IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 634 OF 2009

1. Partha Ghosh,)
Chartered Accountant of Mumbai)
Inhabitant, having his office at)
Price Waterhouse & Co. 252,)
Veer Savarkar Marg, Shivaji Park,)
Dadar (West), Mumbai – 400 028.)

2. D.V. P. Rao,)
Chartered Accountant of Mumbai)
Inhabitant, residing at 3/1F,)
Durga Niketan, Thakurli East,)
Dist. Thane, Dombivali 421 201.).. Petitioners

Versus

1. The Institute of Chartered Accountants)
of India, having its office at)
ICAI Bhavan, Indraprastha Marg,)
New Delhi – 110 002 and)
Mumbai Office at ICAI Bhavan,)
Western India Regional Office,)
Cuffe Parade, Colaba,)
Mumbai – 400 005.)

2. The Disciplinary committee of)
the Institute of Chartered Accountants)
of India, having its office at ICAI)
Bhavan, Indraprastha Marg,)
New Delhi – 110 002.)

3. Amarjit Chopra,)

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Vice President of the Institute of)
Chartered Accountants of India,)
and a Member of the Disciplinary)
Committee having his office at)
ICAI Bhavan, Indraprastha Marg,)
New Delhi – 110 002.)

4. Akshykumar Gupta,)
Member of the Disciplinary)
Committee, having his office at)
ICAI Bhavan, Indraprastha Marg,)
New Delhi – 110 002.)

5. G. Ramaswamy,)
Member of the Disciplinary)
Committee, having his office at)
ICAI Bhavan, Indraprastha Marg,)
New Delhi – 110 002.).. Respondents

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Shri I.M. Chagla along with Shri Atul Rajadhyaksha, Gaurav Joshi i/by Dave & Girish & Co. for the Petitioners.
Shri D.D. Madon along with Shri A.S. Doctor i/by Kanga & Co. for the Respondents.

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CORAM : SWATANTER KUMAR, C.J. AND
S.C. DHARMADHIKARI, J.

JUDGMENT RESERVED ON : 6TH APRIL, 2009

JUDGMENT PRONOUNCED ON : 16TH APRIL, 2009

JUDGMENT (PER SWATANTER KUMAR, C.J.)

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Heard. Rule. Respondents waive service. By consent, Rule is made returnable forthwith. Heard Senior Counsel for both sides.

2. Both the Petitioners, in this Writ Petition, are Chartered Accountants by profession and are members of the Institute of Chartered Accountants of India set up under the Chartered Accountants Act, 1949 (hereinafter referred to as the "Act"). Petitioner No.1 is a Chartered Accountant since 1992 and a partner of M/s. Price Waterhouse & Co., a firm of Chartered Accountants, (hereinafter referred to as the "Firm") while Petitioner No.2 is a Chartered Accountant since 1972 and Senior Manager of the said Firm. This Firm was the statutory auditors of one Global Trust Bank Limited (hereinafter referred to as the "Bank") for the year ended 31st March, 2003. The Petitioners, in their capacity as a partner and Senior Manager of the Firm, respectively, had conducted the statutory audit and signed the qualified audit report on 30th September, 2003 of the said Bank for the year ended 31st March, 2003. Prior to the audit being conducted by the Firm for the financial year ended 31st March,

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2003, the Reserve Bank of India (hereinafter referred to as "RBI") had appointed a Special Auditor viz. M/s. M. Bhaskar Rao & Co. to conduct an independent review of 36 major borrowers' accounts of the said Bank for the year ended 31st March, 2002. The special audit report was submitted on 9th May, 2003 through the RBI to the said Bank and a copy was made available for the limited purposes of review during the course of the audit work carried out by the Petitioners. On 9th May, 2003, the RBI directed the Bank to follow the recommendations contained in the report of M/s. M. Bhaskar Rao & Co., subject, however, to taking into account any material developments/recoveries, post 31st December, 2002. The Petitioners have stated with some significance the fact that in so far as the recommendations for asset classifications and provisioning of NPAs were concerned, there were significant divergences in the Report of the Special Auditor M/s. M. Bhaskar Rao & Co. and in the AFI 2002 Report prepared by RBI, inasmuch as whilst the RBI had recommended additional provisioning to the extent of Rs. 596.30 crores, the Special Auditor had recommended provisioning only upto Rs. 373.43 crores for the year ended 31st March, 2002. The Petitioners have stated that they had followed Circulars and

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Instructions, issued by the RBI from time to time, regarding asset classification and provisioning and had completed the audit of the accounts of the said Bank for the year ended 31st March, 2003 in or about 30th September, 2003. When the Petitioners completed the audit and issued qualified/audit opinion in respect of the accounts for the year ended 31st March, 2003, wherein the gross NPAs were shown in the notes to accounts at Rs. 915.8 crores and the accounts were qualified to the extent of Rs. 311.61 crores. However, on 30th September, 2003, the RBI issued a press release, inter alia, stating that the audited financial results of the said Bank for the year ended 31st March, 2003 indicated that Management had made special efforts in recovery of Non Performing Assets relating to previous years and had made necessary provisions in accordance with the RBI guidelines. Thereafter, the RBI through its Inspectors carried out the Annual Financial Inspection (AFI) of the said Bank for the financial year ended 31st March, 2003. A detailed report known as "AFI 2003" was prepared by the Presiding Inspection Officer and submitted to the RBI somewhere in January, 2004, a copy of which was not made available to the Petitioners despite repeated requests. The Petitioners received an extract of the said AFI 2003 report wherein

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the RBI had recommended provisioning requirements far in excess of those contained in the report of the Special Auditor for specified accounts as well as those contained in the accounts for the year ended 31st March, 2003 audited by the Petitioners. The Presiding Inspection Officer appointed by the RBI had sought to re-open and re-classify the NPAs for provisioning various accounts maintained by the said Bank with retrospective effect. Certain reports appeared in the newspapers somewhere in July, 2004 wherein it was alleged that the external auditor of the said Bank which had audited the accounts for the year ended 31st March, 2002 had appended therein its name to suspect accounts. The Petitioners state that they had not carried out the audit for the year ended 31st March, 2002. On 26th July, 2004, Respondent No.1 wrote a letter to the Firm of which the Petitioners are Partner and Senior Manager, respectively, annexing various newspaper articles, news items and sought Petitioners' comments and reply. To this, vide its letter dated 9th August, 2004 the Firm addressed a reply to Respondent No.1 informing them that it was not in a position to offer comments as it neither knew the source nor the veracity of the news reports. In continuation to its earlier letter, Respondent No.1 vide its letter dated 25th February, 2005, while

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referring to certain information/ documents provided by the RBI, sought clarification from the Petitioners. Various correspondence continued between the parties on different aspects. According to the Petitioners, after a lapse of about 15 months, the Petitioners were shocked and surprised to receive a letter dated 6th December, 2006 wherein Respondent No.1 had referred to various articles which appeared in the newspapers in July 2004 as well as extracts of AFI 2003 report for the year ended 31st March, 2003 of the RBI. It was stated that the matter should be treated as an information case under Section 21 of the Act. Vide letter dated 5th January, 2007, Price Waterhouse & Co., the Firm, submitted to Respondent No.1 the names of the Petitioners as members answerable to the charges. A detailed reply dated 31st March, 2007 was submitted by the Petitioners in response to the show cause notice. Documents in support of the Petitioners were voluminous files nearly 130 in number, as such the complete reply had not been submitted. The RBI had directed the Petitioners to maintain confidentiality and not to disclose the names of the concerned borrowers/account holders. The Respondent No.1 vide letter dated 23rd October, 2007 informed the Petitioners that its Council was prima facie of the opinion that

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Petitioners were guilty of professional or other misconduct and it had decided to cause an inquiry to be made by a Disciplinary Committee. The Petitioners were called upon to submit their documents and names of the witnesses to the Disciplinary Committee. The Disciplinary Committee, vide its letter dated 3rd December, 2007, inter alia, set out the procedure for inquiry by the Disciplinary Committee in respect of the information cases and stated that as far as possible the said procedure would be followed. The procedure indicated in the said letter dated 3rd December, 2007 reads as follows: -

1. Introduction (Also to mention to the Respondent that technical niceties of evidence are not applicable.)

2. Respondent is put on oath.

3. Charges are explained/read out to the Respondent by the Secretary.

4. Filing of the documents by the Respondent.

5. Filing of documents by the witness(es).

6. Drawing attention to Regulation 15(2) of the Chartered Accountants Regulations, 1988.

7. Examination of the witness(es) on oath by the Committee.

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8. Cross-examination of the witness(es) on oath by the Respondent/Counsel.

9. If represented by a Counsel, examination of the Respondent by him.

10. Examination of the Respondent by the Committee.

11. Re-examination of the Respondent by the Committee, if need be.

12. Submissions by the Respondent/Counsel.

13. Questions by the Committee and answers by the Respondent (arising out of his submissions).

3. It is pleaded, in this writ petition, by the Petitioners that the procedure set out in the letter referred above is a well established and settled procedure which is followed by the Disciplinary Committees of Respondent No.1 in information cases. On 15th October, 2008, the Petitioners wrote to the Respondents for permission to cross examine the witnesses of RBI i.e. the concerned officials and partners/auditors of M/s. M. Bhaskar Rao & Co., Chartered Accountants who had prepared the report, and had personal knowledge about the facts stated in the report which was served upon the Petitioners along with charge sheet. Some

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hearings were conducted before the Disciplinary Committee between December, 2007 and January, 2009. Hearings were scheduled but nothing substantially progressed. After taking permission of the RBI the Petitioners submitted documents/ information about the borrowers in a coded form. In the meetings before the Disciplinary Committee, an attempt was made to deviate from the procedure set out in its letter dated 3rd December, 2007. Oath was administered to the Petitioners, as per Item No.2 of the procedure, on 6th October, 2008. The Petitioners had submitted the documents but no documents were submitted by M/s. M. Bhaskar Rao & Co. Though Respondent Nos.1 and 2 had summoned Officers of the RBI who had conducted the AFI 2003 and partners of M/s. M. Bhaskar Rao & Co. to remain present with all documents, the representatives of M/s. M. Bhaskar Rao & Co. failed to do so and at no point of time did the witnesses from the RBI and M/s. M. Bhaskar Rao & Co. appeared to furnish documents to the Petitioners despite requests made by the Petitioners vide letters dated 19th January, 2009; 27th January, 2009 and 27th February, 2009. On 17th January, 2009, Respondents attempted to lead evidence of the concerned partner of M/s. M. Bhaskar Rao & Co., but recording of evidence could not progress

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further because of the difference in the codification of accounts provided by the RBI for the years ending 31st March, 2002 and 31st March, 2003. The RBI had provided two different codes for the same accounts for two financial years, hence codes contained in the report of M/s. M. Bhaskar Rao & Co. did not tally with the codes in the documents provided by the RBI and because of these defects the recording of evidence did not continue. During the cross-examination of the Presiding Inspection Officer it not only became clear that the said witness had no knowledge about the facts stated in the report but he refused to and did not produce any working material in support of AFI 2003 report. The hearing was postponed at the instance of the Disciplinary Committee. The Petitioners had participated in the hearing and were keen to proceed with the same. On 9th March, 2009, Respondent No.1, under a letter dated 6th February, 2009, communicated the transcript of the proceedings held on 17th January, 2009, which according to the Petitioners contained various errors and did not record all what transpired at the said hearing. The date of the next hearing was scheduled for 23rd, 24th and 25th January, 2009. Respondent No.1 vide letter dated 9th March, 2009, while intimating the change in the membership of the Disciplinary Committee, referring

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to Regulation 15(5) of the Chartered Accountants Regulations 1988 framed under the Provisions of the Act, asked the Petitioners to state whether they wished to demand the inquiry to be held *de novo* . The Petitioners vide letter dated 17th March, 2009 opted for *de novo* inquiry for the reasons stated in the said letter and primarily for certain contentions, raised by them in their subsequent submissions made before the Disciplinary Committee, which according to the Petitioners were material.

4. On 23rd March, 2009, the hearing was held before the newly constituted Disciplinary Committee. Only three members of the Disciplinary committee were present and one member was a common member between the previous and newly constituted Committee. During the hearing, the Petitioners were informed that the new Disciplinary Committee had taken a decision to hold *de novo* hearing. During that the proceedings, it was pointed out by the learned Counsel appearing for the Petitioners that despite summons being issued to the RBI, the RBI and its witness had failed to produce relevant documents/ records /working papers, etc. in support of AFI 2003 report. The Committee was requested to ensure production of

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documents. It is averred by the Petitioners that, to its surprise, the Committee instead of acceding to the Petitioners' request and directing Respondent No.1's witness to lead evidence, as per the well established procedure, called upon the Petitioners to make their submissions and meet the charges contained in the show cause notice. No procedure as such was clarified. A handwritten application for an adjournment was submitted. The members of the Committee purported to reject the said application by an oral order. However, transcript of the order was not provided to the Petitioners, and even a short adjournment was declined and the Committee declared that the proceedings were closed.

5. No reply has been filed on behalf of the Respondent, may be, because of shortage of time but there was really not much of a dispute to the facts except for the contention that the charges had rightly been framed, the Petitioners were prima facie guilty of misconduct, the procedure adopted by the Disciplinary Committee was fully in accordance with law, and as per the provisions of the Act and the Regulations framed thereunder. Learned Counsel appearing for the Respondents vehemently argued that the Writ Petition itself

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was premature as the proceedings before the Committee had not concluded and these proceedings being of a recommendatory nature, this Court should not interfere in exercise of its powers under Article 226 of the Constitution of India. It is also contended on behalf of the Respondents that even if some relief is to be granted to the Petitioners in the Writ Petition, an order directing a party to lead evidence of a particular witness cannot be passed in writ jurisdiction.

6. In the event if the Respondents' contention is accepted, it would amount to accepting a procedure and orders which ex facie are violative of statutory provisions as well as principles of natural justice. The orders passed in violation of procedure and principles of natural justice is not an order within the ambit and scope of that Act and/or Regulations as such the consideration by the higher Authority cannot be termed as efficacious and adequate remedy so as to deny entertaining of a writ petition particularly when it relates to reputation of a professional. In such cases, damages to reputation of a professional may be irreparable and irretrievable.

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7. First of all we may deal with the prayers of the Petitioners as made in the Writ Petition. First and foremost, the Petitioners have raised a challenge to the provisions of Regulation 15(4) of the said Regulations which grants unfettered discretion to the Disciplinary Committee to follow the procedure as it may consider just and expedient.

8. Regulation 15(4) reads as under: -

> ”15 Procedure in inquiry before the Disciplinary Committee.
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx
>
> (3) xxx xxx xxx
>
> (4) Except as otherwise provided in these Regulations, the Disciplinary Committee shall have the power to regulate its procedure in such manner as it considers just and expedient.”

9. During the course of hearing, learned Counsel appearing for the Petitioners did not press the above argument and did not challenge the constitutionality of the said provision. Firstly the

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challenge is not pressed and secondly, even if the challenge is to be pressed, we are least impressed with the argument of the Learned Counsel for the Petitioners. The provision of Regulation 15(4) cannot be said to be unconstitutional and arbitrary. It contemplates that the Disciplinary Committee shall have powers to regulate its procedure in such a manner as it considers just and expedient, except as otherwise provided in the Regulations. The procedure provided and adopted by the authority for dealing with the case before it has to be in consonance with the principles of natural justice and basic rule of law. Noting the fact that the procedure spelled out in letter dated 3rd December, 2007 which provided a very fair and just procedure which the Committee had decided to adopt and in view of the stand taken by the Petitioners themselves, we need not discuss this issue any further, and leave it at that.

10. On the other hand, the primary grievance of the Petitioners is that the inquiry being conducted by the Disciplinary Committee, which is in furtherance to the statutory rules and regulations, is violative of the principles of natural justice and is in fact contrary to the procedure for inquiries spelt out by the Committee

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itself in its letter dated 3rd December 2007 and which had also been adopted by the new Disciplinary Committee. Non-compliance of principles of natural justice, basic rule of law and procedure even contrary to the rules and regulations of Respondent No.1 will have the effect of vitiating the entire proceedings and such an action would not be within the ambit and scope of the rules and regulations framed thereunder. Altering the procedure mid-way, not permitting production of witnesses of RBI and non-production of coded documents and uniformity of procedure are bound to and in fact have seriously prejudiced the right of defence of the Petitioners. The Disciplinary Committee exercises a quasi-judicial function and has the authority to make recommendations which casts the Petitioners with serious civil consequences, and as such the Committee is expected to act in conformity with law. Declining the application dated 23rd March 2009 of the Petitioners and even declining an adjournment is also violative of principles of natural justice and against basic rule of law of affording a fair opportunity. In these circumstances, neither the Petition is premature nor the reliefs prayed in the Petition are untenable.

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11. Now, we will proceed to examine the scheme under the relevant Sections, the Regulations framed under the Act and the procedure prescribed by the Committee itself. In terms of Section 4 of the Act, the Institute which is a body corporate has to maintain a register and name of the persons who satisfy the criteria and conditions stated therein are entitled to have their name entered in the Register. A member is not entitled to practice unless he has obtained from the Council a Certificate of practice and has satisfied the other conditions stated under the provisions. To maintain the Register is the obligation of the Council in terms of Section 19 of the Act and it is vested with wide powers, which have serious consequences, in terms of Section 20, where it can remove the name of member from the Register maintained by it for reasons recorded therein including if he earns disabilities specified in Section 8 of the Act or for any other reason ceases to be entitled to have his name borne on the Register. The Council would also remove the name of member in respect of whom an order has been passed under the Act removing him from the membership of the Institution.

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12. Misconduct obviously, is one of the basic reason or ground on which the Council, by an order or by any other reason can direct the name of member to be removed from the Register and consequently the member would lose his certificate and the right to practice. Thus, these are matters having serious civil consequences which can even deny a person the right to practice as a Chartered Accountant by virtue of the powers vested in the Council. Such powers, thus, should essentially be exercised in accordance with law. The Institute has the Council and Officers to manage its affairs. Its functions, inter alia, include enforcing professional discipline, maintenance of professional standards and compliance of professional qualifications. The Council has the power to constitute, amongst other Committees, a Disciplinary Committee consisting of three members, of whom two must be elected by the Council and one must be a person nominated by the Central Government. On report of mis-conduct against a member of the Institute, the Council may refer the case to the Disciplinary Committee which holds inquiry and reports to the Council. If the Council finds no misconduct, it may dismiss the case. In case it finds any misconduct enumerated in Schedule I appended to the Act, after giving an opportunity of being

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heard, it may pass orders and can even remove the name of the member from the rolls or reprimand him. In case of removing the name, where it proposes to remove the name of a member from the Register for a period exceeding five years or permanently, the Council has to forward the case to the High Court with its recommendations and it cannot make an order by itself. Upon such a reference being made to the High Court, the High Court will fix a date for hearing, afford to the Council, the Government and the person affected an opportunity of being heard. The Court then can pass an order directing filing of a complaint, reprimanding the member, referring the case back to the Council for inquiry or further inquiry or even direct the removal of the name of the member as proposed.

13. Section 21 of the Act spells out the procedure in inquiries relating to misconduct of members of the Institute. In terms of Section 21(1) of the Act, the Council is expected to form a prima facie view or opinion that the member of the Institute has been guilty of any professional misconduct or other misconduct and then alone can it refer the matter to a Disciplinary Committee. If such a reference is made, the Disciplinary Committee is to hold an inquiry and in such

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manner as may be prescribed and shall report the result of its inquiry to the Council. On receipt of the report, if the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall proceed in accordance with the provisions of Section 21(4) of the Act and pass appropriate orders under that Section but only after affording to the member an opportunity of being heard. Whenever a reference is made to the High Court under Section 21(5) of the Act, the Court would follow the prescribed procedure and pass appropriate orders. For the purposes of conducting an inquiry under Section 21, 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 relation to summoning and enforcing attendance of any person and examining him on oath, discovery and production of any document and receiving evidence on affidavit. Against an order passed under Section 21(4) of the Act by the Council, an appeal can be preferred to the High Court in accordance with law.

14. Section 30 of the Act empowers the Council to make Regulations which are to be notified in the Gazette of India. These

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Regulations are to be framed for the purposes of carrying out different objects of the Act. Of course, the Central Government has the power to require and direct the Council to make Regulations, amend or modify such framed Regulations. The Regulations so framed have to be laid before each House of the Parliament in accordance with the provisions of the Act. Regulation 10 contemplates that a certificate issued to a member can be cancelled for reasons stated in that Regulation, while Regulations 12 to 18 of Chapter II of the Regulations provides for the procedure which is to be followed by the Disciplinary Committee or the Council while dealing with the matter of misconduct and inquiries to be conducted thereupon. The complaints received relating to misconduct in terms of Section 21 shall be investigated by the Disciplinary Committee. Regulation 12(4) indicates forming of a prima facie view by the Council and the Council is expected to exclude the possibility of a complaint being frivolous or having been made with a mala fide intention. Procedure to be followed by the Disciplinary Committee and the report which is required to be submitted to the Council is contemplated under Regulations 15 and 16 of the Regulations. Regulations 15 and 16 read as under :-

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“15. **Procedure in enquiry before the Disciplinary Committee**.

(1) It shall be the duty of the Secretary to place before the Disciplinary Committee all the facts brought to the knowledge which are relevant for the purpose of the enquiry by the Disciplinary Committee.

(2) If the Respondent pleads guilty, the Disciplinary Committee shall record the plea and submit its report to the Council.

(3) The Respondent shall have a right to defend himself before the Disciplinary Committee either in person or through a legal practitioner or any other member.

(4) Except as otherwise provided in these Regulations, the Disciplinary Committee shall have the power to regulate its procedure in such manner as it considers just and expedient.

(5) Where during the course of an enquiry there occurs a change in the membership of the Disciplinary Committee for any reason whatsoever, any party to the enquiry may demand that the enquiry be held `de-novo' and when such a demand is made the Disciplinary Committee may for sufficient cause and for reasons to be recorded in writing, order that the enquiry shall be held `de-novo'

16. **Report of the Disciplinary Committee**

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

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(2) Where the finding of the Disciplinary Committee is that the Respondent is guilty of professional and or other misconduct, a copy of the report of the Disciplinary Committee shall be furnished to the Respondent and he shall be given the opportunity of making a representation in writing to the Council.

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

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

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

(5) The finding of the Council shall be communicated to the Complainant and the Respondent."

15. Wherever the Disciplinary Committee recommends that the member is not guilty of professional misconduct, the Council is debarred from recording any findings to the contrary. After considering the report of the Committee and the representations in

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writing of the Respondent before the Committee, the findings of the Council shall be communicated to the complainant and the Council may pass an order imposing any of the penalties but only after giving a notice to the member to appear and present his application, if any, or even to make a representation in writing as to why the order in terms of Section 21(4) of the Act be not passed against him. The order so passed then is to be communicated to the complainant as well as the delinquent member as statutorily required under Regulation 17 of the Regulations.

16. From bare reading of the above provisions, it is clear that the entire scheme of the Act and the Regulations are fairly in conformity with the principles of natural justice and basic rule of law. On the basis of a complaint received by the Council in terms of Section 21(2) and Regulation 12, no action at any stage is contemplated to be taken against a member on the Register of the Institute without affording him an appropriate opportunity of being heard and in accordance with law. The Council has to form a prima facie view whether the matter requires consideration and a further inquiry/investigation by the Disciplinary Committee is required or not.

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Rest of the provisions specifically mandate that an opportunity has to be given to the delinquent member in accordance with law. Section 21(1) of the Act specifically uses the expression ".....the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of the inquiry to the Council". Sub-section (3) of Section 21 makes it obligatory upon the Council, after receipt of the report, to proceed in the manner laid down in sub-section (4) of Section 21 which in turn requires "... the Council shall afford to the member an opportunity of being heard before orders are passed against him ......"

17. Similarly, the language of the Regulations is sufficiently indicative of the legislative intent that the authorities have to satisfy, while acting as the Disciplinary Committee, the principles of natural justice which are not merely implied but are evident from the specific language of the provisions. Under Regulation 15(3), the Respondent (delinquent) member has a right to defend himself before Disciplinary Committee either personally or through a legal practitioner and the provisions of sub-regulation (4) requires a Disciplinary Committee to regulate its own procedure inasmuch as it considers just and

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expedient except to the extent otherwise is provided in the said Regulations. Where a demand is raised by a member (delinquent), on a change in the membership of Disciplinary Committee, for *de novo* inquiry the Disciplinary Committee is expected to record reasons in writing for ordering de novo inquiry and that too for sufficient cause.

18. Various expressions used in these provisions are not only suggestive but convey a definite intent of the rule making authority that adherence to the principles of natural justice and basic rule of law are to be observed. When the Council has to form a prima facie view, as contemplated under Section 21(1) of the Act, there has to be proper application of mind. The Council is expected to apply its mind to various aspects before even forming a prima facie view. Once that opinion is formed, it refers the matter to a Disciplinary Committee which is to hold an inquiry in such manner as may be prescribed. The expression "inquiry" is not equatable to a fact finding inquiry as commonly understood in administrative jurisprudence. In this inquiry proceedings, on an opinion formed by the Council, the Disciplinary Committee is expected to submit a report after holding an inquiry in such manner as may be prescribed. The expression "prescribed"

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obviously relates to the manner and procedure prescribed under the Regulations and if both are silent, then the manner of inquiry has to be in conformity with the principles of natural justice. Before the Disciplinary Committee the member has a right to defend and the procedure to be followed by the Disciplinary Committee has to be one which it may consider just and expedient. The expression "just and expedient" has definite connotation in relation to inquiry being conducted by a quasi judicial body and for that matter even by a Disciplinary Authority. The expressions "just" and "expedient" have been explained in the Law Lexicon by P. Ramanatha Aiyar, General Editor Justice Y V Chandrachud, Former Chief Justice, Supreme Court of India, 1997 Edition, which is as follows:-

> "Just – As an adjective fair; adequate; reasonable; probable; right in accordance with law and justice; right in law or ethics; rightful, legitimate, well founded; conformable to laws; conforming to the requirements of right or positive law; conformed to rules or principle of justice. 2 Bom LR 845. As an adverb of time the word "just" is equivalent to "at this moment" of the least possible time since" (Ame.Cyc.)
>
> The word `just' is derived from the Latin `justus' which is from the Latin `jus' which means a right, and more technically a legal right – a law. The word `just' is defined by the

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Century Dictionary as right in law or ethics, and in the Standard Dictionary as conforming to the requirements of right or of positive law, and in Anderson's Law Dictionary as probable, reasonable. Kinney's Law Dictionary defines `just' as fair, adequate, reasonable, probable; and justa causa as a just case, a lawful ground.

The term `Just' is derived from the Latin word `justus'. The word, `just' connotes reasonableness and something conforming to rectitude and justice something requirable and fair. M.A. Rahim and Another v. Sayari Bai, AIR 1973 Mad 83, 87. [Motor Vehicles Act (1939)]"

"Expedient – In one sense, "expedient" (adj) means "apt and suitable to the end in view", practical and efficient," "polite", "profitable", "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right." State of Gujarat v. Jamuadad, AIR 1974 SC 2233, 2238. (Gujarat Panchayata Act (6 of 1962), S. 303-A) Advantageous; fit; proper; suitable to the circumstances of the case."

19. Thus, "just and expedient" is an expression which must be read in conjunction with the manner of procedure of inquiry. The discretion of the Disciplinary Committee to provide its own procedure therefore is regulated by the methodology which is just and expedient.

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The word "Just" conveys judiciousness and the word "expedient" conveys the interest of justice. Anything which is opposed to either of them could hardly be termed as a valid procedure, as that will have an effect of denying a right of defence to the delinquent member as required under Regulation 15(3) of the said Regulations.

20. Reference can be made to a decision of the Supreme Court in *Institute of Chartered Accountants of India v. L.K. Ratna & Ors.,* (1986)4 SCC 531, wherein the Supreme Court held as under:-

> "11. 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

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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 provisions of the Act. As a subordinate body, it reports to the Council, the governing body. The report will contain a statement of the allegations, 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 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 member is not guilty of misconduct, Section 21(2) requires it to record its finding accordingly, and to direct that the proceedings shall be filed or the complaint shall be dismissed. If, on the other hand, 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 requires it to be recorded. A responsibility so grave as the determination that a member is guilty of misconduct, and the recording of that

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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 recored by the Council that the Act moves forward to the final stage of penalisation. The recording of the finding by the Council is the jurisdictional springboard for the penalty proceeding which follows.

12. Now when it enters upon the task of finding whether the member is guilty of misconduct, the Council considers the report submitted by the Disciplinary Committee. The report constitutes the material to be considered by the Council. The Council will take into regard the allegations against the member, his case in defence, the recorded evidence and the conclusions expressed by the Disciplinary Committee. Although the member has participated in the inquiry, he has had no opportunity to demonstrate the fallibility of the conclusions of the Disciplinary Committee. It is material which falls within the domain of consideration by the Council. It should also be open to the member, we think, to point out to the Council any error in the procedure adopted by the Disciplinary Committee which could have resulted in vitiating the inquiry. Section 21(8) arms the Council with power to record oral and documentary evidence, and it is precisely to take account of that eventuality and to repair the error that this power seems to have been conferred. It cannot, therefore, be denied that even though the member has

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participated in the inquiry before the Disciplinary Committee, there is a range of consideration by the Council on which he has not been heard. He is clearly entitled to an opportunity of hearing before the Council finds him guilty of misconduct.

13. At this point it is necessary to advert to the fundamental character of the power conferred on the Council. The Council is empowered to find a member guilty of misconduct. The penalty which follows is so harsh that it may result in his removal from the Register of Members for a substantial number of years. The removal of his name from the Register deprives him of the right to a certificate of practice. As is clear from Section 6(1) of the Act, he cannot practice without such certificate. In the circumstances there is every reason to presume in favour of an opportunity to the member of being heard by the Council before it proceeds to pronounce upon his guilt. As we have seen, the finding by the Council operates with finality in the proceeding, and it constitutes the foundation for the penalty imposed by the Council on him. We consider it significant that the power to find and record whether a member is guilty of misconduct has been specifically entrusted by the Act to the entire Council itself and not to a few of its members who constitute the Disciplinary Committee. It is the character and complexion of the proceeding considered in conjunction with the structure of power constituted by the Act which leads us to

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the conclusion that the member is entitled to a hearing by the Council before it can find him guilty. Upon the approach which has found favour with us, we find no relevance in *James Edward Jeffs v. New Zealand Dairy Production and Marketing Board (1967 1 AC 551: (1967) 2 WLR 136: (1966) 3 All ER 863* cited on behalf of the appellant. The Court made observations there of a general nature and indicated the circumstances when evidence could be recorded and submissions of the parties heard by a person other than the decision making authority. Those observations can have no play in a power structure such as the one before us.

14. Our attention has been invited to the difference between the terms in which Section 21 (3) and Section 21 (4) have been enacted and, it is pointed out, that while Section 21 (4) Parliament has indicated that an opportunity of being heard should be accorded to the member, nowhere in Section 21(3) do we find such requirement. There is no doubt that there is that difference between the two provisions. But, to our mind, that does not affect the questions. The textual difference is not decisive. It is the substance of the matter, the character of the allegations, the far-reaching consequences of a finding against the member, the vesting of responsibility in the governing body itself, all these and kindered considerations enter into the decision of the question

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whether the law implies a hearing to the member at that stage.

15. Learned counsel for the appellant relies on *Chandra Bhavan Boarding and Lodging v. State of Mysore (1970) 2 SCR 600: (1969) 3 SCC 84:AIR 1970 SC 2042,* where this Court found that the procedure adopted by the government in fixing a minimum wage under Section 5 (1) of the Minimum Wages Act, 1948 was not vitiated merely on the ground that the government had failed to constitute a committee under Section 5 (1) of that Act. Reference was also made to *K. L. Tripathi v. State Bank of India,* (1984) 1 SCC 43: 1984 SCC (L&S) 520, where the petitioner complained of a breach of the principles of natural justice on the ground that he was not given a opportunity to rebut the material gathered in his absence. Neither case is of assistance to the appellant . In the former, the court found that reasonable opportunity had been given to all the concerned parties to represent their case before the government made the impugned order. In the latter, the court held that no real prejudice had been suffered by the complainant in the circumstances of the case.

16. It is next pointed out on behalf of the appellant that while Regulation 15 requires the Council, when it proceeds to act under Section 21(4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in Regulation 14 which prescribes what the

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Council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the Council against the report of the Disciplinary committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render it finding. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.

17. It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that th member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for

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a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on “Administrative Law” 5th edn. But as that learned author observes (at p. 487), “in principle there ought to be an observance of natural justice equally at both stages”, and

If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing : instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.

And he makes reference to the observations of Megarry, J. in Leary v. National Union of Vehicle Builders (1971) Ch 34, 49. Treating with another aspect of the point, that learned Judge said :

If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal ? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is

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satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

The view taken by Megarry, J. was followed by the Ontario High Court in Canada in Re Cardinal and Board of Commissioners of Police of City of Cornwall, (1974) 42 DLR (3d) 323. The Supreme Court of New Zealand was similarly inclined in Vislang v. Medical Practitioners Disciplinary Committee, (1974) 1 NZLR 29, and so was the Court of Appeal of New Zealand in Reid v. Rowley, (1977) 2 NZLR 472.

18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may causer serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected and publicly trusted professions is found

guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. “Not all the King's horses and all the King's men” can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blasé attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate *complete* restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mense profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.”

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21. Just and expedient are expressions of fair play. The legislative purpose of requiring the authority to act in conformity with rule of fairness is demonstrated by specific language as well as necessary implication wherever the words are silent. The provisions with regard to disciplinary action which could even result in removing the name of the member from the Register temporarily or permanently are proceedings which essentially must be conducted in conformity with the rule of fairness. Fairness should not only appear to have been done but should actually be done in such proceedings. In simple language `expedient' means tending to promote some proposed or desired object or suitable for the purpose and which is proper under the circumstances. In the case of *Hotel Sea Gull vs State of West Bengal and others*, **(2002) 4 SCC 1,** the Supreme Court while referring to the word `expedient' held that the expression occurring in the statute authorizing modification, revocation under the circumstances would comprehend whatever is suitable and appropriate for any reason for the accomplishment of the specified object. The specific object under the provision with which we are concerned is grant of hearing, right of defence, fairness in procedure and prosecution of a procedure which is just and expedient. Similarly, the expression `just'

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connotes equality, fairness and reasonableness which would obviously result in exclusion of arbitrariness as what is arbitrary cannot be just. (Reference : *Divisional Controller, KSRTC vs Mahadeva Shetty and another*, **(2003) 7 SCC 197**). (Refer : Supreme Court on Words and Phrases (1950-2008), Second Edition, by Justice R.P. Sethi, Former Judge, Supreme Court of India, page 739).

22. In Administrative law and more so in case of the Tribunals exercising quasi-judicial powers, the principle of fair hearing has been applied universally. In *Ridge vs. Baldwin*, **1964 AC 40 : (1963) 2 All ER 66, the Court** restated the principle of the right to a fair hearing as a rule of universal application in the case of administrative acts or decisions affecting rights and even referred it as a duty to afford such hearing upon every one who decides such matters. [Refer : H. W. R. Wade and C.F. Forsyth on Administrative Law (Ninth Edition)].

23. Of course, fair hearing does not stipulate that the proceedings be as formal as in a Court. What natural justice, whether specifically spelled out or by necessary implication, requires is simple or elementary justice as distinct from complex or technical justice,

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otherwise much of the justification of having adjudicatory bodies outside the court system will evaporate in thin air. But adherence to that basic principle cannot be ruled out unless for valid and proper reasons the statute specifically exclude such right. (Refer : Principles of Administrative Law by M.P. Jain & S.N. Jain, Fourth Edition).

24. Fairness in procedure thus has to be reflected from the totality of the facts of a given case. [Refer : From Duty to act judicially and duty to act fairly by Justice C.K. Thakker (2003) 4 SCC (J) Page No.1]. It may be difficult to state whether the principle is universally applicable without reference to facts of a given case. In the case of *Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and others*, **(2001) 1 SCC 182**, the Supreme Court while applying the doctrine of natural justice and stating the principle of fairness in procedure held as under:-

> "Since the decision of this Court in Kraipak case (A.K. Kraipak v. Union of India) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin very succinctly described it as not being capable of

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exact definition but what a reasonable man would regard as a fair procedure in particular circumstances – who then is a reasonable man – the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact, this Court in the case of Keshav Mills Co. Ltd v. Union of India upon reliance on the attributes of the doctrine as above-stated as below: (SCC p. 387 para 8)

> "8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as so to act fairly. See, for instance, the observations of Lord Parker in H.K. (an infant). In re (1967) 2 QB 617. It only means that such measure of natural

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justice should be applied as was described by Lord Reid in Ridge v. Baldwin case as `insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances'. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. Observed in Russell v. Duke of Norfolk (1949) 1 ALL ER 109 (CA):

"The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth. "

2. While it is true that over the years there has been a steady refinement as regards this particular doctrine but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a government action.

19. While it is true that in a departmental proceeding, the disciplinary authority

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is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceedings cannot be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do not find some support from the decision of this Court in the case of *Apparel Export Promotion Council v. A.K. Chopra.*

20. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case."

25. The State, executive authorities or authorities which are performing statutory functions may perform varied functions like legislative, executive and administrative. As far as judicial functions are concerned, they are controlled by codified laws but the

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administrative and quasi-judicial functions are not only controlled by laws but even by practice. These acts may be purely administrative or may be quasi-judicial. The real test which provides a distinction between pure administrative act or administrative or quasi-judicial act is the duty to act judiciously. In *R vs Manchester Legal Aid Committee*, **(1952) 1 All ER 480** the Court said, "the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively". There could be a case where there is duty to act judicially and as well as ministerially. The duty to act judicially may not be expressly provided but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the procedure provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred or the duty imposed on the authority or other indicia afforded by the statute. Thus, duty to act judicially arises from the statutory provisions but in any event duty to act fairly, particularly in relation to discharge of quasi-judicial functions is unavoidable. The Court being conscious of the principle that Governments or other bodies may be doing purely administrative work keeping in view the principles of natural justice, fairness in action

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have developed, the concept of duty to act fairly which has now been universally applied by the Courts even in cases of administrative functions or tribunals discharging quasi-judicial functions. In the case of *M.S. Nally Bharat Engg. Co. Ltd. (supra)* the Supreme Court stated as under :-

> "Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time-hallowed phrase that `justice should not only be done but be seen to be done' is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. ... Indeed, *it cannot have too much elaboration of procedure since wheels of administration must move quickly*." (emphasis supplied).

26. As we have already indicated that various provisions of the Act and the regulations framed thereunder require the Council and

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the Disciplinary Committee to act judiciously. In fact both the principles 'to act judiciously' and 'to act fairly' are applicable to the functioning and procedure adopted by these authorities. Another aspect of compliance to the principles of natural justice and fair play is specifying some reasons for passing an order which would affect the rights of a party. Even in pure administrative action, reasons may not be largely stated like judgments but the authority must provide grounds or basis for taking a view to be examined by the higher authorities concerned in appeal or under the judicial review. A Division Bench of this Court, in the case of *M/s Pipe Arts India Pvt. Ltd. vs Shri Gangadhar Nathuji Golmane*, **2008 (6) Mh. L. J. 280)** had an occasion to deal with the need for giving reasons in judicial orders and for that matter giving reasons even while passing administrative orders, and the Court held as under :-

> "6. It is true that the order in LPA 31 of 2008 was passed on a concession recorded and both the parties were ad idem that the learned Single Judge should have stated some reasons in support of order rejecting the prayer. May be, the order in that case was passed by consent of the parties but certainly, the principle that judicial orders should be supported by some reasoning, still holds good. In the case of Union of India v. E.G.

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Nanbediri, 1991(2) S.L. R. 675 the Supreme Court has settled the principle that even the administrative authorities in exercise of their powers and while passing orders affecting rights of the people should support their orders by some reason. The fine line of distinction between exercise of power in quasi judicial or statutory capacity on one hand and the administrative capacity on the other was wiped out by holding that administrative authorities were also expected to record reasons in support of their orders may be not detailed orders like judgments. The Court held as under:

> "However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action"

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7. In the case of State of West Bengal v. Atul Krishna Shaw and another, 1991 Supp(1) SCC 414, the Supreme Court has clearly stated the principle that giving of reasons in quasi judicial proceeding was the requirement of law as giving of reasons is an essential element of administration of justice and indispensable part of sound system of judicial review.

8. The Supreme Court and different High Courts have taken the view that it is always desireable to record reasons in support of the Government actions whether administrative or quasi judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject matter of judicial review, is reasoned one. Even in the case of Chabungbambohal Singh v. Union of India and others, 1995 (suppl) 2 SCC 83, the Court held as under:

> "His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated unfit. As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated unfit, and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

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27. This requirement of providing reasons concept of reasoning is squarely applicable even to the present case. Why such approach is called for is answered by the mere fact that under Rule 15(5) while considering the demand of a delinquent member for holding of a de-novo inquiry in the event of change of member of Disciplinary Committee, the Committee is expected to record reasons and give sufficient cause while accepting or declining such a request. If the law contemplates stating of reasons even for such a matter, then it will be difficult for the Court to accept that in other matters having much serious consequences, the Committee or the Council is not expected to give reasons. Under Regulation 16(4), even the Council is required to record its findings and is to pass an order under Regulation 17(4). An order could pre-suppose existence of some reasoning or views akin to reason ergo it should be held that the Council and the Disciplinary Committee are expected to pass reasoned orders on matters which affects the rights of the parties in relation to which the Committee or council are exercising their powers which are primarily in the nature of quasi-judicial proceedings. Thus, it would have been proper for the Committee to deal with the application

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dated 23rd March 2009 making a request to follow the procedure declared by the Committee, seeking permission to cross-examine the witnesses and for production of record.

28. It was stated before us that the application which was filed by the Petitioners before the Disciplinary Committee had specifically prayed for a decision of the application, but no specific order was passed in presence of the Petitioner. However, it was indicated that the application was not being accepted. Despite request, the transcript of the order, if any, passed has not been supplied to the Petitioners even till date. It was stated on behalf of the Council, before us, that the case had been closed for report on that day itself and the Disciplinary Committee was in the process of preparing its report for transmission to the Council.

29. It needs to be examined as to whether the procedure adopted by the new Disciplinary Committee was in consonance with the provisions of the Act, Regulations, fair play and principles of natural justice. One way of examining this aspect is to see what is the relevance of the inquiry report prepared by the Disciplinary Committee and what effect it has on the final order. As already noticed, the

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Disciplinary Committee acts in furtherance to a reference made to it by the Council, on the Council prima facie being satisfied that the delinquent member is guilty of misconduct, and after following the prescribed procedure it is to submit its report to the Council where it finds the member guilty. The Council has to consider the report of the Disciplinary Committee and the representation made by the Member, if any, and pass order which is final and binding. But if the Disciplinary Committee report records a finding that the delinquent member is not guilty of any professional or other misconduct, the Council is debarred from recording its finding to the contrary to the report of the Disciplinary Committee in terms of Regulation 16. Such is the impact and effect of the report of the Disciplinary Committee. Thus, the report of the Disciplinary Committee constitutes an important material before the Council which is not only likely but is bound to influence the final conclusion. The function of the Disciplinary Committee in light of quasi judicial functions vested in it is not a mere formality but is a proceeding of substantive nature and having serious consequences. In the case of *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.,* (1993)4 SCC 727, the Supreme Court held as under:-

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> ".....In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the inquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

30. In the case of *Institute of Chartered Accountants of India v. L.K. Ratna and others,* (1986)4 SCC 537, the Supreme Court clearly stated that in terms of Section 21 of the Act, the Disciplinary Committee and the Council are separate functionaries. The Council is the controlling authority and the Disciplinary Committee is merely a

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Committee of the Institute, the function of which is specifically limited by the provisions of the Act. The principles of natural justice in the light of the doctrine of *Nemo judex in causa sua* were applicable as there was no specific exclusion of applicability of principles of natural justice by specific provision in the Act or Regulations. We must notice here with some significance that the Supreme Court in this very case emphasized that to many a man, his professional reputation is his most valuable position. It affects his standing and dignity among his fellow members in the profession and guarantees the esteem of his clientele.

31. Therefore, when reputation of such members is examined and the procedure for removal of their names or taking disciplinary action for any professional or other misconduct is provided, then, even if there is no specific statutory command still the authorities would have to act in consonance with the principles of natural justice. Therefore, there is manifest need to ensure that there is no breach of fundamental procedure in original proceedings. This completely provides an answer to what has been contended by the Respondent Council that all these arguments can be raised before the Council and

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reliefs claimed in this writ petition, therefore, are frivolous and/or premature. Once the Diciplianary Committee has been vested with definite powers and is required to perform quasi judicial functions consequences of which will and are bound to influence the final conclusion, then adherence to the prescribed procedure and principles of natural justice is mandatory and is incapable of being deferred at a subsequent stage. The provisions of the Act and the Regulations contemplate an opportunity and right to defend at that stage and deferment of such a statutory right cannot be permitted to be diluted just because the Council may be able to examine the matter at a subsequent stage. We have already noticed the kind of importance, under the provisions of law, and the effect that the report of the Disciplinary Committee has on the final conclusion. It is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation, that all administrative acts or decisions affecting the rights of the individual must comply with the principles of natural justice and the person or persons sought to be affected adversely must be granted not only an opportunity of hearing but a fair opportunity of hearing. The duty to act fairly may not so much to act judiciously is explicit in the language

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of these provisions and in any case would have to be read into and construed on a bear reading of these provisions. These principles are well settled and reference can be made to a decision of the Supreme Court in the case of *State of Maharashtra & Ors. v. Jalgaon Municipal Council & Ors.,* 2003 9 SCC 731 as well as in the case of *D.K. Yadav v. J.M. A. Industries Ltd.,* 1993 3 SCC 259.

32. It is also a settled principles of law that the principles of cannons of natural justice cannot be placed in a rigid mould or straitjacket. These are flexible rules. Their applicability is determined on the facts of each case. The case which would require consideration in the ultimate analysis would be whether the person aggrieved was given a fair deal by the Authority or not ? (*Jagjit Singh v. State of Haryana & Ors.,* (2006) 11 SCC 1).

33. Let us now find an answer to the above question in the facts and in the circumstances of the present case. The earlier Disciplinary Committee vide its letter dated 3rd December, 2007 had enumerated the procedure which it had decided to follow in terms of Regulation 15(4). This was pointed out during the course of hearing

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that the said procedure was adopted as a practice by the Disciplinary Committee. This procedure clearly provided for introduction of the case, charges to be explained, filing of documents by the witnesses, examination-in-chief, cross-examination of the witnesses and it even provided the Respondents to be represented by a Counsel. In fact this procedure even provided re-examination of the Respondents by the Committee, if need be. In other words, this procedure was considered to be just and expedient by the Committee. A submission was even made on behalf of the Petitioners that after induction of two new members to the Committee, the Committee had decided not to follow such procedure. However, there is nothing on record to substantiate their submission. On the contrary vide letter dated 9th March, 2009, the Disciplinary Authority intimated the change in the membership of the Committee and informed the Petitioenrs that they could demand de novo inquiry under the provisions of Regulation 15 (5) which option the Petitioners exercised. The meeting of the Committee was fixed on 23rd March, 2009 and as per the notice dated 9th March, 2009 the meeting of the Committee was to continue on 24th March, 2009, if necessary. According to the Petitioners, they were told only on 23rd March, 2009 that the Committee had decided to hold

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de novo hearing. At that stage, the Petitioners' Counsel pointed out that despite summons being issued to the RBI, its witnesses had failed to attend and neglected to produce relevant documents/records/working papers and the Committee was requested to ensure compliance of the summons. Instead of acceding to the Petitioners' request the Committee called upon the Petitioners to lead evidence and prove that they were not guilty of the charges of misconduct. The Petitioners' counsel at that stage sought time which was rejected. The Petitioners submitted in writing an application on the same day and even sent by electronic mail through their advocates as well. On 24th March, 2009, they even sought a copy of the transcript of the hearing held on 23rd March, 2009 which has not been supplied and the Committee had announced that the proceedings were closed. On record, there is nothing whatsoever before us to show as to why the witnesses who were present before the previous committee were not called again before the new Committee. What was the reason for denying the Petitioners the opportunity to cross examine the witnesses of Chartered Accountants of M/s. Bhaskar and RBI officers whose report was the sole basis for issuance of charge sheet is not clear. The right of defence of the

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delinquent member as contemplated under Rule 15(3) is a legal right and cannot be denied by exercise of absolute discretion opposed to the principles of natural justice. The charge sheet dated 8th September, 2006 Exhibit - M to the Writ Petition itself opens with the words "on perusal of the news items published in daily news paper dated 26th July, 2004 in respect of statutory audit of the Global Trust Bank Limited. The AFI 2003 report received for the period ending 31st March, 2003, Annexure-II and statutory audit Report of the said Bank was also referred to and relied upon and the irregularities or misconduct pointed out in terms of the specific reference to AFI 2003 report and its different pages were pointed out. In other words, the charge sheet is entirely based upon the AFI 2003 report and statutory Audit Report. Request of the Petitioners for cross examination of the witnesses who had prepared the report thus cannot be termed as unjustified but would squarely be in conformity with the right of fair defence. It is strange that no orders on the application had been passed and in any case placed on record of this file, though it is alleged to have been rejected by passing an oral order or direction. The proceedings before the Committee are of quasi judicial nature and the manner in which the proceedings that had taken place on 23rd

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March, 2009 do not appear to be in consonance with the statutory provisions and the settled cannons of principles of natural justice. The principles of natural justice takes in its ambit different aspects. In the case of M/s. International Cargo Services v. Union of India & Anr., 2005(120) Delhi Law Times 195, a Bench of that Court held as under:-

> "7. The principles of natural justice have twin ingredients. Firstly, the person likely to be adversely effected by the action of the authorities should be given notice to show cause or granted reasonable opportunity of being heard in consonance with the maxim *audi alteram partem*. Secondly, the order so passed by the authorities should give reasons for arriving at any conclusion showing proper application of mind. Violation of either of these principles normally would render an order particularly quasi-judicial in nature invalid. Violation of principles of natural justice is violation of basic rule of law and would invite judicial chasticism. However, this rule is not without exceptions. Of course, the exception to such a rule are rare. Where the legislative scheme of provisions of a statute suggest that intent of the legislature is to take emergent action, in that event and subject to fulfillment of ingredients of the provisions, an order could be passed without affording pre-decisional hearing and an expeditious post-decisional hearing may amount to

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substantial compliance with the basic rule of law. Regulation 20(1) empowers the Commissioner of Customs to revoke the licence of an agent and even order forfeiture of part or whole security. This action could be taken restricted to the grounds spelled out in the regulation itself. This power can hardly be invoked by the authorities for instantly revoking a licence while under 20(2) of the regulations the same authority may in appropriate cases where immediate action is necessary suspend the licence of the agent where inquiry against such agent is pending or contemplated. The emphasis is on the expression `immediate action is necessary' and `enquiry against such agent is pending or contemplated'. Furthermore, this regulation opens with non-obstante expression `notwithstanding anything contained in sub-regulation (1)'. Thus, provisions of sub-regulation (2) would take precedence and recourse thereto can be taken despite the pendency of proceedings for revocation of licence. In normal course, the procedure prescribed under Regulation 22 has to be followed by the authorities. In a case where immediate or emergent circumstances do not exist, notice should be issued to the agent, before authorities could pass an order in exercise of their powers under Rule 20(1) or 21. However, this may not be quite true in an emergent situation. Where the authorities are of the considered view that the facts and circumstances disclose sufficient grounds for invoking emergent provisions and it is absolutely essential to suspend the licence of the agent, in public interest, there the

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authorities may do so without serving a notice on the agent, but at the same time ensuring that post-decisional hearing is granted to the agent and the matter is considered with utmost expeditiousness. The rules of natural justice would have to be read into regulation 20(2) but with the proviso that post-decisional hearing in emergent situation and subject to the satisfaction of the competent authority would be granted at the very first possible opportunity. Whever a licence is suspended without hearing, the authorities would be under obligation to grant post-decisional hearing to the agent immediately thereafter and ensure that the authorities after hearing the concerned party and upon due application of mind consider the matter whether the order of suspension should continue during the period of inquiry or otherwise. Such an approach would be just, fair and would further the object sought to be achieved by these provisions. The expression `immediate' has to be harmoniously read and construed with other provisions including the provisions of regulations 20 and 22. The period specified in regulation 22 would have the effect of rendering the expression `immediate' ineffective and meaningless. Therefore, applying the principle of harmonious construction, the provisions will have to be given their true and correct meaning and they should be permitted to operate in the field in which they are intended to operate by the legislature, so as to avoid any conflict between the language of these two provisions. An order of suspension is bound to have serious consequences

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upon the business of the agent and tantamounts to practically closing the business of the agent. As such to permit an order of suspension, even passed in emergent situations, to continue for indefinite period without hearing the agent would definitely be infringement of the principles of natural justice and basic rule of law as well. The only way in which both these provisions can operate without conflict is to hold that an order of suspension in `emergent' situation can be passed for recorded reasons without hearing the agent at the first instance but should be granted opportunity of showing cause immediately thereafter and the authorities are expected to apply their mind whether the order of suspension so passed should be permitted to continue or not. This power is an exception to the normal rule of *audi alteram partem* and therefore recourse to it should be only in the case of immediate action in public interest or to prevent breach of statutory provisions, regulations or conditions of licence, failing which serious consequences are bound to flow.

8. XXXXX XXXXX XXXXX

9. XXXXX XXXXX XXXXX

10. Natural justice is a procedural requirement of fairness. Those whose duty to decide, must act justly and fairly. Normally, they should hear the parties by granting them opportunity of adequate representation and they must state some reasons in their final conclusions. This doctrine has been extended to statutory authorities or

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> Tribunal exercising quasi-judicial functions and now even to administrative authorities, which can determine civil right or obligations (Rattan vs. Managing Committee 1993(4)SCC 10)."

34. Learned Counsel appearing for the Council emphasized that the adequate checks and balances had been provided under the Regulations itself and in terms of Section 21 read with Regulations 16 and 17, the Council would have to examine all aspects including the grievances raised by the Petitioners in the present petition. The basic object of principles of natural justice is to provide checks and balances. Thus, we must ensure a fair deal and an opportunity to the delinquent of a fair hearing in the proceedings before the Committee whose recommendations can finally determine the conclusions of the Competent Authority for or against the delinquent member.

34. Upon proper analysis of the principles afore stated, with reference to the facts and circumstances of the case, we have no hesitation in holding that the Disciplinary Committee has failed to act in conformity with the provisions of Section 21, Regulations 15 and 16, and settled cannons of natural justice and fair play. The

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Petitioners have not been given a fair deal and their right enshrined in Regulation 15(3) stands violated.

35. Thus while making the rule absolute, we issue the following directions:-

(a) The Disciplinary Committee shall pass a speaking order on the application dated 23rd March, 2009 filed by the Petitioners and convey the order so passed to the Petitioners.

(b) The Petitioners will be granted fair opportunity of hearing in conformity with Regulation 15(3) and the procedure stated in the letter dated 3rd December, 2007 shall be adhered to. In the event the Committee choses to adopt any procedure different than the one stated in the letter dated 3rd December, 2007, it shall ensure that such

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procedure is just and expedient and declare the same to the Petitioner prior to the commencement of the proceedings before itself.

(c) Till compliance of the above directions, the Committee preferably should not submit its report to the Council in accordance with the provisions of Regulation 16.

36. The Petition is disposed of with the above directions, however, with no order as to costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J

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