Supreme Court of India
Institute Of Chartered ... vs L.K. Ratna & Others on 21 October, 1986
Equivalent citations: 1987 AIR 71, 1986 SCR (3)1048
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
INSTITUTE OF CHARTERED ACCOUNTANTS

Vs.

RESPONDENT:
L.K. RATNA & OTHERS

DATE OF JUDGMENT21/10/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 71 1986 SCR (3)1048
1986 SCC (4) 538 JT 1986 671
1986 SCALE (2)614
CITATOR INFO :
RF 1992 SC 248 (537)

ACT:
Chartered Accountants Act, 1949, ss. 17(3), 21(3), 21(4), 22A and First Schedule Part I clauses 6 & 7 Regulations 11-15-Member of Institute of Chartered Accountants-Charged with Misconduct-Disciplinary Committee-Jurisdiction of-Scope of inquiry-Member, Whether entitled to hearing by Council of Institute after Disciplinary Committee submits report.

Sec. 21-Nature of Proceedings before the Disciplinary Committee & Council of the Institute-What are-The conclusion of Disciplinary Committee does not enjoy the status of a 'finding'-Conclusion of Council is the first determinative finding-Council-Whether obliged to give reasons for its finding.

Administrative Law-Professional Body-Charge of misconduct-Disciplinary Committee conducting inquiry & submitting report to Council for final decision-Participation of members of Disciplinary Committee in Council deliberations-Principles of Natural Justice-Whether violated.

HEADNOTE:

The appellant-the Institute of Chartered Accountants of India was created as a body corporate under the Chartered Accountants Act 1949. Its members are Chartered Accountants. The affairs of the Institute are managed by a body known as the Council of the Institute which is headed by the President. Below him is the Vice-President. One of the Standing Committees of the Council is the Disciplinary Committee. It consists of the President and the Vice-President ex-officio of the Council, two members elected by the Committee from its members, and a third member nominated by the Central Government.

Section 21 of the Act lays down the procedure for conducting inquiries relating to cases of misconduct by the members and the penalty which may be imposed. Sub-s. (1) of s. 21 provides that where

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the Council is prima facie of opinion that any member has been guilty of any professional or other misconduct it shall refer the case to the Disciplinary Committee which is to hold an inquiry and report the result to the Council. Sub-s. 4 lays down that where the finding of the Disciplinary Committee is that a member has been guilty of professional misconduct it shall afford an opportunity of being heard and may thereafter make an order either to: (a) reprimand the member; or (b) remove the name of the member from the Register for such period not exceeding five years, or (c) 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 or if the member is guilty of misconduct other than any such misconduct as is referred to in sub-s. 4, it shall forward the case to the High Court with its recommendations thereon. Section 22A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council.

The respondents-Chartered Accountants and members of the Institute, were charged for committing the offences of professional misconduct under clauses 6 & 7 of Part I of the First Schedule to the Act, in that they had prepared and brought out a brochure relating to Management Consultancy Services, and had sent out letters to Auditor Firms appraising them of its existence. The Council considered their replies and being of the prima facie opinion that they were guilty of professional misconduct referred the cases to the Disciplinary Committee which, after affording a personal hearing to the respondents, submitted its report to the Council opining that they were guilty of professional misconduct. The Council considered the aforesaid report, and, after having found the respondents guilty of the misconduct, proposed to remove their names from the register of members for a period not exceeding five years in accordance with the procedure laid down in section 21(4). The respondents were informed that they would be called upon

to appear before the Council to make a representation against the proposed action and that the scope of the oral hearing or written representation would be restricted to the penalty proposed.

Aggrieved by the order of the appellant, the respondents filed Writ Petitions in the High Court. A Single Judge of the High Court allowed the petitions, quashed the orders imposing penalty on the respondents and remanded the cases to the Council for fresh consideration on the finding: (i) that the Council should have given an opportunity to the respondents to represent before it against the report of the Disciplinary Committee; and (ii) that the decision of the Council was

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vitiated inasmuch as the President, the Vice-President and the two members of the Institute, who were also members of the Disciplinary Committee, were disqualified from participating in the proceedings of the Council when it considered the report of the Disciplinary Committee. The appeals filed by the appellant having been summarily rejected by the Division Bench, the Institute appealed to this Court.

Dismissing the appeals of the appellant, this Court,

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HELD: 1.1 A member accused of misconduct is entitled to a hearing by the Council when, on receipt of the report of the Disciplinary Committee, it proceeds to find whether he is or is not guilty. [1067D]

1.2 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. In these 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 him guilty of misconduct. [1063F-G]

2.1 In the scheme incorporated in s. 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. 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 proceedings. 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 provisions of the Act. Its conclusions 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. 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. [1062C-H]

A responsibility so grave as the determination 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
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only upon a finding being recorded 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 spring board for the penalty proceeding which follows. [1062H; 1063A-B]

2.2 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. The nature of the function discharged by the Council in rendering its finding is quasi-judicial. A member whose conduct has been the subject of inquiry by the Disciplinary Committee ending in conclusions adverse to him can legiti-mately entertain an apprehension that the President and the Vice-President of the Council and the other members of the Disciplinary Committee would maintain the opinion expressed by them in their report and would press the acceptance of the report by the Council. 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 the material which falls within the domain of consideration by the Council. It should also be open to the member, to point out to the Council any error in the procedure adopted by the Disciplinary Committee which could have resulted in vitiating the inquiry. [1063B-D]

S. 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 has been conferred. It cannot, therefore, be denied that even though the member has 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. [1063D-E]

3.1 The finding by the Council operates with finality in the proceedings, and it constitutes the foundation for the penalty by the Council on him. [1063G-H]

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. [1063H; 1064A]

3.2 It is the character and complexion of the proceeding consi-
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dered in conjunction with the structure of power constituted by the Act which leads to the conclusion that the member is entitled to a hearing by the Council before it can find him guilty. [1064A-B]

Manek Lal v. Dr. Prem Chand, [1957] SCR 575, referred to.

4. There is no doubt that there is difference between the provisions of s. 21(3) and 21(4), in that while in s. 21(4) Parliament has indicated that an opportunity of being heard should be accorded to the member, nowhere in s. 21(3) there is such requirement. But, that does not affect the question. The textual different 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 kindred considerations enter into the decision of the question whether the law implies a hearing to the member at that stage. [1064D-E]

5. 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 its finding. [1065B-C]

The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. [1065C]

6. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. Where a member of a highly respected and publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. To many a man, his professional reputation is his most valuable possession. 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 such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Therefore, 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 substitution for the original proceeding. [1066F-H; 1067A-C]

7.1 By virtue of s. 17(3) it is obligatory that the Disciplinary Committee should be composed of the President and the Vice-President of the Council and three other members of the Council. While that is so,

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there is nothing in the Act to suggest that the meetings of the Council must always be presided over by the President or the Vice-President and that no meeting can be held in their absence. There is an element of flexibility which makes it possible for the Council to consider the report of the Disciplinary Committee without the participation of the

members of the Committee. Because of the 'flexibility' potential in the scheme, the doctrine of necessity, cannot come into play. [1069E-H]

7.2. There is nothing in s. 21 of the Act to indicate whether the members of the Disciplinary Committee should be excluded when the Council enters upon its task. The function of the Disciplinary Committee of holding an inquiry under s. 21(1) of the Act into the conduct of the member calls for a recording of evidence by the Committee. Its duty does not end there. It must consider the evidence and come to its conclusions. Section 21(2) of the Act plainly says, it must report "the result of its enquiry" to the Council. In the absence of express or implied statutory intendment to the contrary, the members of such a committee would be disqualified from participating in the deliberations of the Council when it proceeds to consider the report in order to find whether the member is guilty of misconduct. For that alone would be consistent with the fundamental principle that justice must not only be done but must also appear to be done. [1068B-F]

Re Daneyger and Alberta Pharmaceutical Association, 17 D.L.R. (3d) 206, Re Prescott, 19 D.L.R. (3d) 446, Re Merchant and Benchers of the Law Society, 32 D.L.R. (3d) 178 and Law Socieety of Upper Ganada v. French, 49 D.L.R. (3d) 1, distinguished.

8. The Council is obliged to give reasons for its finding that a member is guilty of misconduct. In fairness and justice, the member is entitled to know why he has been found guilty. [107 1E-G]

The member has been given a right of appeal to the High Court under s. 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. Further, a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for the finding. [1071F-G]
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9. Due recognition should be given to the fundamental principles and accepted axioms of law. [1070B-C]

[Removal of the anomaly by suitable legislative amendment of s. 17(3) of the Act so that the constitution of the Disciplinary Committee should not necessarily include the President and the Vice-President of the Council was suggested by the Court.] [1070B-C]

James Edward Jeffs and Others v. New Zealand Dairy Production and Marketing Board and others, [1967] 1 AC 551, Chandra Bhavan Boarding and Lodging Bangalore v. The State of Mysore and Anr.[1970] 2 SCR 600 and K.L. Tripathi v.

State Bank of India and Others, [1984] 2 SCC 43, inapplicable.

Leary v. National Union of Vehicle Builders, [1971] 1 Ch. 34, Re Cardinal and Board of Commissioners of Police of City of Cornwall, [1974] 42 D.L.R. (3d) 323, Wisland v. Medical Practioners Disciplinary Committee, [1974] 1 N.Z.L.R. 29 and Reid v. Rowley, [1977] 2 N.Z.L.R. 472, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1911 and 1912 of 1980.

From the Judgment and Order dated 16.4.1980 of the Bombay High Court in Appeal No. 203 and 205 of 1980.

F.S. Nariman, Anil B. Divan, K.K. Jain, S.K. Gupta, Promod Dayal, G. Banerjee and A.D. Sanger for the Appellant.

Atul Setalvad, Atul Rajadhya and Mrs. A.K. Verma for the Respondents.

The Judgment of the Court was delivered by PATHAK, J. These appeals raise some fundamental questions in regard to the conduct and procedure of disciplinary proceedings taken under the Chartered Accountants Act, 1949. Two of the questions are:

> 1. "Whether a member of the Institute of Chartered Accountants of India is entitled to a hearing by the Council of the Institute after the Disciplinary Committee has sub-
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> mitted its report to the Council of its enquiry into allegations of misconduct against the member?
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> 2. When the Council proceeds to consider the Report of the Disciplinary Committee, is the proceeding vitiated by the presence of the members of the Disciplinary Committee who include the President and the Vice-President of the Council and three other members of it?"

The appellant is the Institute of Chartered Accountants of India (the "Institute"). The Institute was created as a body corporate under the Chartered Accountants Act, 1949 (the "Act"), and its members are Chartered Accountants. The affairs of the Institute are managed by a body known as the Council of the Institute, which is headed by a President and a Vice-President below him. There are three Standing Committees of the Council, and one of them is the Disciplinary Committee. The Disciplinary Committee consists of the President and the Vice-President ex-officio of the Council, two members elected by the Committee from its members and a third member nominated by the Central Government. Chapter V of the Act contains provisions dealing with cases of misconduct of

members of the Institute. Section 21 provides for conducting enquiries relating to such misconduct and the penalties which may be imposed, and section 22A provides for an appeal by a member against the imposition of a penalty. As the sections are material, they may be set forth:

> S.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.
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> (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-section. (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:
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> (a) reprimand the member;
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> (b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:
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> Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon. (5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in subsection (4), it shall forward the case to the High Court with its recommendations thereon.
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> (6) On receipt of any case under sub-section (4) or subsection (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders namely:

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

(b) reprimand the member;

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

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

(7) ..... (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.

22A. Appeals (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalities referred to in sub-section (4) of Section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court:

Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of Section 21 and may-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm, or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further inquiry as the High Court considers proper in the circumstances of the case; or

(d) pass such other order as the High Court thinks fit:

> Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard."

The Act provides for the framing of Regulations. Regulations 11 to 15 set forth the procedure for an enquiry into allegations of misconduct.

Messrs A.F. Ferguson & Co. ("Ferguson & Co.") is a reputed firm of Chartered Accountants. The respondent Lalit Kumar Ratna is a partner and the respondents Ashok Kumar Behl and P.R. Bhoopatkar are employees in the firm. All three are Chartered Accountants and members of the Institute.

In 1967 Ferguson & Co. established a Management Consultancy Division. Ratna was head of the Division, and Behl and Bhoopatkar worked under him. On April 15, 1970, Ferguson & Co. wrote to the Institute enquiring whether it could send out letters to Auditor Firms apprising them of the existence of the Management Consultancy Service and whether it was forbidden from doing so by any rules of the Institute. The Secretary of the Institute replied that the Council had appointed a Sub-Committee for considering the ethical problems arising out of the functioning of the Institute's members in the area of Management Consultancy Service and the firm was requested to wait for the recommendations of the Sub-Committee.

On December 8, 1971, Ratna issued a circular to the partners and principals of the firm setting forth guidelines on bringing the Management Consultancy Service brochures to the attention of their respective clients. Meanwhile, Ferguson & Co. also referred the matter to their solicitors, and the solicitors advised that making available of printed informative material in the form of a brochure would not be in contravention of Clauses 6 and 7 in Part I of the First Schedule to the Act or otherwise amount to professional misconduct.

A few days later the Council published an "exposure draft", setting forth the proposals under consideration by the Council regarding the regulations and ethical rules in respect of Management Consultancy Services by Chartered Accountants, and invited members to send their suggestions on the proposals. It was pointed out further that the recommendations to be made by the Council would require appropriate amendments in Part I of the First Schedule to the Act which contained rules in respect of professional misconduct.

Meanwhile, Ratna had prepared a brochure relating to the Management Consultancy Service to be provided by Ferguson & Co. It was stated that the brochure was intended for the use of the clients of the firm who requested information regarding such services and that it was for limited circulation only, the clients themselves being warned of that restriction. On February 19, 1973, the Council wrote to Ferguson and Co. inviting its attention to the brochure and alleging that it contained information against the firm under Section 21 of the Chartered Accountants Act read with clauses 6 and 7 of Part I of the First Schedule to the Act, and in accordance with Regulation 11(5) (b) read with Regulation 12 of the Chartered Accountants Regulations 1964, the firm was required to disclose to

the Council the name of the member answerable to the charge of misconduct. In reply, the firm named Ratna as the member responsible for the brochure.

On April 14, 1973, Ratna submitted a written statement to the Institute denying that he was guilty of professional misconduct and he set forth a detailed statement of the reasons in support of his stand. The Council considered the matter in its meeting of September 13, 14 and 15, 1973 and being of prima facie opinion that Ratna was guilty of professional misconduct referred the case to the Disciplinary Committee. The Disciplinary Committee consisted of the President, S.K. Gupta, the Vice-President, N.C. Krishnan, two members of the Institute, R.K. Khanna and Bansi S. Mehta and the Government nominee, Ganapathi. The Disciplinary Committee gave a personal hearing on January 4, 1974, to Ratna and his counsel. On February 14, 1974, the Disciplinary Committee submitted its report to the Council opining that Ratna was guilty of professional misconduct under clauses 6 and 7 of Part I of the First Schedule to the Act insofar as he solicited clients directly or indirectly and also advertised professional attainments of his services. In its meeting of February 16, 1974 the Council considered the report of the Disciplinary Committee and found that Ratna was guilty of the misconduct. In February 25, 1974, the Institute wrote to Ratna that the Council had found him guilty of professional misconduct, as charged, and that it was proposed to remove his name from the Register of Members for a period not exceeding five years in accordance with the procedure laid down in s. 21(4) of the Act. He was informed that he would be called upon to appear before the Council at its next meeting but in case he did not wish to be heard in person he was entitled to send a written representation against the proposed action. He was required to take note that the scope of the oral hearing for consideration of the written representation would be restricted to the penalty proposed. Copies of the Report of the Disciplinary Committee and the findings of the Council were forwarded to him. On March 4, 1974, Ratna applied for extension of time to enable him to make his representation and the Council granted him time up to April 13, 1974, for that purpose.

It may be stated at this stage that parallel proceedings were taken in the case of Behl and Bhoopatkar. The brochure was treated as information against them also, and on April 14, 1973, they sent their written statements to the Institute. Their submissions were considered by the Council, which being of opinion that they were prima facie guilty of misconduct, referred the matter to the Disciplinary Committee. On January 4, 1974, the Disciplinary Committee granted a full personal hearing to these two respondents, who were represented by counsel. As in the case of Ratna, the Disciplinary Committee made its report to the Council that these two respondents were guilty of professional misconduct under clauses 6 and 7 of Part I of the First Schedule to the Act, and in its meeting on February 16, 1974 the Council held them guilty accordingly and proposed the same penalty as in Ratna's case. They were also invited to appear in person or to make a written representation against the penalty proposed before the Council.

Ratna now filed W.P. No. 426 of 1974 and Behl and Bhoopatkar filed W.P. No. 428 of 1974 in the High Court of Bombay. The Writ Petitions were allowed by Lentin, J by separate orders dated March 3, 1980, on the finding that the Council should have given an opportunity to the members to represent before it against the report of the Disci-

plinary Committee and that the President, the Vice-President and the two members of the Institute who were members of the Disciplinary Committee were disqualified from participating in the proceedings of the Council when it considered the report of the Disciplinary Committee, and that as the decision of the Council was consequently vitiated the orders imposing penalty on the respondents were quashed and the case remanded to the Council for fresh consideration. The Institute appealed to a Division Bench of the High Court and the appeals have been summarily rejected by separate orders dated April 16, 1980.

It is apparent that in the scheme incorporated in s. 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 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 s. 21(2) and s. 21(3) are clear as to that. If on receipt of the report the Council finds that the member is not guilty of misconduct, s. 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, s. 21(3) requires it to record a finding accordingly, and thereafter to proceed in the manner laid down in the succeeding subsections. 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 determina-

tion 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 to the final stage of penalisation. The recording of the finding by the Council is the jurisdictional springboard for the penalty proceeding which follows.

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. S. 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 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.

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 members 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 s. 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 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 and others v. New Zealand Dairy Production and Marketing Board and others, [1967] 1 AC 551 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.

Our attention has been invited to the difference between the terms in which s. 21(3) and s. 21(4) have been enacted and, it is pointed out, that while in s. 21(4) Parliament has indicated that an opportunity of being heard should be accorded to the member, nowhere in s. 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 question. 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 kindred considerations enter into the decision of the question whether the law implies a hearing to the member at that stage.

Learned counsel for the appellant relies on Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore and Anr., [1970] 2 SCR 600, where this Court found that the procedure adopted by the Government in fixing a minimum wage under s. 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 s.

5(1) (a) of that Act. Reference was also made to K.L. Tripathi v. State Bank of India and Others, [1984] 1 SCC 43 where the petitioner complained of a breach of the principles of natural justice on the ground that he was not given an 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.

It is next pointed out on behalf of the appellant that while Regulation 15 requires the Council, when it proceeds to act under s. 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 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 its 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.

It is then urged by learned counsel for the appellant that the provision of an appeal under s. 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 the 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 s. 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 a defect in procedure during the original proceeding. Some of those cases are mentioned in Sir William Wades erudite and classic work on "Administrative Law" But as that learned author observes, "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] 1 Ch.

34. 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 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 D.L.R. (3d) 323. The Supreme Court of New Zealand was similarly inclined in Wislang v. Medical Practioners Disciplinary Committee, [1974] 1 N.Z.L.R. 29 and so was the Court of Appeal of New Zealand in Reid v. Rowley, [1977] 2 N.Z.L.R. 472.

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 cause 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 profession 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 his 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 blase 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 mesne 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.

Upon the aforesaid considerations, we are of definite opinion that a member accused of misconduct is entitled to a hearing by the Council when, on receipt of the report of the Disciplinary Committee, it proceeds to find whether he is or is not guilty. The High Court is, therefore, right in the view on this point.

Accordingly, the respective findings of the Council that Ratna, Behl and Bhoopatkar are guilty of misconduct are vitiated and must be quashed. Consequently, the penalty imposed on each of them is also liable to be quashed.

Our decision on the first question is sufficient to dispose of these appeals. But the appellant is anxious to obtain our opinion on the second question also as, it is said, the question is bound to arise in future in cases of disciplinary proceedings. As it was one of the points on which the High Court allowed the writ petitions, and as we have already heard full agrument on it, we proceed now to consider the point.

The question is whether the respective findings of the Council holding the three members guilty of misconduct can be said to be vitiated by bias because the members of the Disciplinary Committee participated in those proceedings. As has been pointed out, s. 17 of the Act provides for a Disciplinary Committee, consisting of the President and the Vice-President ex-officio of the Council, who will be the Chairman and Vice-Chairman respectively of the Disciplinary Committee, and three other members of the Council, two of them being elected by the Council to the Committee, and the third being nominated by the Central Government from amongst the persons nominated to the Council by the Central Government. Therefore, all the five members of the Disciplinary Committee are drawn from the Council.

Now the Council is vested with power under s. 21 to find whether the member is guilty of misconduct. There is nothing in s. 21 of the Act, however, to indicate whether the members of the Disciplinary Committee should be excluded when the Council enters upon its task. The answer must be found from the general scheme of the Act and the fundamental principles of law.

There can be no dispute that the function of the Disciplinary Committee of holding an enquiry under s. 21(1) of the Act into the conduct of the member calls for a recording of evidence by the Committee. Its duty does not end there. It must consider the evidence and come to its conclusions. As s. 21(2) of the Act plainly says, it must report "the result of its enquiry" to the Council. In the absence of express or implied statutory intendment to the contrary, it appears to us that the members of such a Committee would be disqualified from participating in the deliberations of the Council when it proceeds to consider the report in order to find whether the member is guilty of misconduct. For that alone would be consistent with the fundamental principle that justice must not only be done but must also appear to be done. The nature of the function discharged by the Council in rendering its finding is quasi judicial, and we are reminded of the observations of this Court as far back as Manek Lal v. Dr. Prem Chand, [1957] SCR

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> "It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a

> litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."
>
> We must remember that the President and the Vice-

President of the Council and 3 members of the Council compose the Disciplinary Committee. The President and the Vice-President do certainly hold significant status in the meetings of the Council. A member whose conduct has been the subject of enquiry by the Disciplinary Committee ending in conclusions adverse to him can legitimately entertain an apprehension that the President and the Vice-President of the Council and the other members of the Disciplinary Committee would maintain the opinion expressed by them in their report and would press for the acceptance of the report by the Council. To the member whose conduct has been investigated by the Committee, the possibility of the Council disagreeing with the report in the presence of the President and the Vice-President and the other members of the Committee would so rather remote. His fears would be aggravated by the circumstance that the President would preside over the meeting of the Council, and would thus be in a position to control and possibly dominate the proceedings during the meeting. We do not doubt that the President and the Vice-President, and also the three other members of the Disciplinary Committee, should find it possible to act objectively during the decision-making process of the Council. But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed.

The objection on the ground of bias would have been excluded if the statute had expressed itself to the contrary. But nowhere do we find in the Act any evidence to establish such exclusion. It is true that by virtue of s. 17(3) it is obligatory that the Disciplinary Committee should be composed of the President and the Vice-President of the Council and three other members of the Council. While that is so, there is nothing in the Act to suggest that the meetings of the council must always be presided over by the President or the Vice-President, and that no meeting can be held in their absence. We find that Regulation 140 framed under the Act contemplates that the Council may meet in the absence of the President and the Vice-President, and provides that in their absence a member elected from among the members who are present should preside. There is an element of flexibility which makes it possible for the Council to consider the report of the Disciplinary Committee without the participation of the members of the Committee. Because of the 'flexibility' potential in the scheme, the doctrine of necessity, to which reference has been made on behalf of the Institute, cannot come into play. We must admit that it does appear anomalous that the President and the Vice-President of the Council should be disabled from participating in a meeting of the Council because they are bound by statute to function as the Chairman and the Vice-Chairman of the Disciplinary Committee, and were it not for the factor of flexibility which we see in the scheme, we would have been compelled to the conclusion that the Act implies an exclusion of the doctrine of bias. But as we have observed, no such exclusion is implied by the scheme of the Act or its policy. We suggest the removal of the anomaly by suitable legislative amendment of s. 17(3) of the Act so that the constitution of the Disciplinary Committee should not necessarily include the President and the Vice-President of the Council. It is only appropriate that due recognition should be given to the

fundamental principles and accepted axioms of law.

Learned counsel for the Institute relies on Re Dancyger and Alberta Pharmaceutical Association, 17 D.L.R. (3d) 206; Re Prescott, 19 D.L.R. (3d) 446; Re Merchant and Benchers of the Law Society. 32 D.L.R. (3d) 178 and the majority opinion in Law Society of Upper Canada v. French, 49 D.L.R. (3d) 1 in support of the contention that participation by the members of the Disciplinary Committee does not vitiate the proceedings of the Council. The principal basis on which the Canadian courts proceeded in upholding the validity of the meeting of the parent body, despite the participation therein of the members of the Disciplinary Committee, lay in this that the entire proceeding, that is to say the enquiry by the Committee and the subsequent consideration of its report by the parent body, constituted a single proceeding, and had to be distinguished from a case where the decision by a subordinate body was assailed in appeal before a superior authority. This distinction, it seems to us, can be of little assistance if full play is given to the maxim that no man shall be a Judge in his own cause. We are impressed by the soundness of the minority opinion pronounced by that learned and distinguished Judge, Laskin, C.J.C. in Law Society of Upper Canada v. French (supra) decided by the Supreme Court of Canada. He observed:

> "I do not think that the issue herein falls to be decided according to whether the proceedings in Convocation are or amount to an appeal or are or amount to a review under a two-stage scheme of inquiry into allegations of professional misconduct. No doubt, characterization of the proceedings as an appeal may lend weight to the contention of the appellant solicitor, but the principle underlying his position rises above any such formalistic approach. The principle is immanent in the ancient maxim nemo judex in causa sua, expressed by Coke in Dr. Benham's case (1610)
>
> 8. Co. Rep. 113b, 77E.R. 646."
>
> The conclusion reached by us has not been an easy one.

The authorities on the subject have oscillated from one extreme to the other, and an analysis of the cases points at times to some rather slender element in the mosaic of facts which has influenced the outcome. There is good reason ultimately for adopting a liberal view, for as has been observed by the late Professor S.A. De Smith in his 'Judicial Review of Administrative Action' Fourth Edition p. 261:

> "..... a report will normally include a statement of findings and recommendations, which may be controverted before the parent body; and in such a case the participation of members of the sub- committee in the final decision may be of dubious validity. The problem is not merely one of strict law; it is also one of public policy."

Accordingly, we concur with the High Court that the finding of the Council holding the respondents Ratna, Behl and Bhoopatkar guilty of misconduct is vitiated by the participation of the members of the Disciplinary Committee.

Before we conclude, we may refer to a third point raised before us, the point being whether the Council is obliged to give reasons for its finding that a member is guilty of misconduct. It seems to us that it is bound to do so. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under s. 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding.

The appeals fail and are dismissed, but in the circumstances of the case we make no order as to costs.

M.L.A. Appeals dismissed.