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

WRIT PETITION (LODGING) NO.13865 OF 2024

irav Anil Trivedi,]
Address : 413/414, Shramjeevan B5,]
Opposite Lodha New Cuffe Parade,]
Wadala Truck Terminus, Mumbai – 400001.] .. Petitioner

Versus

1. Insolvency & Bankruptcy Board of India (IBBI),]
   Through its Chairperson,]
   Address : 5th Floor, Mayur Bhavan,]
   Shankar Market, Connaught Circus,]
   New Delhi – 110001.]
2. ICSI Institute of Insolvency Professionals,]
   Through its Managing Director,]
   Address : 3rd Floor, ICSI House 22,]
   Institutional Area, Lodhi Road,]
   New Delhi – 110003.]
3. Union of India,]
   Through Secretary - Ministry of Corporate Affairs,]
   Address : 5th Floor, 100, Everest,]
   Marine Drive, Mumbai – 400002.] .. Respondents

Mr. Pratik Sarkar with Ms. Priyal Gupta, Advocates, i/by Vidhi Legal, for the Petitioner.

Mr. Pankaj Vijayan with Ms. Sushmita Chauhan, Advocates for Respondent No.1.

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

The date on which the arguments were heard : 19TH JULY 2024.

The date on which the Judgment is pronounced : 9TH AUGUST 2024.

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

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

2. The challenge raised in this writ petition is to the show cause notices dated 26th October 2023 and 10th April 2024 that have been issued to the petitioner by the Insolvency & Bankruptcy Board of India proposing to take action against him for violations under the Insolvency and Bankruptcy Code, 2016 and Regulations framed thereunder. The petitioner besides seeking restoration of his Authorization for Assignment also challenges the validity of Clause 23A provided in the Schedule to the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 *("2016 Regulations")* as well as Clause 23A of the Bye-Laws of ICSI Institute of Insolvency Professionals by urging the same to be ultra vires.

3. Facts relevant for considering the challenge as raised in the writ petition are that the petitioner is presently registered with the Insolvency & Bankruptcy Board of India *("IBBI")* as an Insolvency Professional *("IP")*. This registration is granted under The Insolvency & Bankruptcy Code, 2016 *("Code")* read with the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. The IBBI, through its Deputy General Manager issued a show cause notice to the petitioner on 26th October 2023 under Section 219 of the Code read with Regulations 11 and 12 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 *("2017 Regulations")*. In the show cause

notice, reference was made to an investigation report that was submitted by the Investigating Authority. On the basis of the said investigation report, the petitioner was called upon to show cause why action should not be taken to cancel the petitioner's registration as an IP. The petitioner submitted his reply to the said show cause notice and denied the allegations made therein. Further proceedings in that regard are pending.

4. Thereafter on 10th April 2024, the IBBI, through its Deputy General Manager issued another show cause notice to the petitioner under Section 219 of the Code read with Regulations 11 and 12 of the Regulations of 2017, calling upon the petitioner to show cause why suitable actions under Section 220 of the Code should not be taken against the petitioner. Reference in the show cause notice was made to the investigation report dated 8th March 2024 and the same was made the basis of the show cause notice. The petitioner submitted his reply to the said show cause notice and denied the allegations made therein.

5. With the issuance of the aforesaid show cause notices, the Authorization for Assignment *("AFA")* of the petitioner came to be suspended. It is in this backdrop that the petitioner has raised a challenge to the aforesaid show cause notices as well as the action of suspending the AFA pending adjudication of the show cause notices.

6. Mr. Pratik Sarkar, learned counsel for the petitioner raised various contentions in support of the prayers made in the writ petition. He submitted that :-

(a) Section 218 of the Code empowers the IBBI to undertake action in the matter of a complaint received under Section 217 of the Code as regards the functioning of an IP. The Board by an order in writing can issue directions to any person or persons to act as an investigating authority for conducting an inspection or investigation. In absence of there being any order in writing issued by the Board, it was not permissible to undertake any inspection or investigation on the complaint received under Section 217 of the Code. It was urged that in the present case, there was no order passed by the IBBI to undertake such investigation as was evident from the response of the IBBI to the information sought under the Right to Information Act, 2005. Hence issuance of the show cause notices to the petitioner was without jurisdiction. Further, the requirements of Regulation 12 of the 2017 Regulations of sharing all relevant information were also not satisfied. On these counts, the entire action was liable

to be struck down. It was thus submitted that if the jurisdictional facts on the basis on which the show cause notices could be issued were absent, this Court could exercise discretion under Article 226 of the Constitution of India and interfere in the matter.

(b) The suspension of the AFA was without jurisdiction inasmuch as there was no statutory sanction to the action of suspending such authorization merely on the issuance of the show cause notices. Referring to the provisions of Chapter VI of the Code, it was submitted that there was no power conferred on the IBBI to suspend the authorization of an IP pending adjudication of the show cause notices. Even under the 2016 Regulations or 2017 Regulations, no such power was conferred. Clause 23A of the 2016 Regulations that stipulates such suspension upon initiation of disciplinary proceedings was ultra vires the provisions of the Code. Since the suspension of the AFA affected the legal rights of the petitioner, it was necessary for the IBBI to have first complied with the principles of natural justice. Exclusion of the principles of natural justice before effecting suspension of the

AFA rendered Clause 23A bad in law. Merely for the reason that the requirement of complying with the principles of natural justice was not stipulated in Clause 23A, the same could not be dispensed with. It was necessary to comply with the principles of natural justice before suspending the AFA since substantial rights of the petitioner were affected.

(c) The 2016 Regulations as well as the 2017 Regulations did not have the force of law and they travelled beyond the scope conferred by the Code. In fact, Section 240 of the Code did not confer any power on the IBBI to make Regulations that could curtail the right of IP's to function pending adjudication of the show cause notices. Relying upon the decisions in *Bharathidasan University and Anr. Vs. All-India Council for Technical Education and Ors, (2001) 8 SCC 676* and *Kerala State Electricity Board and Ors, Vs. Thomas Joseph alias Thomas M.J. and Ors, (2023) 11 SCC 700* it was urged that the aforesaid Regulations could not be given effect to since they travelled beyond the power conferred under the Code and were ultra vires. It was thus prayed that the

prayers made in the writ petition be granted and the AFA be restored in favour of the petitioner.

7. Mr. Pankaj Vijayan, learned counsel appearing for the first respondent - IBBI opposed the aforesaid submissions and submitted that the petitioner was not entitled to any relief whatsoever. Replying to the grounds as urged by the learned counsel for the petitioner, it was submitted that :-

(a) Both the show cause notices issued to the petitioner were preceded by investigation reports that were duly submitted pursuant to an order passed under Section 218 of the Code. Referring to the relevant documents in that regard, it was submitted that insofar as the show cause notice dated 26th October 2023 was concerned, a separate order had been passed appointing Mr. Mayank Mehta, Deputy General Manager as Investigating Authority. After submission of such report by the Investigating Authority, the show cause notice came to be issued to the petitioner by furnishing all necessary details. Similar was the case with regard to the show cause notice dated 10th April 2024. After complying with all the statutory requirements, the said show cause notice had been

issued. Since the IBBI had complied with all necessary pre-requisites, there was no case made out to entertain the challenge to the issuance of the show cause notices. The petitioner had submitted his reply to the show cause notices but failed to raise these contentions therein. The challenge, if any, could only be to an adverse order if passed on the show cause notices. Referring to the decision in *Union of India and Anr. Vs. Kunisetty Satyanarayana, AIR 2007 SC 906* it was submitted that the writ petition as filed raising a challenge to the show cause notices was premature and the same did not deserve to be entertained.

(b) The suspension of AFA was in view of the provisions of Clause 23A of the Model Bye-Laws under the 2016 Regulations. With the issuance of the show cause notices, the disciplinary proceedings against the IP were deemed to have commenced and therefore the AFA was rightly suspended. It was well settled that suspension pending the disciplinary proceedings could not be treated as a punitive measure so as to confer any right upon the person suspended to challenge the

same. The learned counsel referred to the decision in *State Bank of Patiala and Ors. Vs. S.K. Sharma, 1996 (3) SCC 364* and *State of Maharashtra and Ors. Vs. Sajjad Ali Mohammad Ali and Ors, 2011 (2) Mh.L.J. 392* in that regard. Referring to the provisions of Section 241 of the Code, it was submitted that the 2016 Regulations and the 2017 Regulations had been laid before each House of Parliament and hence they had the necessary statutory support for being implemented. Reference was made to the Bulletin published by the Rajya Sabha and the Lok Sabha in that regard. The IBBI having acted in accordance with the statutory provisions which had the force of law, the challenge as raised to its validity was misconceived. The validity of Clause 23A of the 2016 Regulations had been upheld by the Madras High Court in *CA V. Venkata Sivakumar Vs. Insolvency and Bankruptcy Board and Ors, Writ Petition No.16650 of 8.2020 decided on 22nd January 2024*.

(c) The 2016 Regulations as well as the 2017 Regulations had been framed by the IBBI pursuant to such powers being conferred by Sections 196 and 217 to 220 read

with Section 240 of the Code. The said Regulations having been laid before the Parliament as required by Section 241 of the Code and no objections whatsoever having been received, the same had become part of the statute. The Bye-Laws of the ICSI Institute of Insolvency Professionals were forming part of the Regulations and were also valid. The learned counsel referred to the decision of the Supreme Court in *Premachandran Keezhoth and Anr. Vs. Chancellor Kannur University and Ors, 2023 INSC 1032* to contend that the Regulations and Bye-Laws were legally valid. As the IBBI had acted within the jurisdiction conferred on it, its action was not liable to be interfered with at the behest of the petitioner.

. It was thus submitted that in absence of any jurisdictional infirmity on the part of the IBBI in issuing the show cause notices, there was no case made out to interfere in exercise of writ jurisdiction. In view of various adjournments sought by the petitioner before the Disciplinary Committee, those proceedings could not be completed. The petitioner ought to participate in the disciplinary proceedings. The writ petition was therefore liable to be dismissed.

8. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documents on record. We have thereafter given thoughtful consideration to the respective submissions. At the outset it is to be borne in mind that the challenge raised in the present writ petition is to the show cause notices dated 26th October 2023 and 10th April 2024. By these show cause notices, the petitioner has been called upon to show cause why action should not be taken to cancel his registration as an IP. Action is also proposed under Section 220 of the Code. Ordinarily, challenge to a show cause notice is considered to be a premature challenge for the reason that the noticee has an opportunity to reply to such notice and contest the assertions made therein. The show cause notice itself calls for the response of the noticee prior to taking any further action as proposed. It is therefore for the authority issuing the show cause notice to consider such response and thereafter indicate either the action to be taken or the dropping of the notice on acceptance of the noticee's stand. It is thus clear as held in *Kunisetty Satyanarayana (supra)* that mere issuance of a show cause notice does not result in infringement of any right of the noticee. This is for the reason that the authority issuing the show cause notice may well be satisfied with the explanation furnished by the noticee and drop the proceedings. It is only if an order imposing a penalty or taking some action is passed that the noticee can complain of his rights being affected. Notwithstanding this position, the Court may

interfere with the issuance of show cause notice if it is found to be issued without any jurisdiction or if it is for any other reason wholly illegal. It is to this limited extent that the challenge as raised by the petitioner to the impugned show cause notices would require examination.

9. At the outset reference to the relevant provisions of the Code would be necessary. Under Section 196(1)(t), the IBBI has been conferred the power to make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under the Code. Chapter VI of the Code deals with inspection and investigation against any Insolvency Professional Agency or its member. A person aggrieved by the functioning of an IP can make a complaint to the Board under Section 217. On receiving such complaint under Section 217, if the Board has reasonable grounds to believe that any IP has contravened any of the provisions of the Code or the Rules or Regulations, it can by an order in writing direct any person or persons to act as an Investigating Authority for conducting an inspection or investigation of such IP. The Investigating Authority can require any person who is likely to have relevant documents, record or information to furnish the same to it. Ancillary powers have been conferred on the Investigating Authority to take steps for conducting such inspection or investigation. On the inspection or investigation being completed, the IBBI can issue a show cause notice to such IP in the manner specified by the Regulations in that regard. The IBBI can appoint a

Disciplinary Committee for considering the reports of the Investigating Authority for considering the reports submitted under Section 218(6) of the Code.

. Such Disciplinary Committee is thereafter required to consider the reports of the Investigating Authority and on being satisfied that the IP has contravened the provisions of the Code or the Rules or Regulations framed thereunder, it can impose penalty as prescribed. Under Section 240 of the Code, the IBBI has been empowered to make Regulations consistent with the Code as well as Rules made thereunder for the purposes of carrying out the provisions of the Code. The said power includes the time and manner of carrying out investigation under Section 218(2) in view of Section 240(2)(zzz). A power is also conferred under Section 240(2)(zzza) to frame Regulations as regards the manner of carrying out inspection of an IP and the time for giving reply under Section 219 of the Code. Under Section 241 of the Code, every Rule or every Regulation made under the Code have to be laid before each House of Parliament in the manner prescribed and it is only thereafter that such Rule and Regulation would have effect. It can thus be seen that the aforesaid provisions in the Code lay down in detail the manner in which inspection and investigation against any IP can be conducted.

10. In the reply filed on behalf of the IBBI, it has been stated that the

2016 Regulations as well as the 2017 Regulations were placed before each House of the Parliament as required by Section 241 of the Code. No objections whatsoever were raised to the same and thereafter the said Regulations had become part of the Code. It is well settled that on compliance with the requirements of laying before each House of Parliament any Regulations framed under a statute, such Regulations in the form of subordinate legislation become part of the principal enactment. Reference in this regard can be made to the decision in *Premachandran Keezhoth and Anr. (supra)*.

. The learned counsel for the petitioner sought to rely upon the decisions in *Bharathidasan University and Anr.* and *Kerala State Electricity Board and Ors. (supra)* to contend that notwithstanding the aforesaid, if the Regulations travelled beyond the parent Act, they would suffer from the vice of being ultra vires. There can be no dispute with this proposition. In the present case, it can be seen that Chapter VI of the Code lays down in detail the manner in which inspection and investigation against an IP can be undertaken. For doing so, the IBBI has relied upon the Regulations framed in exercise of powers conferred by Section 240(2)(zzz) and (zzza). Since the 2016 Regulations and 2017 Regulations have been shown to have been placed before each House of Parliament, the legal fiction contemplated by Section 241 of the Code would come into play and the said Regulations would become part of the Code for being enforced. The

2016 Regulations and the 2017 Regulations seek to carry out the provisions of the Code. We do not find that the aforesaid Regulations and especially Clause 23A of the 2016 Regulations travel beyond what has been empowered to be done under the Code. We therefore do not find that Clause 23A can be held to be ultra vires on the grounds canvassed by the petitioner. The challenge to the validity of Clause 23A therefore fails.

. Similar is the case with Clause 23A of the Bye-laws of the ICSI Institute of Insolvency Professionals. Clause 2(1)(c) of the 2016 Regulations refers to the model bye-laws contained in the Schedule to the 2016 Regulations. Once it is found that the 2016 Regulations are valid in view of compliance of Section 241 of the Code, the Bye-laws framed by the ICSI Institute of Insolvency Professionals in accordance with the model bye-laws contained in the Schedule to the 2016 Regulations would also be valid.

11. According to the learned counsel for the petitioner, any investigation undertaken in terms of Section 218 of the Code ought to be preceded by an order in writing to be issued by the IBBI directing any person or persons to act as an Investigating Authority to conduct an investigation. In absence of any such order in writing being issued by the IBBI, the issuance of the show cause notices was without jurisdiction. In this regard we find that insofar as the show cause notice dated 26th October 2023 is

concerned, office noting dated 26th September 2023 has been placed on record which indicates that Shri. Mayank Mehta, DGM was directed to undertake investigation. This office note was supplied to the petitioner when he demanded information under the provisions of the Right to Information Act, 2005. There is a similar office noting appointing the very same officer to undertake investigation that resulted in issuance of the show cause notice dated 10th April 2024. It therefore cannot be said that the Investigating Authority in the absence of any order in writing proceeded to conduct an investigation in terms of Section 218(1) of the Code.

. We may state that we have not gone into the issue as regards sufficiency of prima facie material that warranted issuance of an order in writing under Section 218(1) of the Code appointing an Investigating Officer in the complaints against the petitioner. Since a jurisdictional issue was raised on behalf of the petitioner that there was no order in writing issued by the IBBI, we have referred to the presence of such orders prior to issuance of the show cause notices. It would be open for the petitioner while contesting the show cause notices to contend that the material on the basis of which such order was passed appointing an Investigating Authority was insufficient in the circumstances of the case.

. We are thus satisfied that the investigation was undertaken consequent to an order in writing issued by the IBBI under Section 218(1)

of the Code. The show cause notices therefore cannot be faulted on the ground that the Investigating Authority submitted its report in the absence of any prior order in writing as contemplated by Section 218(1) of the Code.

12. While questioning the show cause notices, the petitioner has raised a challenge to the validity of Clause 23A of the 2016 Regulations as being ultra vires. According to him there is no power conferred by the Code on the IBBI to direct suspension of the AFA pending consideration of the show cause notices. The Regulations are thus excessive in nature.

. Clause 23A provides for suspension of the AFA on initiation of disciplinary proceedings by the agency or by IBBI as the case may be. The Explanation to Clause 23A states that the date of issuance of a show cause notice till its disposal would amount to pendency of a disciplinary proceeding. In other words, issuance of a show cause notice amounts to initiation of such disciplinary proceedings.

13. The validity of Clause 23A was questioned before the Madras High Court in *CA V. Venkata Sivakumar (supra)*. After considering the challenge in detail, the Division Bench held that Clause 23A of the 2016 Regulations was valid and there was no illegality in providing for suspension of an AFA on initiation of disciplinary proceedings. Paragraphs

6 to 6.4 of the said decision being relevant, they are reproduced hereunder:

> 6. Regulation 23A has already been extracted supra. It can be seen that it only lays down that the AFA shall remain suspended once the disciplinary proceedings are initiated. As a matter of fact, Regulation 12A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, categorically provides that the Resolution Professionals should not have any disciplinary proceedings pending against them. If that be the case, it is only logical that there is an ad-interim suspension of AFA if any disciplinary proceedings are initiated subsequently also. The power of ad-interim suspension has always been held to be a valid and natural exercise of power and that the only requirement there must be an express rule enabling the same.
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> 6.1 There is no discretion vested with the IPAs and the suspension is automatic, once the disciplinary proceedings are initiated. Therefore, it can neither be termed as manifestly arbitrary nor be challenged on the ground of any confirmation of unguided/unbridled power.
>
> 6.2 The power of suspension is not a punishment and is an ad-interim measure and if one has to be issued with show cause notice, then the very purpose of ad-interim suspension is lost. In as much as ultimate punishment is imposed only on the conclusion of the disciplinary proceedings it cannot be said that any substantial or vested

right of the Resolution Professional is violated. On the contrary, the purpose of suspension is to immediately keep the erring person away from the office, so that the relevant materials and evidences which are on record be properly collected and that there is an impartial and fair enquiry in the issue. Therefore, the requirement of issuance of show cause notice cannot be read into a provision of ad-interim suspension.

6.3 Of course, any suspension, if prolonged, without any inquiry being proceeded with, would cause stigma. But the larger public interest and the laudable purpose behind the rule of suspension and the relative hardship had to be balanced. Only to avoid hardships, normally swift and prompt completion of the process of disciplinary proceedings is insisted upon. Therefore, the petitioner or any other aggrieved professional can only insist upon prompt completion of the proceedings and the hardship cannot be a ground for challenging the very regulation itself.

6.4 Accordingly, finding no infirmity, we uphold the constitutional validity of the Regulation 23A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

14. We are inclined to agree with the view taken by the Division Bench of the Madras High Court in CA *V. Venkata Shivakumar (supra).* It has been found in the said decision that suspension by itself cannot be treated

as a penalty and it is only an ad-interim measure that is to operate till the disciplinary proceedings are concluded. There is also no question of the principles of natural justice being attracted in such case as urged on behalf of the petitioner. According to the IBBI, the suspension on account of the operation of Clause 23A of the byelaws would not bar the petitioner from continuing with pending assignments but the same would only bar the petitioner from accepting new assignments pending disposal of the show cause notices. Such stand has been taken in paragraph 16 of its affidavit-in-reply dated 08/07/2024. We therefore do not find that the suspension of AFA pending consideration of the show cause notices is in any manner contrary to law or unwarranted in the facts of the present case. The contention raised by the petitioner in this regard therefore cannot be accepted.

15. From the foregoing discussion we find that *(a)* the 2016 and 2017 Regulations have been framed pursuant to the power conferred by the provisions of the Code and especially Sections 196 and 217 to 220 read with Section 240 of the Code. The same having been laid before both the Houses of the Parliament, they have got statutory force thus empowering the IBBI to take necessary action in accordance therewith. The power includes issuance of a show cause notice by the IBBI for taking any action under Section 220 of the Code. *(b)* the show cause notices dated 26th

October 2023 and 10th April 2024 were preceded by reports of the investigating authority which undertook investigation after being duly authorised by orders passed under Section 218 of the Code. *(c)* Clause 23A of the 2016 Regulations as well as Clause 23A of the Bye-laws framed by the ICSI Institute of Insolvency Professionals are valid. The suspension of the petitioner's AFA is legal as it is the consequence of initiation of disciplinary proceedings against him. The same is duly provided by Clause 23A of the 2016 Regulations and the Bye-Laws in that regard.

16. Hence for aforesaid reasons, we do not find any exceptional case made out to interfere with the issuance of show cause notices dated 23rd October 2023 and 10th April 2024. The same do not suffer from any jurisdictional infirmity. It is clarified that the observations made in the judgment are only for the purposes of considering the validity of the show cause notices. The same shall not be considered as any expression on the merits of the petitioner's defence as raised in his reply to the show cause notices. All contentions of parties on merits are kept expressly open.

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

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**