



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.20352 OF 2023

Rohit J. Vora,
R/of Borivali, Mumbai

.. Petitioner

Versus

Insolvency & Bankruptcy Board of India,
New Delhi

.. Respondent

Mr. Pratik Sarkar, Advocate, i/by Vidhi Legal, for the Petitioner.

Mr. Pankaj Vijayan with Mr. Ameya Bandivadekar, Advocates for the Respondent.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

The date on which the arguments were heard : 30TH JULY 2024.

The date on which the Judgment is pronounced : 4TH SEPTEMBER, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition filed under Article 226 of the Constitution of India is to the order dated 3rd July 2023 passed by the Disciplinary Committee consisting of a whole-time member of the Insolvency and Bankruptcy Board of India. By the said order, the show cause notice under Section 220 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, dated 16th May

2023, issued to the petitioner as an Insolvency Professional has been adjudicated and the petitioner's registration has been suspended for a period of one year from the date of the order.

3. Bereft of unnecessary details, it may be stated that the petitioner came to be appointed as an Insolvency Professional – IP by the Insolvency and Bankruptcy Board of India – IBBI. On the basis of an investigation report submitted by the Investigating Authority, the IBBI through its Deputy General Manager issued a show cause notice to the petitioner under Section 219 of the Insolvency and Bankruptcy Code, 2016 – the Code - calling upon the petitioner to show cause why action as indicated in paragraph 5 of the show cause notice, which included an action of cancellation of the petitioner's registration, may not be taken. The petitioner responded to the aforesaid show cause notice and it is on that basis that the Disciplinary Committee comprising of a single whole-time member adjudicated the same on 3rd July 2023.

4. Mr. Pratik Sarkar, the learned counsel for the petitioner inter alia submitted that since the show cause notice was adjudicated by a single member of the Disciplinary Committee in a manner contrary to the proviso to Section 220 of the Code, the order impugned was vitiated. According to him, under the proviso to Section 220 of the Code, it has been clearly stipulated that the Disciplinary Committee would consist of "whole-time

members” which indicated that such Committee ought to comprise of more than one whole-time member. To buttress his submission in this regard, the learned counsel sought to rely upon Treatise on the Insolvency and Bankruptcy Code, 2016, wherein after referring to the report of the Joint Committee of Parliament, 2016, it has been stated that the Disciplinary Committee ought to consist of more than one Member. Though Clause 2(1)(c) of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 – *Regulations of 2017* defined the expression “Disciplinary Committee” to mean a Committee of whole-time member(s) constituted by the Board under Section 220(1) of the Code, that definition in the Regulations would not control the proviso to Section 220(1) of the Code for it to be contended that the Disciplinary Committee could consist of a single member. In that regard the learned counsel placed reliance on the decision in *Kunj Behari Lal Butail and Ors. Vs. State of H.P. and Ors. 2000 INSC 88* and urged that the Regulations had been framed in exercise of powers conferred by Section 196 of the Code for carrying out the purposes of the Code. The same would not empower such Regulations to travel beyond the provisions of the Code. He also placed reliance on the decision in *Kerala State Electricity Board and Ors. Vs. Thomas Joseph alias Thomas M.J. and Ors. 2022 INSC 1293*. He also referred to an interim order passed by the Gujarat High Court in *Bhupendra Singh Rajput Vs. Insolvency and Bankruptcy Board of India*

(IBBI) (*Special Civil Application No.6988 of 2023, dated 20th April 2023*), wherein after noting the submission that the Disciplinary Committee ought to consist of “whole-time members” which could not be construed to mean a single member, interim relief was granted. Merely because the Regulations were placed before both the Houses of Parliament in accordance with Section 241 of the Code, the same would not mean that it was permissible for such Regulations to provide for a matter contrary to what had been provided under the Code. In that regard, the learned counsel referred to the decision in *Bharathidasan University and Anr. Vs. All-India Council for Technical Education and Ors. 2001 INSC 454*. Since the impugned order was passed by a single member of the Disciplinary Committee in a manner contrary to the Code, this Court ought to exercise jurisdiction as the impugned order had been passed in a manner not provided by the Code. This being a jurisdictional issue, the Court could examine the petitioner’s challenge. It was thus submitted that the order dated 3rd July 2023 be quashed as it was passed by a single whole-time member of the Disciplinary Committee.

5. Mr. Pankaj Vijayan, learned counsel for the respondent-IBBI opposed the aforesaid submissions. He submitted that under proviso to Section 220(1) of the Code, it was permissible for the IBBI to constitute a Disciplinary Committee consisting of even a single whole-time member. The use of the expression “members” and “whole-time members” in the

proviso to Section 220(1) of the Code implied that the said plural expression would also include a singular member. He referred to the provisions of Section 13 of the General Clauses Act, 1897 – *Act of 1897* to submit that use of an expression which may be singular in a particular provision would include the plural and vice versa. He referred to Clause 2(1)(c) of the Regulations of 2017 to submit that a Disciplinary Committee has been explained to be a Committee of whole-time member(s) which implied that the Disciplinary Committee could also consist of a single whole-time member. Merely for the reason that in some other proceedings, a Disciplinary Committee consisting of two whole-time members had been constituted would not mean that a single member Disciplinary Committee was not permissible under the Code or the Regulations of 2017. He referred to the provisions of Section 240 of the Code to contend that in exercise of powers conferred by sub-section (1), the Regulations of 2017 had been framed and they were consistent with the provisions of the Code. He referred to the affidavit-in-reply filed on behalf of the IBBI as well as copies of the Lok Sabha and Rajya Sabha Bulletins to indicate the manner in which the Regulations had been placed before both the Houses of Parliament. The learned counsel placed reliance on the decision in *Jagdish Singh vs Lt. Governor, Delhi And Ors 1997 INSC 258*, *Premachandran Keezhoth & Anr. Vs. Chancellor Kannur University & Ors., 2023 INSC 1032* and *Gambhirdan K. Gadhvi Vs. The State of Gujarat*

and Ors., 2022 INSC 259. The interim order passed by the Gujarat High Court could not be treated as a precedent for the proposition that a Disciplinary Committee of a single whole-time member could never be constituted.

6. We have heard the learned counsel for the parties and we have also perused the documents on record. We have thereafter given due consideration to their respective submissions. To consider the question as to whether the Disciplinary Committee constituted under Section 220 of the Code can consist of a single whole-time member, it would be necessary to refer to the relevant statutory provisions. Chapter VI of the Code pertains to Inspection and Investigation in matters relating to any insolvency professional agency or its member. Section 220(1) reads as under:-

“220. Appointment of Disciplinary Committee.—

(1) The Board shall constitute a disciplinary committee to consider the reports of the Investigating Authority submitted under sub-section (6) of section 218 :

Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.”

. Under the aforesaid provision, the IBBI is empowered to constitute a Disciplinary Committee for considering an investigation report submitted

by the Investigating Authority. The proviso to sub-section (1) of Section 220 stipulates that the members of the Disciplinary Committee can only be whole-time members of the IBBI.

7. Clause 2(1)(c) of the Regulations of 2017 defines the expression “Disciplinary Committee”. The said provision reads as under:-

"Disciplinary Committee" means a committee of whole-time member(s) constituted by the Board under sub-section (1) of section 220 of the Code :

Provided that the whole-time member(s) in the Disciplinary Committee shall not be associated with the investigation or inspection;”

. The aforesaid clause indicates that the Disciplinary Committee would consist of whole-time member(s) as constituted by the IBBI provided that such whole-time member(s) is not associated with the investigation or inspection undertaken.

8. According to the learned counsel for the petitioner, since the expression “members of the Disciplinary Committee” appearing in the proviso to Section 220(1) of the Code makes reference to more than one member, the Disciplinary Committee cannot consist of only a single member. On a plain reading of Section 220(1) of the Code it is clear that the IBBI is empowered to constitute a Disciplinary Committee for considering the reports of the Investigating Authority that have been

submitted under Section 218(6) of the Code. The proviso to sub-section (1) merely requires that the members of the Disciplinary Committee should be whole-time members of the IBBI. The said proviso does not seek to provide the number of members who should constitute the Disciplinary Committee. On the contrary, the object of the proviso is to indicate that it is only the whole-time members of the IBBI who can be the members of the Disciplinary Committee. In fact, Clause 2(1)(c) of the Regulations of 2017 states that a Disciplinary Committee means a Committee consisting of whole-time member(s). This would therefore indicate that a Disciplinary Committee could consist either of a single whole-time member or more than one whole-time member. Since the Regulations of 2017 have been framed in exercise of powers conferred especially under Sections 220 and 240 of the Code with a view to carry out the provisions of the Code, Clause 2(1)(c) on its plain reading indicates that a Disciplinary Committee can consist of a single whole-time member or more than one whole-time member. Thus, while Section 220(1) of the Code deals with constitution of a Disciplinary Committee with the requirement that its members ought to be whole-time members of the IBBI, the constitution of the Disciplinary Committee as regards the number of its members is provided by Clause 2(1)(c) of the Regulations of 2017.

9. The learned counsel for the IBBI is justified in relying upon Section 13 of the Act of 1897. The said provision reads as under :-

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“13. Gender and number —

In all [Central Acts] and Regulations, unless there is any thing repugnant in the subject or context,-

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.”

. What is relevant to note is that though the words in singular would include the plural and vice-a-versa, the same is subject to there being nothing repugnant in the subject or context of the matter. In other words, it is not that in all situations a word in the singular can mean to include the plural and vice-a-versa. The context in which such expression has been used would govern the matter. If the subject or context indicates otherwise, it would not be permissible to interpret a singular word to include the plural and vice-a-versa. Reference in this regard can be made to the decisions in *The Newspapers Ltd. Vs. The State Industrial Tribunal 1957 INSC 25* and *Dhandhaniala Kedia & Co. Vs. The Commissioner of Income Tax 1958 INSC 87* wherein it has been held that the principle underlying Section 13 of the Act of 1897 does not have universal application and that the said principle can apply only when no contrary intention is deducible from the scheme or the language used in the statute.

10. In our view, the proviso to Section 220(1) of the Code uses the plural expression “members” while referring to the eligibility of being part of the Disciplinary Committee. The object of the proviso is not to specify the number of members the Disciplinary Committee should comprise of. It only stipulates that the Disciplinary Committee shall consist of whole-time members of the IBBI. Clause 2(1)(c) of the Regulations of 2017 in clear terms indicates that the Disciplinary Committee constituted by the IBBI ought to consist of whole-time member(s). This would indicate that the Disciplinary Committee could consist of either a single whole-time member or more than one whole-time member. Restricting the sweep of the word “members” appearing in the proviso to Section 220(1) of the Code to its plural effect would result in a position that would be against the spirit of Clause 2(1)(c) of the Regulations of 2017 as the expression “member(s)” indicates that the Disciplinary Committee can comprise either of a single whole-time member or more than one whole-time member. Thus, the context in which the word “members” is used in the proviso to Section 220(1) of the Code does not limit its operation only to its plural meaning. “Members” of the Disciplinary Committee would include a singular whole-time member too, as plural would include the singular in view of Section 13(2) of the Act of 1897.

. In our view, the issue with regard to the requisite number of

members of the Disciplinary Committee has to be answered by referring to Clause 2(1)(c) of the Regulations of the 2017 and not on the basis of the proviso to Section 220 (1) of the Code. There is nothing repugnant either in the subject or context of Chapter VI of the Code or the Regulations of 2017 to construe and restrict the sweep of the expression “members” occurring in the proviso to Section 220(1) of the Code only to the plural. Rather, the expression “member(s)” in Clause 2(1)(c) of the Regulations of 2017 is a clear indicator of the intention of the rule-makers that a Disciplinary Committee envisaged under Section 220(1) of the Code could be either a single member committee or may comprise of members more than one.

11. Another contention raised by the learned counsel for the petitioner was that Clause 2(1)(c) of the Regulations of 2017 could not be permitted to travel beyond what was provided under Section 220(1) of the Code. Since the expression “members” had been employed in the said provision, the expression “member(s)” used in Clause 2(1)(c) being against the spirit of the statutory provision could not be relied upon. To substantiate this contention, reliance was placed on the decisions in *Kunj Behari Lal Butail and Ors. (supra)* and *Kerala State Electricity Board and Ors.(supra)*. It has been held in *Kunj Behari Lal Butail* that a delegated power to legislate by making rules “for carrying out the purposes of the Act” is a general delegation without laying down any guidelines. It cannot be so exercised

as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of such Act. This position has been reiterated in *Kerala State Electricity Board and Ors. (supra)* and it has been further observed that while considering the validity of a subordinate legislation, the Court would have to consider the nature, object and scheme of the enabling Act as well as the area over which power has been delegated under such Act and thereafter decide whether the subordinate legislation confirms to the parent statute. Rules or Regulations cannot be made to supplant the provisions of the enabling Act but to supplement it.

. There can be no quarrel with the aforesaid legal position. We however find that in the present case, Clause 2(1)(c) of the Regulations of 2017 seeks to indicate the manner in which a Disciplinary Committee can be constituted. It could comprise of either a whole-time member or whole-time members. It therefore cannot be said that this clause travels beyond what has been provided by Section 220(1) since the latter provision merely requires the members of the Disciplinary Committee to be whole-time members of the IBBI. For the very same reason, the ratio of the decision in *Bharathidasan University and Anr. (supra)* cannot be applied to the case in hand. The interim order passed by the Gujarat High Court merely expresses a prima-facie view which cannot be treated as a precedent.

12. In the light of the above discussion, we do not find that the objection raised by the petitioner to the constitution of the Disciplinary Committee on the ground that it consists only of a single whole-time member of the IBBI can be accepted. It would be permissible to constitute a Disciplinary Committee consisting of either a single whole-time member or more than one whole-time member of the IBBI. The challenge as raised therefore fails. By clarifying that the observations made in this judgment are only for considering the issue with regard to the constitution of the Disciplinary Committee, we observe that the further proceedings be adjudicated on their own merits in accordance with law. All contentions in that regard are kept open.

13. Rule stands discharged with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]