



Reserved On : 18/03/2026
Pronounced On : 25/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CHARTERED ACCOUNTANT REFERENCE NO. 2 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Approved for Reporting	Yes	No
	✓	

COUNCIL OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Versus
JIGNESH V SHAH - C A

Appearance:

MR. B.S. SOPARKAR FOR MRS SWATI SOPARKAR(870) for the
Applicant(s) No. 1

MR MRUGESH JANI(1984) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. This is a case reference under Section 21(5) of the Chartered Accountants Act, 1949 (hereinafter referred to as "the Act") in respect of Shri Jignesh V. Shah, Chartered Accountant, Smt. Prabha S. Prasad [General Manager (V&I), Vijaya Bank], Bangalore (hereinafter referred to as the "Complainant") made the following allegations against Shri Jignesh V. Shah of M/s. Jignesh V. Shah & Co, Chartered Accountants, Ahmedabad, (hereinafter referred to as "the respondent").

BRIEF FACTS :

2. The respondent was appointed as Concurrent Auditors



for the bank's Relief Road Branch, Ahmedabad for the period 01.07.2003 to 30.06.2004. As per the appointment letter / guidelines, he was required to scrutinize the following aspects::

- (a) *Loans sanctioned/excess allowed beyond the delegated powers of the Branch Manager.*
- (b) *Are all the documents correctly executed in the latest revised document formats and properly stamped wherever necessary in terms of Stamp Act and as per book on "Guidelines on the loan documents".*
- (c) *Whether there is a shortfall in the securities/missing of securities or deterioration in the quality of chargeable current assets.*
- (d) *Whether the excesses granted have been reported in OD reports on the same day?*
- (e) *Whether the excess reported in the OD reports is within the delegated powers, whether approval has been obtained in such cases?*
- (f) *Other irregularities / defects if any.*
- (g) *Whether interest is recovered properly, if not period (no. of quarters) during which it was not recovered in detail. Whether credits in the account are sufficient to cover the interest, if not what is*



the amount of shortfall.

- (h) *Report on overdue irregular inland bills, purchased, CBP, DBP, SBP including cheques in general and PIBC/instant credit scheme (IPAP).*
 - (i) *Report on overdue inland bills discounted.*
 - (j) *Whether prior permission from the competent authority was obtained for operation in the accounts where either renewal or review is pending?*
3. The Internal Inspectors of the bank during their inspection held in October, 2003 came across several serious deficiencies which the Respondent had failed to report, which are as under:
- i) *CCH Limit of M/s.Varsha Textiles (Prop. Paramount Polycot Pvt. Ltd.) - Against the sanctioned limit of Rs.260.00 lakhs, branch has allowed excess limit continuously with a maximum of Rs.3,38,15,730/-. Excess OD report not submitted to Controlling Office for approval. The balance amount outstanding in the account as on 30.09.2003 was Rs.2,93,690/-. Branch has purchased 9 bills of M/s.Varsha Textiles under supply bills purchased account amounting to Rs.258.04 lakh having no delegated power, of which 8 bills amounting to Rs.258.04 lakh having no delegated power, of which 8 bills amount to Rs.229.54 lakhs are*



overdue.

- ii) CCM limit of M/s.Shree Umiya Enterprises against the sanctioned limit of Rs.10.00 lakhs, branch has allowed excess continuously with a maximum of Rs.19,74,116/- without submitting OD report to Controlling Office.*
- iii) Apart from the above limit Branch Manager has purchased 7 cheques under CBP amount to Rs. 6,71,006/- beyond his delegated powers which were returned unpaid and were kept pending for 6 months without reporting to Controlling Office and subsequently debited to the CCM account of the party.*
- iv) CCM account of M/s.Rajni Comburtion Pvt. Ltd. Branch has received the renewal sanction with enhancement of limit from Rs.30 lakhs to Rs.70 lakhs but without execution of renewal documents branch has simply modified that DP in computer from Rs. 30 to 70 lakhs without fulfilling 13 sanction terms and conditions. Excess allowed continuously with a maximum of Rs. 89.97 lakhs and OD reports were not sent to the Controlling Office.*
- v) Supply Bills Purchased account of M/s.Ashima Ltd. Manager has purchased 13 local Supply Bills of the*



party to the extent of Rs.2,08,16,481/- without sanctioned limit and delegated powers. Out of the 13 bills, 5 bills amount to Rs.74.47 lakhs are still outstanding and the matter was not reported to Controlling Office.

vi) SBP account of M/s.Paramount Industries Branch Manager has purchased 2 bills under Supply Bills Purchased account for Rs.90,12,750/- which is still outstanding without sanction and beyond delegated power which are overdue and not reported to Controlling Office.

vii) Branch has allowed TOD's in 18 current accounts amounting to Rs.41.86 lakhs beyond the delegated powers and also not reported to the Controlling Office. 8 accounts amounting to Rs.13.57 lakhs are still pending for recovery.

4. Accordingly, the Complainant filed complaint against the Respondent on 16.03.2004. A copy of the complaint was sent to M/s.Jignesh V. Shah & Co. Chartered Accountants vide petitioner's letter dated 02.07.2004 with a request to disclose the name of the member(s) who is / are answerable to the charge of misconduct and to send copies of this letter with its enclosures to the said member/s with a request to send directly to the Petitioner his / their written statement, if any, as required under Regulation 12(7) of the Chartered Accountants Regulations, 1988.



5. The respondent submitted his written statement, duly verified on 09.08 2004. The complainant submitted the rejoinder, duly verified on 11.09.2004. The respondent submitted his comments, duly verified on 19.10.2004. Thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the above papers containing the complaint, the written statement, the Rejoinder and the Comments were considered by the Council at its meeting held in May, 2005 at New Delhi. The Council being *prima facie* of the opinion that the respondent was guilty of professional and / or other misconduct, decided to cause an enquiry to be made in the matter by the Disciplinary Committee.
6. Thereafter, the complainant and the respondent were examined by the Committee. The Committee submitted its report dated 07.07.2006, by holding that the Respondent was guilty of gross negligence falling within the meaning of Clause (7) of Part-I of the Second Schedule read with Sections 21 and 22 of the Act.
7. The Disciplinary Committee report was forwarded to respective parties vide letter dated 28.07.2006 and they were informed that the said report would be considered by the Council in the forthcoming meetings. The respondent did not file any written representation on the report of the Disciplinary Committee, however, representative of the complainant Department appeared before the Council and the respondent submitted his



written representation dated 05.10.2006 on the report of the Disciplinary Committee.

8. On consideration of the Report of the Disciplinary Committee along with the written representation dated 05.10.2006 received from the Respondent and also the oral submissions made by the representative of the Complainant Department before it, the Council decided to accept the Report of the Disciplinary Committee and accordingly held that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Act.
9. Accordingly, under Section 21(5) of the Act, the Council decided to recommend to the High Court that the name of the respondent be removed from the Register of Members for a period of six months.

SUBMISSIONS ON BEHALF OF THE COUNCIL :

10. Learned advocate Mr.B.S.Soparkar appearing for the Council, while pointing out the report of the Disciplinary Committee and also the opinion of the Council has submitted that in fact the respondent has admitted that there was serious negligence amounting to misconduct on his behalf in failing to file timely reports pointing out the serious deficiency. It is submitted that the only excuse given by the respondent was about his family circumstances and there is no contest on merits.
11. While referring to the questionnaires of the Disciplinary



Committee to the respective parties, it is contended that before the Disciplinary Committee, the respondent has categorically admitted that he did not submit the flash report of the irregularities, and the same were only submitted on 30.12.2003 after the inspection was carried out by the Bank through its internal Inspectors. It is submitted that the family circumstances such as the death of his father and surgery of his wife, is an after-thought, as his father had passed away in September, 2003 and the inspection was undertaken by the Inspectors in October, 2003 and thereafter also till 30.12.2003, the respondent did not file the flash report, indicating serious irregularities in the aforementioned cases.

12. While placing reliance on the judgment of the Supreme Court in the case of State Bank of India and others vs. Ramadhar Sao, 2025 SCC OnLine SC 1752, it is urged that this Court may not disturb the concurrent findings of the Disciplinary Committee as well as the Council, since the respondent has not alleged any irregularities in holding the proceedings by the Disciplinary Committee as well as by the Council. Reliance is also placed on the decision of this Court in the case of Council of Institute of Chartered Accountants of India vs. Arun Purushottam Kapadia, [2014] 41 taxmann.com 308 (Gujarat). By placing reliance on the decision of this Court in the case of C A Rajesh v. Disciplinary Committee, [2012] 28 taxmann.com 100 (Gujarat), he has submitted that the



learned Single Judge of this Court, after appreciating the provisions of Clause-7 of Part-1 of Second Schedule of the Act, r/w provisions under Sections 21(3), 21(B)(3) and 22 of the Act has held that failure to exercise due diligence is a very vital aspect which also is to be taken into account in examining the Chartered Accountant's conduct and the finding or the conclusion recorded by the Disciplinary Committee and confirmation by the Council cannot be disturbed if only the quantum of penalty is shown to be or found to be so disproportionate as it would amount to victimisation. It is submitted that in the present case, looking to the proved misconduct, the Council has recommended the name of the respondent to be removed from the Register of Members for the period of six months only and hence unless the Court finds that such penalty is disproportionate to be deficiency, the same may not be interfered with.

SUBMISSIONS ON BEHALF OF THE RESPONDENT :

13. Responding to the aforesaid submissions, and opposing the recommendation, learned advocate Mr.Mrugesh Jani, at the outset, has submitted that the Disciplinary Committee as well as the Council fell in error in recommending six months removal from Register of Members, since it would be a very harsh and disproportionate punishment, looking at the alleged negligence or failure to perform the duty, more particularly in wake of the fact that, the complainant-Bank has neither alleged any *mala fide* intention nor it is



asserted that the respondent has gained anything illegal in belatedly filing the flash reports. It is submitted that in absence of accusations of *mala fide*, the impugned action of removal from Register of Members for a period of six months, is illegal and hence, the provision of Clause-7 of IInd Schedule cannot be invoked. In support of his submission, he has placed reliance on the decision of Calcutta High Court in the case of Council of Institute of Chartered Accountants vs. Somnath Basu, AIR 2007 Calcutta 29. It is submitted that as held by the Calcutta High Court, in case of proved carelessness and negligence but in absence of ill-motive, the recommendation of the Council for removal of the name from the Register of Members is uncalled for.

14. It is also contended that the report of the Inspectors out of which the proceedings emanated has not been supplied to the respondent and is neither placed before the Disciplinary Committee nor before the Council. It is submitted that the non-production of internal Inspectors Report, which reported negligence, will vitiate the entire proceedings.
15. It is also contended that the irregularity in case of two entities being M/s.Varsha Textiles and M/s.Shree Umiya Enterprises, the irregularities were already committed before the respondent was appointed and hence it was the earlier Auditor who was responsible for not reporting the irregularity committed by such entities and hence the respondent cannot be fastened with the



liability or inaction committed by the earlier Auditors.

16. Finally, it is submitted that the respondent has not deliberately belated the reporting of the statutory audit. It happened due to several family circumstances, more particularly, the death of his father as well as his wife had undergone surgery of cyst. Thus, it is urged that the recommendation made by the Council may not be accepted by this Court.

ANALYSIS AND OPINION :

17. We have heard the learned advocates appearing for the respective parties at length.
18. The relevant extract of the un-amended Section 21 of the Act, as applicable to the instant case, under which the reference has been made to this Court is incorporated as under :

“21. Procedure in inquiries relating to misconduct of members of Institute -

(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 :—*

- (a) reprimand the member;*
(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit

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 sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(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.”*

19. It is not in dispute that the respondent was appointed as concurrent Auditor for the period from 01.07.2003 to 20.06.2004 and as per the Appointment Letter/ Guidelines, he was required to point out the irregularity, defects or shortfalls and report the same to the Bank. It appears that the Bank took an internal inspection of the Branch on October, 2003 when the various irregularities, which are briefly reiterated as under:

(a) CCH limited of M/s.Varsha Textiles in which it is alleged that Branch has allotted excess limit against the sanctioned limit of Rs.260.00 lakhs and



the excess overdraft report was not submitted to Controlling Office for approval.

- (b) CCM limit of M/s.Shree Umiya Enterprises, the Branch allowed excess continuously without submitting Overdraft report to Controlling Office against the sanctioned limit of Rs.10 lakh. The Branch Manager purchased 7 cheques beyond his delegated powers which were reported unpaid and were kept pending for 6 months without reporting to Controlling Office.*
- (c) CCM Account of M/s. Rajni Combustion P. Ltd, without execution of renewal documents, the Branch has simply modified that DP in computer from Rs.30 to 70 lakhs without fulfilling 13 sanction terms and conditions.*
- (d) Supply Bills Purchased account of M/s.Ashima Ltd., the Branch Manager purchased 13 local Supply Bills of the party to the extent of Rs.2,08,16,481/- without sanctioned limit and delegated powers. Among 13 bills, 5 bills amounting to Rs.74.47 lakh were remained outstanding.*
- (e) SBP account of M/s.Paramount Industries, the Branch Manager has purchased 2 bills under Supply Bills Purchased account for Rs.90,12,750/- which remained outstanding without sanction and*



beyond delegated power.

(f) Branch has also allowed TODs in 18 current accounts amounting to Rs.41.86 lakhs beyond the delegated powers and not reported to the Controlling Office.

20. After the complaint made by the Bank on 16.03.2004, the Council, upon perusal of the responses of the respective parties, decided to cause an inquiry by the the Disciplinary Committee vide its opinion dated 25.05.2005. Upon the inquiry having been conducted by the Disciplinary Committee, it was found that the respondent has failed to discharge its duties and onus in reporting the aforementioned irregularities, committed by various entities and the respondent was held guilty of professional misconduct within the meaning of Clause-7 of Part-1 of Second Schedule read with Sections 21 and 22 of the Act.

21. The Disciplinary Committee held a detailed inquiry in which the respondent participated. He was also given ample opportunity of hearing, and there are no allegations levelled by the respondent regarding any violation of rules or regulations or principles of natural justice. Keeping this in mind, we are now making an endeavour to examine the case of the respondent on merits.

22. The proceedings of the Disciplinary Committee are



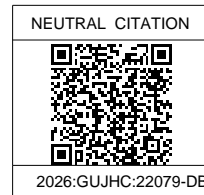
minutely examined by us. When questions were placed by the Members of the Committee to the respondent about his failure in duty to report the irregularities of serious nature, promptly by generating flash reports, the respondent in his defence has only mentioned about his family circumstances. His sole defence is that he was unable to highlight the deficiency/ irregularities through his flash report since his father had passed away somewhere in September, 2003 and his wife had undergone surgery for cyst in August, 2003.

23. At this stage, we may mention that, subsequently, the respondent has reported the irregularities vide his flash reports on 31.12.2003. The respondent was very well aware about the Bank's internal audits by the Inspectors in the month of October, 2003. The defence of the respondent taking shelter under family circumstances is not palatable since it is accepted that his father has passed away in September, 2003 and his wife had undergone surgery in August, 2003, much prior to the internal inspection of the Branch conducted in October, 2003. Even after the irregularities surfaced in October, 2003, the respondent reported the irregularities vide flash report No.14/03-04 on 30.12.2003 and the quarterly report of quarter ending on December, 2003, i.e after a period of almost two months. Thus, the defence taken by the respondent before the Disciplinary Committee citing his family circumstances, is not palatable and appears to be an after-thought. The



respondent had enough time to report the irregularity in flash report from October, 2003 and onwards also after the internal inspection of the Branch was conducted. However, he did not do so till 30.12.2003. It is not denied by the respondent that the flash report is to be generated immediately upon noticing the irregularity. As per the appointment letter / guidelines, the respondent was supposed to verify all these deficiency on daily basis, however he remained indolent, and woke up only after the internal inspection was undertaken by the Bank. Thus, the facts which are proved and not denied by the respondent, suggest that the respondent was negligent in undertaking his duties. The respondent has also raised grievance about non-supply of Inspectors Report, however, he has not shown the prejudice caused to him in this context. Before the Disciplinary Committee, he has not demanded the Inspectors Report. Moreover, the non-supply of the Report cannot alter the fact that the Respondent has not acted diligently in pointing out the deficiencies. On the contrary, he has admitted that the deficiencies were not pointed out due to his family circumstances.

24. It is also the case of the respondent that he had in his quarterly report pointed out the irregularity of M/s.Varsha Textiles and M/s.Shree Umiya Enterprise. We have perused Annexure No.CAQ14 dated 30.09.2003 prepared by the respondent and on a perusal of the same, it is noticed by us that none of the 5 entities, as



mentioned hereinabove, for which the respondent was charged, figure in annexure CAQ14, nor there is any explanation tendered relating to other entities. As admitted before the Committee, the irregularity of M/s.Varsha Textiles and M/s.Shreeji Umiya Enterprises were reported vide the flash report on 30.12.2003 only. The respondent, who was supposed to submit daily report, monthly report and quarterly report and explain the same in verification/ revenue audit, issue relating to frauds and other irregularities, legal compliance certificate, etc., did not undertake such exercise and has only done on 30.12.2003. We find that vide Annexure No.CAQ19 dated 30.09.2003, the respondent had prepared a report on account where warning signals were observed, which required special attention of Regional Office, Zonal Office and Head Office and the name of M/s.Varsha Textiles, Rajni Combustion P. Ltd., along with 26 entities appeared in such reports. However, the fact remains that the respondent never reported vide flash report. The respondent failed to carry out the concurrent audit effectively on daily basis and it was only done after the Bank's internal experts' report. The Committee and the Council have examined the facts in detail along with the defence taken by the respondent and ultimately has recommended the removal of the respondent from the Register of Members for a period of 6 months.

READING OF CLAUSE-7 OF PART-I OF SECOND SCHEDULE :



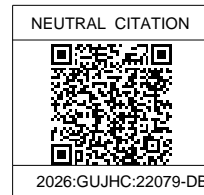
25. The entire case of the respondent hinges on the provisions of Clause-7 of Part-1 of Second Schedule of the Act, which reads as under:

“THE SECOND SCHEDULE
[See Sections 21(3), 21-B(3) and 22]
Part I

Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;
- (3) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;
- (5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;
- (6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;**



- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.
26. It is the case of the respondent that the provision of Clause(7) will not get attracted in his case since there was no *mala fide* intention alleged in not filing the report immediately, and negligence in not filing the same immediately will not amount to misconduct.
27. The complete reading of Clause (7) will be “A chartered accountant in practice shall be deemed to have been guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.” A close reading of the provision of Clause-7 will depict that the same is divided in two parts by **“,(coma) and word “or”** , i.e, “does not exercise due diligence,” or “is grossly negligent in the conduct of his professional duties”.
28. Thus, the use of ‘coma’ before word "or" used in Clause 7 is a disjunctive particle to express an alternative. The intention of Clause 7 in the first part of failure to exercise due diligence forms a separate class of misconduct, and cannot be read as “and” to connect with



gross negligence. Both the words “diligence” and “negligence” are forms of conduct/behaviour and hence are used in a single sentence instead of making a separate clause. Therefore, the respondent, who has not shown due diligence in highlighting the deficiencies/irregularities promptly, can be said to have committed professional misconduct.

29. Thus, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he does not exercise due diligence or he is grossly negligent in the conduct. The Disciplinary Committee and the Council is not required to examine the professional misconduct by including both the contingencies as prescribed in Clause-7, i.e, failure to exercise due diligence and grossly negligence. The Chartered Accountant’s misconduct is, thus, required to be examined either he fails to exercise due diligence or he is grossly negligent in his professional duties.
30. In the facts of the present case, as we have previously held that the respondent remained indolent for almost a period of 2 months even after internal report of the Inspectors of the Bank. The family circumstances as highlighted by the respondent before the Committee and before us, cannot come to his rescue as such incidents had happened prior to the internal auditors report. On an overall appreciation of the facts, we are of the opinion that the respondent has not undertaken his professional duties by exercising “due diligence”. In this regard, we



do not find any error in the findings and the opinion record by the Disciplinary Committee as confirmed by the Council that the respondent has in fact is guilty of professional misconduct, as envisaged in Clause-7 of Part-1 of Second Schedule.

SCOPE OF JUDICIAL REVIEW :

31. We may, at this stage, reiterate the settled legal precedent about the Court's power to interfere with the findings of the Disciplinary Authority as well as Appellate Authority (Council in the present case) or where the disciplinary proceedings are examined in two stages, one by the Disciplinary Authority and another by any higher authority to the Disciplinary Authority.
32. The respondent has not alleged any irregularity, illegality or violation of principle of natural justice in holding the inquiry and hence in absence of such assertion, this Court cannot interfere with the findings recorded by the Disciplinary Authority and confirmed by the Council. It is no more *res integra* that the Court cannot interfere with the findings of the disciplinary authority by reassessing and questioning the adequacy of the evidence established in the disciplinary proceedings, if the enquiry has been fairly and properly held, and there are no allegations of any violation of principles of natural justice or statutory regulations or the findings are based on extraneous consideration. (Vide State Bank of Bikaner and Jaipur vs. Nemi Chand



Nalwaya, (2011) 4 SCC 584, State of Karnataka vs. N. Gangaraj, (2020) 3 SCC 423).

33. The respondent has placed reliance on the judgment of the Calcutta High Court in the case of ***Council of Institute of Chartered Accountants vs. Somnath Basu, (supra)***. However, we do not agree with the view expressed by the Calcutta High Court to the extent it holds that the auditors cannot be held to be guilty of any misconduct bereft of any charge of dishonesty committed by him in discharge of his duties. We also do not agree with the view expressed by the Calcutta High Court to the extent that the negligence in performance of duties or error of judgment in discharging of such duties, cannot constitute misconduct unless ill-motive in the aforesaid acts are established. Such observation if applied in the present case or in the cases of auditor who has failed to exercise his due diligence or is gross negligent in performing his professional duties; the provision of Clause-7 of Part-1 of Second Schedule will become redundant. The Part-1 of 2nd Schedule enumerates professional misconduct in relation to Chartered Accountant in practice and there are 10 eventualities which are prescribed therein. The elements of ill-motive and dishonesty, as expressed by the Calcutta High Court, cannot be introduced in the compartments as prescribed in Part-1 of the Second Schedule. The Chartered Accountant who is engaged by the Bank is supposed to be very vigilant and his act of not reporting the irregularities or illegalities of the Bank



Account holders or the staff of the Bank, including the Manager, directly impacting the reputation, functioning and efficiency of the Bank, cannot be made reliant on ill-motive or dishonest intention. The Chartered Accountant is a professional engaged by the Bank only to point out the irregularities and it is immaterial as to such irregularities are not reported due to his ill-motive or lack of honesty. The negligence in the performance of duty or errors of judgment in discharging of such duties, as highlighted by the Calcutta High Court will definitely form the expression 'does not exercise due diligence' and the failure of due diligence cannot be subject to any involvement of element of ill-motive.

: FINAL ORDER :

34. Upon an overall analysis of the proceedings, we find that the recommendation of the Council for removal of the respondent's name from the Register of Members for a period of six months is, in principle, appropriate. However, while accepting the said recommendation, we cannot overlook the inordinate lapse of time consumed in the present proceedings. The Council, by its decision dated 14.10.2006, recommended to the High Court that the name of the respondent be removed from the Register of Members for a period of six months under Section 21(6) of the Chartered Accountants Act, 1949. The said provisions of Section 21(6) empower the High Court to pass orders in terms of clauses (a) to (d), which read as under :



*“(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.”*

35. Having regard to the passage of nearly two decades, we are of the considered view that the respondent ought not to be subjected, at this belated stage, to the rigours of removal from membership, even for a limited duration of six months. In the facts and circumstances of the case, an order under clause (b) of Section 21(6) of the Chartered Accountants Act, 1949, viz. “reprimand”, would adequately meet the ends of justice.
36. Accordingly, while upholding the findings of the Disciplinary Committee and the recommendation of the Council, we modify the proposed penalty of removal of the respondent from Register of Members for a period of six months to that of “reprimand.”
37. The Reference stands disposed in aforesaid terms.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

SAJ GEORGE