants. We, therefore, hold that the Council has the power to call for further report from the Disciplinary Committee on non-guilt of the professional or other misconduct of the respondent. In this backdrop, the proviso to sub-regulation (4) of Regulation 16 becomes relevant. In case, on the second occasion, the report of the Disciplinary Committee still holds the delinquent member not guilty, there is no option left to the Council except, by operation of proviso to sub-regulation (4) of Regulation 16 read with Section 21(2), as the Council is enjoined, to record finding of no guilt since the power of calling for further report would stand exhausted. Any other view, in our considered opinion, would defeat the object of the Act.

The contention of Shri Rao that the Council has not applied its mind to the facts of this case is not correct. In fact, the proceeding dated December 21, 1993, viz., "on consideration of the report of Disciplinary Committee and your written statement, the Council decided that further

A enquiry in the case was necessary to be made by the Disciplinary Committee keeping in view the following issues :

1. What were the terms and details of engagement accepted by your firm from EXIM Bank relating to publication of booklet entitled, "India - Your Software Opportunity"?

B 2. Were the contents of 'insertion' in the booklet containing your firms name and address in accordance with the engagement accepted?

3. Whether you/your firm had rendered assistance, as offered in the 'insertion', to the "interested parties"?

C 4. Whether you/your firm had communicated with the "interested parties" for rendering information, clarifications and assistance?

5. Whether you/your firm's communications with the "interested parties" were limited to providing information and clarifications on the matters contained in the booklet?

D 6. Nature of assistance provided by you/your firm to the "interested parties"?

E 7. Whether the remuneration accepted by you/your firm from the EXIM Bank included the jobs of rendering information, clarifications and assistance to the "interested parties"?

8. Whether you/your firm had accepted remuneration from the "interested parties" for rendering information, clarifications and assistance separately?

F 9. Whether you/your firm had received any professional work from the "interested parties" communicated or contracted pursuant to publication of the booklet or from their associates?

G 10. Whether the communications effected by you/your firm with the "interested parties" were either on your or your firm's letter-head? If so, the manner and style of signing the letters."

H do indicate the active application of its mind and consideration to various aspects mentioned in the questionnaire based thereon and, therefore, it is not a case of mechanical incantation of the provisions in sub-regulation (3) of Regulation 16. It is true that in para 10 of the Special Leave Petition,

they have mentioned that what they are required to consider is the report and not the evidence adduced before the Disciplinary Committee is only a mistaken impression of the Council as projected, but by reason thereof, it is difficult to conclude that the Council has not applied its mind to the relevant facts before calling for further report. A

Though Shri Rao sought to impress upon us that on a reading of the report originally taken note of from the cover of the booklet of the EXIM Bank, it does not constitute professional misconduct. We decline to go into that question for the reason that any finding recorded by this Court would adversely affect either party. Therefore, since the Council has not gone into that question, we do not propose to express any opinion in that behalf. It is for the Council to consider the same, after the receipt of further report from the Disciplinary Committee. We accordingly allow the appeal, set aside the judgment of the High Court and uphold the direction issued by the Council to the Disciplinary Committee to make further enquiry and to submit a further report in that behalf. B C

The appeal is accordingly allowed but, in the circumstances, without costs. D

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

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

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

(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, H

A 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.

B (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.

C (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.

D (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 :

E (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 :

F 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.

G (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.

H (6) On receipt of any case under sub-section (4) or sub-section

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

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

(b) reprimand the member

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

(d) refer the case to the Council for further inquiry and report.

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

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

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

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

- A (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 :-
- B (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.”
- C “Regulation 16 : Report of the Disciplinary Committee:
- (1) The Disciplinary Committee shall submit its report to the Council.
- D (2) Where the findings of the Disciplinary Committee is that the respondent is guilty of professional and or other misconduct, a copy of the report of the Disciplinary Committee shall be furnished to the respondent and he shall be given the opportunity of making a representation in writing to the Council.
- E (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.
- F (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.
- G 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.
- H (5) The finding of the Council shall be communicated to the complainant and the respondent.”

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

5. Institute of Chartered Accountants of India (for short, the "Institute"), is defined in Section 2(e) of the Act. Section 3 which provides for the incorporation of the institute lays down as under :

"3. Incorporation of the Institute :

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

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

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

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“9. Constitution of the Council of the Institute.

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

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

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

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

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

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

9. Section 17 provides as under :

“Committees of the Council.

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

(i) an Executive Committee,

(ii) an Examination Committee, and

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(iii) a Disciplinary Committee.

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

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

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

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

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

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

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10. Section 19 provides that the Council shall maintain a Register of the Members of the Institute. Section 20 gives power to the Council to remove from the Register the name of any Member of the Institute for various reasons set out therein. The Council is required to remove from the Register the name of any Member in respect of whom as order has

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A been passed under that Act that his name be removed from the Membership of the Institute.

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

D 12. From a perusal of these statutory provisions, it will be seen that the Council has got three Standing Committees, including a Disciplinary Committee. The President and Vice-President of the Council are the President and Vice-President of each of these Standing Committees, including the Disciplinary Committee. The Disciplinary Committee is, therefore, a high power Committee as the Chief Executive Authority of the Council, namely the President, is also present in the Disciplinary Committee as its President.

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

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

H 15. Sub-section (2) lays down as to what the Council would do if it finds, on the receipt of the report that the Member is "guilty" of any professional or other misconduct. It has, in that event, to record the finding

that the Member is not "guilty" with the direction that the proceedings be filed or the complaint be dismissed. A

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

"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." C

17. If Sub-section (2) of Section 21 and the Proviso extracted above are read together, it will come out that if the Disciplinary Committee submits report of "not guilty", the Council has to accept this report and close the proceedings as the mandate of law is that the Council shall not record its findings contrary to the report of the Disciplinary Committee. This provision does not affect the primacy of the Council. It does not have the effect of making the Council a body subordinate to the Disciplinary Committee which remains one of the Standing Committees of the Council. Now if the President and Vice-President of the Council, who are also the President and Vice-President of the Disciplinary Committee, have together with other Members of the Committee, decided on the basis of the material on record, that the Member against whom disciplinary proceedings were initiated either on the information received by the Council or on a specific complaint made to it, that the Member is "not guilty", the same President and Vice-President sitting in the Council are required not to adopt a contrary finding but to adopt the findings of the Disciplinary Committee and close the proceedings. In view of this provision, the disciplinary proceedings cannot be equated with the disciplinary proceedings conduct against Government servants where the Appointing Authority which is the authority competent to inflict ultimate punishment, including that of dismissal, usually, under the rules made under Article 309 or under executive instructions issued by the Government, appoints an enquiry officer to hold the disciplinary proceedings and submit a report whether or not the D, E F G H

A employee against whom such Proceedings were initiated was guilty or not guilty. There, the authority competent to inflict punishment retains the jurisdiction to accept or not to accept the findings of the enquiry officer. It can ultimately differ with the finding of "not guilty" recorded by the enquiry officer and may give a contrary finding that the delinquent employee was guilty and then proceed to inflict the appropriate punishment according to law.

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

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

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

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21. Regulation 16(2) provides that where the finding of the Disciplinary Committee is that the Member is "guilty", a copy of the report shall be furnished to the Member and he shall be given an opportunity of making a representation in writing to the Council. The Council shall then consider the report of the Disciplinary Committee along with the representation of the Member and if in its opinion a further enquiry is necessary, it shall cause such further enquiry to be made whereupon a further report shall be submitted by the Disciplinary Committee.

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

23. This will show that a further enquiry can be ordered only where the Disciplinary Committee has initially found the Member to be "guilty" and has recorded a finding to that effect. An order for further enquiry can be passed only on a consideration of the report of Disciplinary Committee and the representation of the Member made against such report. What is implicit in this provision is that a Member to whom a copy of the finding is furnished may have the occasion to challenge or to accept the findings. On copy being furnished, the Member gets an opportunity to look into the contents of the report. He may find that the procedure adopted by the Disciplinary Committee was not proper and was not in consonance with the requirements of law or principles of natural justice or that the manner in which the evidence was scrutinised by the Committee was incorrect or that the case required certain material evidence to be brought on record. In such a situation, the President, who is the Chief Executive Authority of the Council and is also the President of the Disciplinary Committee as also other Members will come to know of the grievance of the delinquent Member through his representation. The Council may, on a consideration of the report and the representation, feel that it was a case where further enquiry was to be made by the Disciplinary Committee in the light of the various contentions raised by the delinquent Member. It will then call upon the Disciplinary Committee to hold further enquiry and submit a further report. On the submission of the further report by the Disciplinary Committee, the Council will take the final decision in the matter either itself or refer the case to the High Court together with its recommendations. This exercise is not to be undertaken where the Committee has recorded a finding that the delinquent Member was not "guilty". B
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24. In order to bring out the point more effectively, I may refer to the provisions of Regulation 14 which have since been replaced by an amendment made in 1988 by the present Regulation. Regulation 14 is quoted below : G

"Report of the Disciplinary Committee.

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

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

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

(4) The findings of the Council shall be Communicated to the complainant and the respondent.”

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

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

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

G “The Council has the power to call for further report from the Disciplinary Committee on non-guilt of the professional or other misconduct of the respondent. In this backdrop the proviso to sub-regulation (4) of Regulation 16 becomes relevant. In case, on the second occasion, the report of the Disciplinary Committee still holds the delinquent member not guilty, there is no option left to

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the Council except, by operation of proviso to sub-regulation (4) of Regulation 16 read with Section 21(2), as the Council is enjoined, to record finding of no-guilt since the power of calling for further report would stand exhausted. Any other view, in our considered opinion, would defeat the object of the Act.” A

28. What is, therefore, indicated is that the Council has the power to call for further report from the Disciplinary Committee even in those cases where the Committee has recorded a finding of “not guilty”, although, if the said finding is repeated by the Disciplinary Committee in its further report, the Council has no option but accept it. The helplessness of the Council has, therefore, been postponed as it allows one-time exercise to the Council to call for further report and thereafter to mutely accept the finding if the findings of “not guilty” are repeated by the Disciplinary Committee. Why has this been done when the Statute clearly wants immediate acceptance of the findings by the Council, is not comprehensible. Reading into the provisions that the Council has power to call for a further report even in those cases where the finding given by the Committee is that the delinquent Member is “not guilty”, would amount to altering the terms of the Statute and introducing a provision which did not exist, unless it is a case of casus omissus, which admittedly it is not. B
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29. It is said that a Statute is an edict of Legislature. The elementary principal of interpreting or construing a Statute is to gather the *mens or sententia legis* of the Legislature. E

30. Interpretation postulates the search for the true meaning of the words used in the Statute as a medium of expression to communicate a particular thought. The task is not easy as the “language” is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the Legislature cannot be approached as the Legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the Legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or Statute after undertaking the whole process of law-making. F
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A 31. Statute being an edict of the Legislature, it is necessary that it is expressed in clear and unambiguous language. In spite of Courts saying so innumerable times, the draftsmen have paid little attention and they still boast of the old British jingle "I am the Parliamentary draftsman. I compose the country's laws. And of half of the litigation, I am undoubtedly the cause", which was referred to by this Court in *Palace Administration Board v. RVB Thampuran and Ors.*, AIR 1980 SC 1187 [1195]. = [1980] 3 SCR 187. In *Kirby v. Leather*, (1965) 2 All ER 441, the Draftsmen were severely criticised in regard to Section 22(2) (b) of the (UK) Limitation Act, 1939, as it was said that the Section was so obscure that the Draftsman must have been of unsound mind.

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

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

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

34. Where, therefore, the “language” is clear, the intention of the Legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the Statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception including that, of necessity, which is not the case here, (See : *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests Palghat and Anr.*, AIR (1990) SC 1747 (1752) = [1990] 2 SCR 401; *Smt. Shyam Kishori Devi v. Patna Municipal Corporation and Anr.*, AIR (1966) SC 1678 (1682) = [1966] 3 SCR 466; *A.R. Antulay v. Ramdas Srinivas Nayak and Anr.*, [1984] 2 SCC 500 (518, 519) = [1984] 2 SCR 914. Indeed, the Court cannot re-frame the legislation as it has no power to legislate. (See : *State of Kerala v. Mathai Verghese and Ors.*, [1986] 4 SCC 746 (749) = [1987] 1 SCR 317 and *Union of India and Anr. v. Deoki Nandan Aggarwal*, AIR (1992) SC 96 (101) = [1991] 3 SCR 873).

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

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

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

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

B I.M.A.

Appeal allowed.