



Appeal No 074/06/19

**AKHTER MAHMOOD MIAN CHARTERED ACCOUNTANT LAHORE
(APPELLANT)**

Vs.

**THE INSTITUTE OF CHARTERED ACCOUNTANTS
(Respondent)**

ORDER

Date: December 12, 2019

Zahid Abdullah: Information commissioner

A. The Appeal

1. The Appellant filed three appeals with the commission on April 30, 2019 in which he stated that he had requested information from Quality Assurance Board, Appellate Board and Review Committee of the Institute of Chartered Accountants of Pakistan, (ICAP) under the Right of Access to Information Act 2017.

2. The three appeals are as under:

Appeal 1:

- “That the Appellate Board made the hearing of our appeal which was fixed for hearing on July 31, 2018. The copy of the notice is attached herewith for your kind ready reference. The hearing of the case was completed after the detailed arguments of our Lawyer. The decision/order which should have been issued and be provided to the Appellant as envisaged in Rule 19.5 of the Quality Control Review Framework, 2015 was reserved and till to date we have not been provided the copy of the said decision/order.
- That the Quality Assurance Board had acknowledged vide its letter No ICAP/QAD/000135/60352/2019-057 dated February 26, 2019 that the Appellate Board has communicated with QAB in January 2019, of which apparently there was no provision of law in the framework that the Appellate Board communicated to the defendant Department /Public Body but the Appellant had been deprived of it. It was important that the Appellant should also be communicated simultaneously.
- That we requested to provide the copy of the proceedings and order vide our letter no AMM-18516-ICAP dated April 08-2019 but the Appellate Board ICAP has not replied up till this date.

- That the time limit as prescribed in Section 14 of the Act has already lapsed but no action has been taken by Appellate Board in this regard.
- That we have no alternate but to prefer the appeal before this August Appellate Forum for the redressal of our grievances because that our appeal against the unlawful and impugned order has been fixed for May 04, 2019. We are unable to prepare and arguments for the appeal until the requested information have not been provided to us.
- That the Institute of Chartered Accountants of Pakistan has been created through the Institute of Chartered Accountants Ordinance, 1961 and is the public body as defined in section 2(ix) of the Act and this Information Commission holds legal jurisdiction to hear the appeal u/s 17 of the Act.

It is prayed

- That order may please be passed to make available information and documents as requested by us.
- Any other relief may please be granted by the Information Commission as is deemed fit”.

Appeal 2:

- “That the Quality Assurance Board (QAB) of the Institute of Chartered Accountants of Pakistan Karachi issued the report of Quality Control Review against the Appellant Firm of the Chartered Accountants which was totally unlawful and without the jurisdiction because our previous report issued by the QAB has already attained finality in our favour under the Rule 19.6 of the Quality Control Review Framework, 2015. Despite this clear and vivid fact, the Quality Assurance Board issued another report on the same facts.
- That the Quality Assurance Board had acknowledged vide its letter No ICAP/QAD/000135/60352/2019-057 dated February 26, 2019 that the Appellate Board has communicated with QAB in January 2019, of which apparently there was no provision of law in the framework that the Appellate Board communicated to the defendant Department /Public Body but the Appellant had been deprived of it.
- That we requested to provide the certain information, communications and policies and guidelines and other information from the Quality Assurance Board vide our letter no AMM-18519-ICAP dated April 08-2019 but the Quality Assurance Board has not replied up till this date.
- That the time limit as prescribed in Section 14 of the Act has already lapsed but no action has been taken by Quality Assurance Board in this regard.
- That we have no alternate but to prefer the appeal before this August Appellate Forum for the redressal of our grievances because that our appeal against the unlawful and impugned order has been fixed for May 04, 2019. We are unable to prepare and argue the appeal until the requested information has not been provided to us.

- That the Institute of Chartered Accountants of Pakistan has been created through the Institute of Chartered Accountants Ordinance, 1961 and is the public body as defined in section 2(ix) of the Act and this Information Commission holds legal jurisdiction to hear the appeal u/s 17 of the Act.

It is prayed

- That order may please be passed to make available information and documents as requested by us.
- that the order for the necessary action may please be passed against the responsible officials of the Quality Assurance Board u/s 22(2) of the Act , who have obstructed the access of information under the law.
- Any other relief may please be granted by the Information Commission as is deemed fit.”

Appeal 3:

- ”That the Review Committee of the Quality Assurance Board (QAB) of the Institute of Chartered Accountants of Pakistan Karachi has held the meeting with us on February 01, 2018 in which we appeared and made available all the files and the records as desired by the Review Committee. The Review Committee has apparently sent the report to the Quality Assurance Board (QAB) but no report has been issued to us. On the basis of this report, the QAB has issued the report of Quality Control Review against the Appellant Firm of the Chartered Accountants which was totally unlawful and without the jurisdiction because our previous report issued by the QAB has already attained finality in our favour under the Rule 19.6 of the Quality Control Review Framework, 2015. Despite this clear and vivid fact, the Quality Assurance Board issued another report on the same facts.
- That the Quality Assurance Board had acknowledged vide its letter No ICAP/QAD/000135/60352/2019-057 dated February 26, 2019 that we have made submissions and explanations before the Review Committee which were considered in the meeting held on February 20, 2019 on the basis of which QAB has issued the report on dated February 26, 2019
- That we requested to provide the final report of the meeting held with us on February 01, 2019 and the Review Committee may have meeting on February 20, 2019, vide our letter no AMM-18517-ICAP dated April 08-2019 but the Review Committee of QAB has not replied up till this date.
- That the time limit as prescribed in Section 14 of the Act has already lapsed but no action has been taken by Quality Assurance Board in this regard.
- That we have no alternate but to prefer the appeal before this August Appellate Forum for the redressal of our grievances because that our appeal against the unlawful and impugned order has been fixed for May 04, 2019. We are unable to prepare and argue the appeal until the requested information have not been provided to us.
- That the Institute of Chartered Accountants of Pakistan has been created through the Institute of Chartered Accountants Ordinance, 1961 and is the public body as defined

in section 2(ix) of the Act and this Information Commission holds legal the jurisdiction to hear the appeal u/s 17 of the Act.

It is prayed

- That order may please be passed to make available final report as requested by us.
- that the order for the necessary action may please be passed against the responsible officials of the Quality Assurance Board u/s 22(2) of the Act , who have obstructed the access of information under the law.
- Any other relief may please be granted by the Information Commission as is deemed fit”.

B. Proceedings

3. Through a letter dated July 03, 2019, the Respondent shared with the commission that:

“It is important to mention here that the Quality Assurance Board (QAB) is an independent body which has been formed to undertake the implementation and oversight of the quality assurance review framework as per Rule 2 of the Framework of Quality Control Review (QCR) Program 2015 (the ‘Framework’). Our reply to the above said letters as given below has been prepared after consulting the concerned official of the Quality Assurance Department.

The Firm has filed two appeals before the Pakistan Information Commission (PIC) with the prayers that orders may be passed to make available: (i) final report; (ii) information and documents requested vide letter dated April 8, 2019; and (iii) take necessary action against official who obstructed access to information under the law.

It is pertinent to note that Review Committee constituted by Quality Assurance Board (QAB) under Rule 14.4 of the Framework may only amend the draft report which shall be approved by the Board and final report shall be shared with the firm under Rule 16 of the Framework.

The final report dated February 26, 2019 duly approved by the Board was sent to the Firm through courier dated February 26, 2019 bearing consignment No. KI409443933 and was duly received by a staff member namely Mr. Sami in the office of the Firm. (Copy of tracking shipment is attached)

The policies, guidelines and review methodology issued and adopted by the Quality Assurance Board are part of the Framework which being a public document is available on our website. Thus, the Firm may access the document from our website. (Link is given here: <https://un.vw.icap.oty.pkl/q/hi/itv-ass/inwce/qcr-i'nmmvorkh>)

Further, please note that the request to share recording and minutes of the meetings is not tenable on the ground of being private and confidential information of the Institute as per section 7 (b) of the Right to Access to Information Act, 2017.

The necessary information was provided to the Firm therefore, the allegation of obstruction by an official of the Quality Assurance Board is not plausible.

Moreover, the Firm accepted the final decision of the Appellate Board bearing Order No. 02/2019 dated May 16, 2019 according to which the Firm shall complete its compliance by December 31, 2019 and QAB shall decide the matter within the Framework in accordance with law. Kindly note that the Firm has acknowledged to make compliance and to offer for review of quality control in accordance with new Framework of 2019 vide its letter dated May 16, 2019. (Copy of letter dated 16.05.2019 is attached)

In view of the above, the appeals of the Firm may be dismissed”.

4. Through a letter dated July 13, 2019, the Appellant shared with the commission that:

“The response of the officials of the ICAP is not relevant and pertinent to the issues raised in the said appeals against the quality departments of ICAP. As we have mentioned in our appeals that we are asking for the information which are necessary for our professional development, strengthening of quality and the information which are directly relating to our case of quality review. But the relevant staff is creating obstructions in fair process of quality control program, which is totally damaging the image of accounting profession to whom we have devoted our significant part our life. You are aware that the general public has very high expectations on the Chartered Accountants and ICAP as well and now days; CA has attained the level of Model Role Profession.

Being the fellow members of the ICAP, we cannot tolerate such kind of attitude of the employees of ICAP who do not have interest and stake in the development of the accounting profession in the country. Due to non-chalant and flippant aptitude of the impugned quality department of ICAP, the role of practicing chartered accountants is being criticized in the public and regulating bodies.

It is pertinent to mention here that the Parliament has already took the cognizance and has intervened through the creation of the Audit Oversight Board which will observe the audit quality of the practicing firms of chartered accountants. It reflects that the State organs are not satisfied with the performance of Quality Assurance Board (QAB).

If the quality of Quality Assurance Board (QAB) is not satisfactory and backed by due documentation and the practicing Chartered Accountants cannot be benefited out of it, then the very purpose of such huge exercise on the cost of public exchequer and hard earned many of professionals, cannot be justified.

We are committed to fight for the betterment and enhancement of the profession on the basis of our own cost. If the desired information is being released, which they are possessing; it will be helpful for us to enhance our professional capacity and intellect”.

5. The hearing date was fixed for August 06, 2019 through the hearing notice sent on July 19, 2019 and both parties were informed accordingly. Mr. Israr Khan, Senior Manager, Institute

of Chartered Accountants of Pakistan represented the public body whereas Mr. Jamil Akhter Baig appeared on the behalf of the Appellant.

6. In the hearing, the Appellant shared background of the case reproduced as shared by the Appellant:

““BACKGROUND OF THE CASE””

- 1) That the Quality Assurance Board passed the order against that our quality is not satisfactory. Against this order, we filed the appeal before the Appellate Board ICAP on October 26, 2017, which was fixed for hearing on November 21, 2017. The notice was issued on November 14, 2017. The copy of the notice is attached as Annexure-A.
- 2) That the said appeal was heard on fixed date being November 21, 2017 and was kept in waiting for the decision of the appeal.
- 3) That latter on, we received the notice dated January 10, 2018 for appearing before the Review Committee constituted by the Quality Assurance Board through which date of hearing was fixed for January 17, 2018. It may please be observed that the notice of Review Committee was served and date was fixed before the announcement of judgment of the Appellate Board.
- 4) That we write a letter vide no. AMM-17337-ICAP dated January 11, 2018 to Mr. Shahid Hussain Senior Director Quality Assurance that we should be provided the copy of decision of the Appellate Board The copy of the letter is enclosed as Annexure-C.
- 5) That after the receipt of our above referred letter, Mr. Shahid Hussain Senior Director Quality Assurance fixed our case for the hearing of same date January 17, 2018 without considering our objection and request. The copy of the letter is enclosed as Annexure-D.
- 6) That on the receipt of above notice for January 17, 2018, we requested again to Mr. Shahid Hussain Senior Director Quality Assurance with copies to all the members of the Appellate Board vide our letter No. AMM-17343-ICAP dated January 15, 2018 that the copy of the decision should be provided to the appellant as envisaged in Rule 19.5 of the Framework of Quality Control Review Program 2015. It was also requested that the hearing/ meeting of the Review Committee may please be deferred till the release of the decision of the Appellate Board. The copy of the letter is enclosed as Annexure-E. The meeting of the Review Committee was deferred meanwhile.
 - 1) That on our above referred request, the decision of the Appellate Board with the date of announcement of January 23, 2018 duly signed only by the Chairman Appellate Board was sent to us vide covering letter no. ICAP/QAD/000135/49570/2018/024 dated January 23, 2018 signed by Mr. Shahid Hussain Senior Director Quality Assurance with copy to Chairman Quality Assurance Board and Chairman Appellate Board. The copy of the letter and the decision of the Appellate Board are enclosed as Annexure-F. We were surprised to observe that the decision was announced by the Appellate Board on January 23, 2018 but the Quality Assurance Board has referred our case to Review Committee in its 85th meeting held on December 21, 2017. It is obvious that the proceedings/decision of the Quality Assurance Board before the

announcement of decision of the Appellate Board are totally unlawful, unauthorized and void ab-initio in the eyes of law.

- 7) That after the receipt of the decision the Appellate Board dated January 23, 2018, the matter being decided by the QAB in 85th meeting dated December 21, 2017 was kept intact and personal hearing before Review Committee was fixed February 01, 2018. The copy of the notice is attached as Annexure G. In this meeting, Mr. Jamil Akhter Baig engagement partner of the Appellant, opened all the audit files and necessary record before the Review Committee. The following objections were raised during the course of hearing.
- The proceedings of the Review Committee was not legal and in compliance of the Rules of the Framework.
 - The Members of the Review Committee were not conducting the proceedings of the Review Committee in fair, and impartial manner, because Mr. Ajlal Haider and Mr. Fahad Pervaiz and Mr. Shahid Hussain Senior Director Quality Assurance were fully participating in the proceedings of Review Committee. Although Review Committee was constituted with the members of the Quality Assurance Board. Thus the whole proceedings of the Review Committee were illegal, influenced by the Officers below and biased. The whole proceedings of the Review Committee was conducted in non serious and in unprofessional manner. It was not humanly impossible that the eight audit files have been reviewed by the Review Committee in two hours meeting. We may raise questions and doubts about the quality and legal compliance of the Quality Assurance Board and its Review Committee. We agitated that the dependence of the members of Review Committee on the employees of the Quality Assurance Department is the parochial approach and gross violation of the Rules of the Framework 2015. We were deplored to observe that how such kind of authoritative bodies of August Institute performed with narrow minded approach just to condemn the practicing members of Institute.
- 8) That we received notice being No. ICAP/QAD/000135/52767/ 2018-146 dated May 17, 2018 from the Deputy Director Quality Assurance that our appeal has been fixed before the Appellate Board on May 29, 2018. The copy of a notice is attached as Annexure G. We made the request for adjournment because our senior staff had gone on examination leaves and holidays of Eid-ul-Fitrar were also to start. Our request of adjournment was accepted and the appeal was again fixed for hearing on July 31, 2018 vides notice No. ICAP /QAD/000135/54244/2018-218. The copy of a notice is attached Annexure H.
- 9) That we appeared before the Appellate Board and made the arguments of the case as follows.
- In first, we explained that there is no appeal pending before this Appellate forum, but the Appellate Board held and ordered unanimously that our appeal is pending before this Forum. The Board ordered in further that the appellant has been provided an opportunity of being heard to submit its arguments otherwise the appeal will be decided ex-party.
 - We had no alternate but to commence the arguments. Our first and foremost legal argument was that the appeal has stood as accepted being time barred because the appeal was to be decided in all circumstances within 60 days from the date of the

filing of appeal as provided in Rule 19.6 of the Framework The Appellate Board has become functus officio as regards of this appeal. It is obvious that after the lapse of time limitation, the matter has been closed in the favour of the auditing firm thus past and closed matter cannot be opened and trailed again.

OUR ARGUMENTS REGARDING ACCESS TO INFORMATION

10) That we were surprised to know that we received Quality Control Review Report issued by Quality Assurance Board only signed by Mr. Shahid Hussain Senior Director Quality Assurance vide letter No. ICAP/QAD/00135/60353/2019-058 dated February 26, 2019 being unsatisfactory. The appeal against this unlawful and void ab-initio has been filled challenging the said order on the basis of the grounds of appeal as mentioned in the appeal. The said Quality Control Review was annexed with a covering letter which was also signed by the Mr. Shahid Hussain Senior Director Quality Assurance. The Quality Control Review report is totally silent that this report has been issued again following the directions of the Appellate Board through its order. The copy of the covering letter attached as Annexure H. However, in the covering letter, it was explained that

- This report has been issued considering our submissions and explanations in the meeting of Review Committee held on February 20, 2019.
- The matter was reconsidered by the Quality Assurance Board following the receipt of a communication from Appellate Board in January 2019.

11) That on the receipt of said unlawful Quality Control Review report; we tendered our request as follows.

- We requested the Chairman Appellate Board vide our letter no.AMM 17343-ICAP dated March 04, 2019 to provide the copy of order of hearing taken place on July 31, 2018.The copy of the letter is attached as Annexure I.
- We requested our letter number vide AMM-18452-ICAP dated March 9, 2019 to Mr. Shahid Hussain Senior Director Quality Assurance to provide the copies of communication of Appellate Board made with the Quality Assurance Board in January 2019, minutes and video recording of the Review Committee under Rule No. 8.5 of the Framework, and, Engagement Review methodology, and policies of Quality Assurance Board etc under Rule 5.5 of the Framework. The copies of the both letters are attached as Annexure. J

12) That it was very important to note by Appellate Board that the above referred letter one of which was addressed to the Chairman Appellate Board and other was addressed to Mr. Shahid hussain Senior Director Quality Assurance Board, both were replied through one vide letter no. ICAP /QAD /000135/64388/2019-113 dated March 25, 2019 by same person Mr. Shahid Hussain designated as Secretary Appellate Board. The copy of the letter is enclosed herewith as Annexure **K**. The request made in above referred letters were not considered nor replied. However, Mr. Shahid Hussain, Secretary Appellate Board stated and acknowledged that Quality Control Review report dated February 26, 2019 was issued after providing opportunity of being heard before Review Committee on dated February 1, 2019 in pursuance of Appellate order dated January 23, 2018. The Secretary Appellate Board remained ignorant and contradictory in its earlier statement that the matter was considered by Quality Assurance Board in December 21, 2017 and matter was

referred to the Review Committee even before the announcement of the order of the Appellate Board which was issued on January 23, 2018. It is worth to note by the Appellate Board that how the same person can act for the Executive and Appellate Forum. It is fanatical and obliterated way of work in such dignified bodies specifically created for the Quality Assurance of the practicing members. It is the spot on the face of the Appellate forum.

- 13) That after the receipt of above referred letter, we sent again the letter to the Secretary Appellate Board vide our letter number AMM-18503-ICAP dated April 01, 2019 and requested that we are asking for the copy of the order of the Appellate Board regarding hearing held on dated July 31, 2018. The copy of the letter is attached as Annexure **L**
- 14) That we made the request to Mr. Shahid Hussain, Secretary Appellate Board vide our letter no. AMM 18548-ICAP dated April 17, 2019 that our first appeal should be fixed if the order has not yet been passed after the hearing of July 31, 2018, but no action has been taken on it.
- 15) That we made the requests u/s 11 of the Right of Access to Information Act, 2017 to different bodies of the Institute in the following manner.
 - Letter No AMM -18519-ICAP dated April 08-2019 to Mr. Shahid Hussain Senior Director Quality Assurance through which certain information were requested from the Quality Assurance Board.
 - Letter No AMM -18517-ICAP dated April 8, 2019 through which request was made to the members of Review Committee Quality Assurance Board to provide the final report of Review Committee meeting of dated February 01,2018.
 - Letter No AMM -18516-ICAP dated April 8, 2019 through which the Chairman Appellant Board was prayed to provide the copy of the order of the appeal regarding hearing held on July 31, 2018.
- 16) That the requests made under section 11 of the Right of Access to Information Act, 2017 were not complied within the stipulated time as provided in the Act, and then we have no alternate but to prefer to appeals before this August Information Commission u/s 17 of the Act. The said appeals against Quality Assurance Board, Review Committee and Appellate Board have been filled on April 30, 2019
- 17) That our second appeal was fixed for hearing for dated April 25, 2019. We made the application for adjournment that our appeal may please be adjourned till the resolution of the following issues.
 - Our previous appeal may please be fixed for hearing.
 - The Information and documents requested through various letters may please be provided.
- 18) That the date of hearing of the appeal of April 25, 2019 was adjourned and fixed again for May 4, 2019, without resolving all the objections raised in the application of adjournment. This letter was issued by Mr. Shahid Hussain Secretary Appellate Board vide letter No. ICAP /QAD/000135/65543/2019-150 dated April 25, 2019. The copy

of the said letter is enclosed as Annexure M. Although this letter was confession /admission of various illegal acts, one important contradiction may be noted by the Appellate Forum that it was stated that the Appellate Board did not take any further action on our earlier appeal because the Appellate Board has become functus officio , but in letter No ICAP/QAD/000135/60352/2019-057 dated February 26, 2019 it was stated by the same Officer that the Quality Control Review Report dated February 26,2019 was issued after the communication of Appellate Board with Quality Assurance Board in January 2019, for which we are crying to obtain its copy.

- 19) That we may explain that the comments of Secretary ICAP are totally irrelevant and brushing aside. The Secretary has not replied on the issues raised in the appeals. He has wrongly said that we have filed two appeals. We have filed three appeals. He has innocently replied that perhaps we are struggling to obtain the report of Quality Assurance Board dated February 26; 2019. He has not apparently gone through the facts our appeals. We have never asked for this report. The information, report and order which are being requested have clearly and explicitly been discussed in our appeals. It looks that the Secretary ICAP has been misguided by the concerned officials of the ICAP who are obstructing the flow of the information and causing the image of the profession. It is also incorrect to state that the policies, guidelines and review methodology issued and adopted by the Quality Assurance Board are the part of the Framework and available on the Web site of the ICAP. We are very disturb and perturbed to take this argument and to explain that the Framework of Quality Control Review Program , 2015 was approved by the Council of ICAP in its meeting held December 11, 12 2014 and does not fall in the purview of the Quality Assurance Board. The Secretary has further stated that we have accepted the decision of the Appellate Board and we will do the compliance of the new Framework, 2019. It may please be noted that the Appellant Board has accepted our arguments and has passed the order accordingly. The order of the Quality Assurance Board has been set aside. We have never denied the quality review of ICAP. In fact, we offered for the Quality review since the first year of audit of the Firm which was 2003 and since then we are holding the QCR. As we have stated that the Secretary indulged in irrelevant response and has avoided doing the necessary reply on the availability of the information. The Secretary ICAP is legal and responsible post of the Institute and it is getting difficult for us to comment on such dignified post of the Institute and we assume that he has not been properly explained by the responsible officials of the Quality Assurance Board otherwise the comments of the Secretary should have been different.
- 20) That the August Information Commission may observe that we are requesting the information, orders or reports which are mandatory to be provided to the party concerned to have all proceedings in transparent and fair manner. The Hon'able Forum may kindly observe that how the fair trial can be ensured if the relevant public bodies did not provide the information to the citizen for which he has been charged and penalized and he has been stopped to earn his livelihood through his profession for which has attained the qualification through difficult process of examination. We are holding practice license for last 25 years. We may reiterate that the Right to Fair Trial has been protected through Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 (The Constitution). All the citizens are equal before the law and are entitled to equal protection of Law as enshrined in the Article 25 of the Constitution then why we have been discriminated by the public Body of the State. The right of access to information has protected through Article 19A of the Constitution following which the legislation has promulgated the Right of Access to Information Act, 2017. The favourable order to pass the necessary instructions the

said Public Body shall be enforcement of the Constitution and the protection of the basic rights of the citizens of Pakistan. It is deplorable that the quality of the Quality Assurance Board of the Institute of Chartered Accountants of Pakistan can be looked into under these circumstance and we are very keen to see it in improved form because our career and professional development is connected with this Auditing and Accounting profession. We have already stated that we are committed to fight for the betterment and enhancement of the profession on the basis of our own cost. If the requested information is being released, being concealed by these Departments, it will be helpful and useful for us to enhance our professional capacity and intellect.

In view of above submissions, it is prayed that;

- The order may please be passed to disclose the requested information u/s 20(1)(e) of the Act.
- The order may also be passed u/s 20(1)(f) to impose the fine on the Officials of the Institute who have wilfully obstructed in the flow of the information and we have suffered the professional and financial loss.

That any other relief may please be granted as deemed necessary by the Commission””.

7. The commission shared documents sent by the Respondent through email dated October 10, 2019 with the Appellant. In response, the Appellant through email dated October 21, 2019 shared the following response:

“We have checked the documents filed by ICAP and No Paper or document is relevant as we have requested.

We requested the following documents

- 1 Order of the Appellate Board regarding hearing held on July 31, 2018
 - 2 Copy of the final report of the Review Committee of which hearing held on February 01,2018
 - 3 Policies and guidelines of the Quality Board
 - 4 The copy of the communication of the Appellate Board with the Quality Board
- We request that the order may please be passed strictly to provide the requested documents because the ICAP is pressing hard us for the quality review but is reluctant to provide the said information and documents which are indeed for the next review”.

C. Discussion and Commission’s View on Relevant Issues

8. This case has brought to the fore interdependence and permeability of fundamental human rights. Furthermore, the interplay and the constitutionality of the right to information and right to fair trial and their inclusion in chapter of fundamental rights through Article 19-A and Article 10-A respectively has highlighted the pivotality of Article 8 of the Constitution of the Islamic Republic of Pakistan which is as under:

““8.Laws inconsistent within derogation of fundamental rights be void.-

(1) Any law, or any custom or usage having the force law, in so far as it is inconsistent with the rights conferred by this Chapter shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred

and any law made in contravention of this clause shall, to the extent of such contravention, be void.”

9. The reliance of the Respondent on Rules of the Framework of Quality Control Review (QCR) Program 2015 is also untenable when juxtaposed with Article 8 of the Constitution and Section 25 of the Act as these Rules are in contravention to Article 10A which is as under:

““Right to fair trial - For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process””.

10. The Respondent, in its role as regulatory body should have fulfilled its constitutional obligation of providing the Appellant due process by providing the requested documents in performing its functions of quality assurance.

11. As evidenced by the documents of Appellate Board produced by the appellant, being letter No. ICAP/UAD00135/64933/2019-134 Dated April 10, 2019 through which notice is being issued to Appellant Firm by Shahid Hussain Secretary Appellant Board and ICAP/UAD00135/65543/2019-150 Dated April 25, 2019 which was also signed by Mr Shahid Hussain as Secretary Appellant Board raises the question of conflict of interest which needs to be investigated. It raises serious questions about the quality of the quality assurance process and how can there be due process if the same person is acting as Secretary Quality Assurance Board and the Secretary Appellant Board.

12. The commission is of the view that the Respondent, while performing its functions of a regulatory body, should have provided the requested documents i.e. Order of the Appellate Board regarding hearing held on July 31, 2018, copy of the final report of the Review Committee of which hearing held on February 01, 2018, Policies and guidelines of the Quality Board and the copy of the communication of the Appellate Board with the Quality Board.

13. The commission is of the view that as the Respondent has relied on Rules of the Framework of Quality Control Review (QCR) Program 2015 at the expense of the provisions of the Right of Access to Information Act 2017. As such, the powers vested in the Principle Officer have not been exercised “reasonably, fairly, justly and for the advancement of the purposes of the enactment” as required under Section 24A (1) of the General Clauses Act 1897. Furthermore, the requirement of Section 24A (2) of the General Clauses Act 1897 “The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall so far as necessary or appropriate, give reasons for making the order or as the case may be for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially has also been compromised.

D. Order

14. The appeal is allowed. The Respondent is directed to provide Order of the Appellate Board regarding hearing held on July 31, 2018, copy of the final report of the Review Committee of which hearing held on February 01, 2018, Policies and guidelines of the Quality Board and the copy of the communication of the Appellate Board with the Quality Board. This information be provided to the Appellant at the earliest, but in any case, not later

than 10 working days of the receipt of this order. Furthermore, the Respondent is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission by 12/01/2020.

15. Copies of this order be sent to the Respondent, the Appellant, President, Institute of Chartered Accountants of Pakistan, (ICAP), Chairman, Appellate Board, (ICAP) and Executive Director, Quality Assurance Department, (ICAP) for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
December 12, 2019

This order consists of 13 (thirteen) pages; each page has been read and signed.