**(1999) 10 MAD CK 0050**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 12479, 1240, 12630 and 12631 of 1999 and W.M.P. No''s. 17825, 17826, 18081 and 18082 of 1999 1 October 1999

CHARTERED ACCOUNTANTS STUDY CIRCLE APPELLANT

Vs

INSTITUTE OF CHARTERED ACCOUNTANTS RESPONDENT

**Date of Decision :** 01-10-1999

**Acts Referred:**
Constitution of India, 1950 — Article 19(1)(g), 21

**Citation :** (2000) 108 TAXMAN 341

**Hon'ble Judges :** P.D. Dinakaran, J

**Bench :** Single Bench

**Advocate :** Arvind P. Datar and V.R. Rajasekaran, for the Petitioner and N.R. Chandran, R. Srinivasamoorthy and S. Ravikurnar, for the Appellant;

# Judgement

1. Chartered Accountants Study Circle, the petitioners in W.P. Nos. 12631 and 12479 of 1999 as well as the Society of Auditors, the petitioners

in W.P. Nos. 12480 and 12630 of 1999, are societies registered under the Societies Registration Act, bearing Regn. Nos. 68 of 1980 and

6/1932-33, respectively.

2. Petitioners in W.P. Nos. 12479 and 12480 of 1999 seek for a writ of declaration to declare the form of application for multipurpose

empanelment as published in the Journal of Institute of Chartered Accountants, June 1999, pages 74-106 issued by the first respondent as ultra

vires the provisions of Chapter VR of the Chartered Accountants Act, 1949. Chapter X of the Chartered Accountants Regulations, 1988, the

articles 14, 19(1)(g) and 21 of the Constitution of India insofar as the petitioners are concerned.

3. The petitioners in W.P. Nos. 12630 and 12631 of 1999 seek a writ of

declaration to declare the form of empanelment to the office of the first

respondent therein as published in the Journal of Institute of Chartered Accountants, June 1999, pages 65-72, read with notice issued in the

newsletter of the Southern India Regional Council of the Institute of Chartered Accountants of India, Vol. 25, Part 1, 1-7-1999 at page 7 issued

by the first respondent as ultra vires the provisions of the Chartered Accountants Act, 1949. Chapter X of the Chartered Accountants Regulations,

1988, articles 14, 19(1)(g) and 21 insofar as the petitioners are concerned.

4. The Chartered Accountants Act, 1949 (''the Act'') was enacted to make provisions for the regulation of the profession of Chartered

Accountants and for that purpose to establish an Institute of Chartered Accountants (''the Institute'').

4.1 The following provisions of the Act are relevant to be mentioned:

The terms ''Chartered Accountant'', ''Council'', ''Institute'', ''Holder of Restricted Certificate'' and ''Register'' are defined as follows :

(b) ''Chartered Accountant'' means a person who is a member of the Institute;

(c) ''Council'' means the Council of the Institute;

(a) ''Holder of a Restricted Certificate'' means a person holding a permanent or temporary restricted certificate granted by a State Government

under the Restricted Certificates Rules, 1952;

(e) ''Institute'' means the Institute of Chartered Accountants of India constituted under this Act;

(f) .... .... ....

(g) ''Register'' means the Register of Members maintained under this Act;

4.2 As per section 2(2), a member of the Institute shall be deemed ''to be in practice'' when individually or in partnership with Chartered

Accountants in practice. He, in consideration of remuneration received or to be received, (i) engages himself in the practice of accountancy; or (it)

offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation,

verification or certification of financial accounting and related statements or holds himself out to the public as an accountant., or (iii) renders

professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered

Accountant in practice; and the words ''to be in practice'' with their grammatical variations and cognate expressions shall be construed accordingly.

4.3 Section 3 provides for the incorporation of the Institute.

4.4 Section 5 of the Act divides the members of the institute into two categories, viz., ''associates'' and ''fellows''. An associate is a person whose

name is entered in the Register and who is entitled to use the letters'' A.C.A.'' A fellow is a person who, after becoming an associate member of

the Institute, has been in continuous practice in India for at least five years, and who is entitled to use the letters ''F.C.A.''

4.5 Section 9 of the Act provides for the Constitution of Council of the Institute for the management of the affairs of the Institute and for

discharging the functions assigned to it under the Act.

4.6 Section 17(1) enables the Council to constitute from amongst its members the Committees such as (i) an Executive Committee; (it) an

Examination Committee; and (iii) a Disciplinary Committee. That apart, u/s 17(2), the Council may also form such other Committees f or the

purpose of carrying out the provisions of the Act.

4.7 Section 19 requires the Council to maintain a Register of Members of the Institute, which register as per section 19(2) shall contain the

particulars of every member of the Institute, such as (i) full name, date of birth, domicile, residential and professional address; (it) the date on which

his name is entered in the Register; (iii) his qualification; (iv) whether he holds a certificate of practice, and (v) any other particulars which may be

prescribed. The Council, as per section 19(3), shall publish the list of members of the Institute as on the 1st day of April of each year and shall

send a copy thereof to every member of the Institute. Every member of the Institute shall, on his name being entered in the Register, pay such

annual membership fee as may be prescribed.

4.8 Section 21 prescribes the procedure to be followed in inquiries relating to misconduct of members of the Institute in case of any alleged

professional misconduct by any member of the Institute.

4.9 Section 22 defines the professional misconduct.

 

4.10 Section 30 empowers the Council to make regulations for the purpose of carrying out the objects of the Act and notify the same in the

Gazette of India. A copy of such regulations shall be sent to each member of the Institute. As per section 30(2), in particulars, and without

prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters:

(a) ** ** **

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(c)** ** **

(d) the conditions under which any foreign qualification may be recognised;

(e) the manner in which and the conditions subject to which applications for entry in the Register may be made; & (9) **

(h) the particulars to be entered in the Register;

(i) & (i) ** **

(k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(l) to (s) ** **

(t) any other matter which is required to be or may be prescribed under this Act.

4.11 Section 30A empowers the Central Government to direct the Council to make any regulations or to amend or revoke any regulations already

made within a specified period and if the Council fails to comply with such directions, the Central Government may make the regulations or amend

or revoke the regulations made by the Council.

4.12 Section 30B provides for laying of the regulations before each House of Parliament.

4.13 Part 1, Part H and Part W of the First Schedule to the Act deal with the professional misconduct in relation to Chartered Accountants who

are in practice, in service and that of the members generally, respectively.

4.14 Part 1 of the Second Schedule to the Act deals with the professional misconduct in relation to Chartered Accountants in practice requiring

action by a High Court, of which, the following clauses are relevant to be referred to:

(1) discloses information acquired in the course of his professional engagement

 

to any person other than his client without the consent of his client

or otherwise than as required by any law for the time being in force:

(5) fails to disclose a material fact known to him which is not disclosed in a financial statement but disclosure of which is necessary to make the

financial statement not misleading;

(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) is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information to warrant the expression of an opinion or his expressions are sufficiently material to negate the expression

of an opinion;

Clause (i) of Part 11 of the Second Schedule deals with the professional misconduct in relation to members of the Institute generally requiring

action by a High Court, who contravenes any of the provisions of the Act or the regulations made thereunder.

5. The Council, by exercising its powers u/s 30 of the Act, framed the Chartered Accountants Regulations, 1988 (the Regulations) for the purpose

of carrying out the objects set out in the Act and notified the same in the Gazette. The following regulations are relevant to be referred :

5. 1 Regulation 3 provides for the maintenance of the Register of Members as per Form ''1'' Schedule A, which register shall contain the

particulars such as Membership Number; R.M. Enrolment No.; Name in full, Date of Birth; Domicile; Residential address; Professional address;

Date of entry in the Register; Qualifications; Whether holding a certificate of practice; Date of admission as Fellow; Whether practising

independently, in partnership or employed in a firm of Chartered Accountants in practice; Whether holding a salaried employment, if not in

practice; change of address, if any and remarks.

5.2 Regulation 5(1)(b) provides that an associate who desires to be admitted as Fellow shall submit an application, as prescribed in Form ''T in

Schedule A, by furnishing the particulars such as name; date of birth, qualification; the name of the Chartered Accountant(s) in practice or the firm

of Chartered Accountants in practice under whom the applicant served as an Articled Clerk/Audit Clerk; Articles/Audit Registration No. details of practical training, period of residence in India; etc. In case of an associate to be registered as a Fellow, he shall comply with the particulars given in

Form ''Y'' in Schedule A such as membership number and date of admission as Associate; Professional address; Whether practising independently

or as a partner of a firm of practising members of the Institute, etc.

5.3 Regulation 185 enables the Council, while publishing the list of members u/s 19(3), to distinguish between the Associates and Fellows in

practice and between the Associates and Fellows not in practice.

5.4 Regulation 186 authorises the Council, for the publication of list of members, to call for such information as it considers relevant from the

members and it may also call for additional information as may be required for statistical purposes,

5.5 While regulation 187 provides that every member in practice shall have a professional address in India in his own charge or in charge of

another member.

Regulation 188 provides that all notices required by the Act or the Regulations to be given to the members shall be forwarded by post to such

professional address.

5.6 Regulation 190A bars a Chartered Accountant in practice not to engage in any other business or occupation other than the profession of

accountancy, except with the permission granted in accordance with a resolution of the Council.

5.7 Regulation 191, however, permits the Chartered Accountants in practice to accept part-time employment such as, a liquidator, trustee,

executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matter, or may take up an appointment that

may be made by the Central Government or a State Government or a court of law or any other legal authority or may act as a secretary in his

professional capacity, provided his employment is not on a salary-cum-full time basis. In pursuance of Regulation 191, the Council resolved to

grant general permission to the members with respect to certain part-time assignments which are enumerated in Appendix No. (1) to the

Regulations.

6. It is also relevant to refer sections 29,30(1),30(1A) and 31 of the Banking Regulation Act, 1949, which are intended to consolidate the law

 

relating to banking.

6.1 Section 29 contemplates that at the expiration of the calendar year or at the expiration of a period of twelve months every banking company,

whether incorporated in India in respect of business transacted by it and every banking company incorporated outside India in respect of business,

transacted through its branches in India, shall prepare a balance sheet and profit and loss account as on the last working day of the year or the

period, as the case may be.

6.2 Section 30(1) of the Banking Regulation Act, 1949, contemplates that the balance sheet and profit and loss accounts prepared in accordance

with section 29 of the Banking Regulation Act, shall be audited by a person duly qualified under any law for the time being in force. Section 30(1

A) of the Banking Regulation Act states that notwithstanding anything contained in any law for the time being in force or in any contract to the

contrary, every banking company shall before appointing or re-appointing or removing any auditor or auditors obtain the prior approval of the

RBI.

6.3 Section 31 of the Banking Regulation Act contemplates that the balance sheet and profit and loss accounts as referred to in section 29 of the

said Act, along with the report of the auditors, shall be furnished as returns to the RBI within three months from the end of the period to which they

refer and the RBI may extend the said period of three months by a further period not exceeding three months.

6.4 A bare reading of the provisions of sections 29, 30(1), 30(1 A) and 3 1 of the Banking Regulation Act makes it clear that the balance sheet

and profit and loss accounts of all banks are subject to scrutiny of the RBI and the same shall be audited by the qualified auditors appointed by the

RBI.

7. Accordingly, at the request of the RBI, the first respondent-Institute, f or the last fifteen years used to prepare a panel of qualified auditors for

auditing the accounts of the nationalised banks and rural banks and submit such panel every year to the RBI who on receipt of such panel,

scrutinise the same and allot audit work of the nationalised banks and rural banks to the qualified auditors as contemplated under sections 29,

30(1), 30(1 A) and 31 of the Banking Regulation Act.

 

8. It is therefore, clear that the Register maintained by the Institute u/s 19(1) of the Act, read with regulation 3 of the Regulations, the List of

Members published by the Institute u/s 19(3) of the Act, read with regulations 185 and 186 and the empanelment of Chartered Accountants for

the purpose of sections 29, 30(1), 30(1A) and 31 of the Banking Regulation Act are all quite distinct from each other.

9. It appears that the President of the Institute received a letter dated 25-9-1998 from the RBI enclosing a representation dated 19-8-1999 from

one Badyala & Co., a firm of Chartered Accountants, explaining the necessity of elimination of bogus firms from the empanelment.

10. Taking note of the above letter of the RBI alleging mushroom growth of bogus audit firms the Institute, by exercising their powers u/s 17(2) of

the Act, constituted a Committee called Professional Development Committee, the second respondent in W.P. Nos. 12479 and 12480 of 1999,

to suggest appropriate recommendations to eliminate any malpractice by any members to weed out the mushroom growth of bogus firms and to

cull out the authentic and correct information from the Chartered Accountants.

11. The Committee after taking note of the fact that in recent times apart from the banking sector, several other authorities have shown interest in

obtaining panel of auditors from the Institute for carrying out their audit work and other assignments and the necessity to cheek the mushroom

growth of bogus audit firms to arrest malpractice in furnishing false and incorrect particulars by the audit firms, and to prepare a panel of genuine

and bona fide firms, in the broader interest of the society at large decided to prepare a multipurpose empanelment by way of a composite data

based information to satisfy the requirements of the RBI and other authorities to facilitate the allotment of audit and other diversified assignments

and, accordingly, recommended a comprehensive application form requiring all relevant and material details and documents for the multipurpose

empanelment.

12. The Council in their meeting held in ''April and May 1999, approved the recommendations of the second respondent Committee and invited

the members to apply in a composite format for the purpose of empanelment with all relevant details and documents required therein. The

comprehensive application format was, thus, published in the Journal of the

 

Chartered Accountants of India, June 1999 and notified the last date as

31-4-1999, notifying that no extension of time beyond the aforesaid time limit would be granted.

13. The application form consists of five parts.

13.1 Part 1 contains the.basic information such as Code Number, Name of the Concern with Status, Firm Registration Number, PAN/GIR No.,

Service-tax Registration Number, Address, Telephone Number, E-mail etc.

13.2 Part II deals with the relevant information for the purpose of empanelment of auditors for different branches of public sector undertakings;

banks and statutory and central branches of regional and rural banks.

13.3 Part 111 deals with the information for updating the database of the Institute.

13.4 Part 1V enumerates the list of documents to be attached along with the application form, viz-

(i) a copy of the latest financial statements of the partnership firm or of the sole proprietary concern or individual, as the case may be;

(ii) a copy of the statement of income forming part of the latest Income Tax return of the firm /proprietor/ individual along with a copy of

acknowledgement;

(iii) a copy of the latest available assessment order for the firm /proprietor/ individual;

(iv) a copy of the statement of income forming part of the latest Income Tax return of each of the partners along with a copy of acknowledgement;

(v) a copy of the latest available assessment order for each of the partners; and

(vi) a copy of the partnership deed.

13.5 Part V provides for a declaration to be furnished by the applicant.

14. That apart, the Committee also enlisted nine discrepancies that were noticed while processing the applications for empanelment during the

previous years, putting the members on notice that the applications would be rejected on account of these discrepancies: viz.,-

(i) Applications that were not signed in the manner required;

(ii) Applications made by the partners /proprietors on behalf of more than one firm;

(iii) Applications containing incomplete information relating to their establishment/ membership number and year of enrolment not given, complete

details of partners/ proprietor of the concern not filled in, interest in other partnership firms /sole proprietary concern/ individual practice not

disclosed, applications not in the prescribed format, etc.;

(iv) Applications that were not legible;

(v) Applications that were made by the partners of the firm in their individual names /proprietary concern''s name in spite of clear instructions that

no partner of a concern shall apply in his individual or proprietary name when he is a partner in a firm and that applications in such cases shall be in

the name of partnership firm only;

(vi) Multiple applications - Different applications made by the members of the same firm and later on requested for withdrawal of one or more of

the same;

(vii) Applications that were received after the last date;

(viii) Applications received from the members whose main occupation was not practice; and

(ix) Applications with incorrect information.

15. The applicants are also required to take note of the following points carefully, while filling up the form, the relevant parts of which are referred

to as follows:

(v) The Members/ firms should give the particulars in the form on the basis of the constitution of the firm and the staff position as on April 1, 1999.

If the names of the erstwhile partners are shown, such applications are liable to be rejected.

(vi) In case of the applications by members practising individually, the reference to the proprietor/ concern should be construed as referring to such

individual members and all the relevant details should be furnished accordingly.

(viz) The expression ''experience'' mentioned in this form refers to the total experience of the partner/ proprietor in rendering the specific type of

service which also includes such experience gained by him/ her while associated with other concerns as partners or proprietor or while practising

as an individual.

(viii) Application should be sent in duplicate under registered post with acknowledgement due or by hand delivery or by courier. in case no information is to be provided against any column, they should indicate ''NIL'' or Not Applicable'' against that column. Under no circumstances

should any column in the application form be left blank.

(ix) Application must be signed by the individual or by the proprietor in the case of a sole proprietary concern and by all the partners of the firm in

the case of a partnership firm.

(x) If any member is a common member or partner in more than one firm, it must be ensured that the application for empanelment should be made

in respect of only one firm in which the member wants to be empanelled. If the application is sent in respect of more than one firm where any one

of the members is common, the applications for all the firms are liable to be rejected.

(xi) * *

(xii) No partner of a firm shall apply in his individual name/ proprietary firm''s name whenhe/they is/are partner(s) in a firm. The application in such

cases shall be in the name of the partnership firm only. However, if a member is not a partner in any partnership firm, the application may be made

by the sole proprietary firm or in his individual name if his main occupation is professional practice.

(xiii) Only a member of the Institute, whose main occupation has been treated as the practice of the profession of accountancy, is entitled to apply.

Similarly, a firm can apply only if it has at least one partner whose main occupation has been treated as the practice of the profession of

accountancy. Members who are in whole-time employment in firms of Chartered Accountants or with a practising Chartered Accountant are not

entitled to apply.

(xiv) * *

(xv) The member/ firm should ensure to quote the correct Unique Code No. In case of any mistake in the Unique Code No., the application is

liable to rejection.

(xvi) No request for any change in the particulars supplied in the form would be entertained.

(xvii) Mere submission of the application form to the Institute does not ensure that the name of the applicant will be placed on the panel. The

 

Institute reserves the right to use the information received from members for any purpose in the interest of the profession, in addition to submitting

the same to appropriate authorities. The Institute also reserves the right to call for any further information or explanations from the members

concerned to verify the correctness of the particulars furnished in the application form. The allotment of audits or other assignments would be done

by the authorities on the basis of multivariate crited a which are confidential and the Institute does not interfere in the allotment of the assignments.

Members are advised not to correspond directly with the authorities on matters relating to empanelment.

16. That apart, the application form contains Annexures A to R to be enclosed therewith. Of the said Annexures, the following are relevant to be

referred to:

16.1 Annexure A deals with the details of the partners and their respective main occupations as well as number of hours devoted for audit work

per week, etc.

16.2 Annexure B deals with the details of paid Chartered Accountant employees in the concern. The applicant should furnish information such as

name, membership number, year of enrolment, date of beginning of continuous employment in the concern, whether ACA or FCA, whether they

are in service on full-time basis or part-time basis, usual place of residence and signature. The signatures should correspond to those in the

Institute''s record.

16.3 Annexure G calls for the details of indebtedness to Public Sector Banks/ Regional Rural Banks (for amounts exceeding Rs. 1,000 including

outstandings in respect of credit cards).

16.4 Annexure H deals with the details of Directorship in Public Sector Banks and Regional Rural Banks.

16.5 Annexure J deals with the particulars of professionals employed in the firm other than the Chartered Accountants, who may be classified as

per the respective areas of specialisation, e.g., cost accountants, lawyers, engineers, etc.

16.6 Annexure K calls for the details relating to previous experience of the applicant concern and partners/ proprietor (only those who have signed

the audit report /conducted the audit) as statutory auditor of companies other than the Government companies and Banks and Insurance

companies and such particulars should be only in respect of assignments handled during the preceding eight years.

16.7 Annexure L deals with the previous experience of the concern and partners / proprietor (only those who have signed the audit

report/conducted the audit as statutory auditor/ auditor of Head/ Central Office(s) or Branches of Insurance Companies and such particulars

should be given only in respect of assignments handled during the preceding eight years.

16.8 Annexure M calls for the details relating to the experience as Concurrent/ Internal Auditor of Head/ Central Office/ Branches of Insurance

Companies, of the Concern and partners/ proprietor (only those who have signed the audit report/ conducted the audit) and such particulars

should be given only in respect of assignments handled during the preceding three years.

16.9 Annexure N deals with the previous experience in rendering professional services to Government Companies and the details of the partners/

proprietors who have signed the audit report/rendered the relevant service.

17. The applicants are further required to declare that the information furnished by them in Annexures A to R are complete and correct as on 1 -4-

1999 and that no separate application for any of the branches or associate concern having common partner or proprietor had been made and that

they have not infringed any of the terms and conditions prescribed therein; and that their applications are liable to be rejected in case of any

infringement of the terms and conditions. If the statement made or information furnished is not correct, it would render them liable for disciplinary

action under the Act and the regulations framed thereunder; they should not accept any audit or any other assignment allotted on the basis of the

information furnished if the application form is accepted but the firm is not in existence at the time of audit; and that the signatures should

correspond to those in the Institute''s records.

18. Similarly, the Controller and Auditor-General of India (''C&AG''), the first respondent in W.P. Nos. 12630 and 12631 to 1999, a

constitutional authority appointed by the President of India, by a warrant issued under article 148 of the Constitution of India, while discharging his duties under article 149, read with section 619(3), of the Companies Act, 1956, is empowered to appoint auditors for auditing the accounts of the

Government Companies and Public Sector Undertakings and also empowered to direct the manner in which the accounts of such Government

Companies and Public Sector Undertakings shall be audited by the auditors so appointed by the C & AG.

19. The C & AG, accordingly, invited applications in the prescribed for-mat, from the Chartered Accountants for the purpose of empanelment of

auditors for allotment of audit work of Government Companies and Public Sector Undertakings, as required u/s 619(3) of the Companies Act and

published the application form at pages 65 to 72 in June 1999 issue of Journal of the Institute of Chartered Accountants of India, requiring the

Chartered Accountants to furnish similar details and documents as required by the Institute.

20. The last date for submitting the filled in application forms to the C & AG was 7-7-1999 and the applications should be in the prescribed

format. If the application forms are not supported with specific documentary evidence, they are liable to be rejected summarily and no

correspondence will be entertained in that regard. Firms already empanelled must also send their particulars in the prescribed format, enclosing the

attested true copies of the certificates as well as other documents required as per the application form. The firms which are already empanelled, but

do not send their particulars afresh are liable to be suspended from the panel and they are not eligible afresh and, consequently, the audits if any

allotted to the existing firms which are under the panel but which do not fulfil any of the criteria for the empanelment, would be withdrawn.

20.1 The notification also prescribed the eligibility criteria for empanelment in Special Regions, such as, Jammu. & Kashmir, Orissa, North-Eastern

States, Sikkim, Andaman & Nicobar Islands and Lakshadweep Island, as well as other regions anywhere in the country. The eligibility criteria are

as follows:

Special Regions:

(i) Sole Proprietorship Firms: Sole proprietorship firm whose proprietor is an FCA and is engaged full-time with the firm,

(ii) Partnership Firms . Partnership firms with at least one full-time partner who should be an FCA. anywhere in the country:

Partnership firms with at least two full-time partners, one of whom should be an FCA.

OR

Partnership firms with at least two FCA partners (of whom at least one should be a full-time partner based in India) and 20 full-time Chartered

Accountant employees in India.

20.2 The following guidelines have been framed for allotment of audit:

(a) The ranking of the firms would be decided, inter alia, on the basis of only full-time partners in case of partnership firms or full-time sole

proprietors in case of sole proprietorship firms.

(b) The status of partners/CA employees of a firm will be reckoned as on 1-4-1999.

(c) The allotment of audits of Public Sector Undertakings would be done according to the ranking of the firm which will be based on the aggregate

point score. Points have been given for the experience of the firm; for the partners of the firm; for the long association of the partners; and for the

employees of the firm.

(d) The selection of statutory auditors for the audit of major Public Sector Undertakings falling in sectors specified in the Annexures to the

application form would be done through a judgmental process taking into consideration the firm''s seniority, number of partners/ number of

Chartered Accountant employees in the firm and the experience of the firm in the requisite areas as given in the Annexure.

20.3 The application form also clearly states that in case of two or more firms having partners in common, only one of the firms would be

considered for empanelment. While determining the ranking of the empanelled firm, no point will be given on account of partners sharing with other

(sister) firms. The application also provides columns to mention the details of the technically qualified employees, viz., Engineers, Cost

Accountants, Lawyers, Valuers, Surveyors and also the non-technical staff and their qualifications. The applicants should also give the particulars

indicating the name of the company audited, whether it is a public limited company or a private limited company, the turnover of the company, nature of business, years of audit, etc.

21. Thereafter, in the letter dated 1-7-1999 issued in the Southern India Regional Council of the Institute of Chartered Accountants, Vol. 25,

published in July 1999, the C & AG required the attested true copies of the following documents:

(a) Latest Income Tax returns of the firm as well as or the partners,

(b) Latest partnership deed, and

(c) Latest financial statement of the firm along with its schedules.

22. The petitioners complain that the details and the documents required to be furnished as per the comprehensive application forms, notified by

the Institute and C & AG referred to above, have no nexus to the object of preparing a multipurpose empanelment; violates articles 14, 19(1)(g)

and 21 of the Constitution and also ultra vires the provisions of the Act as well as Chapter X of the Regulations and, hence, the above writ

petitions.

23. The grievance of the petitioners, legal contentions and the reliefs sought f or in the above writ petitions are identical in nature and, therefore, all

the above writ petitions are heard together.

24. Mr. Arvind P. Datar, the learned counsel for the petitioners, contends that certain information sought for and the documents to be enclosed

with the application form are more personal in nature and they are not in any way either related or relevant to the professional competency required

for the preparation of the panel, nor for any statistical purpose, much less, to update the same; these informations and documents cannot be the

yardstick to assess the professional proficiency or competency, of the petitioners or their technical ability, the informations and documents hitherto

called for by the Institute for the purpose of preparation of the panel themselves are self-sufficient; and the existing system of preparation of panel

was going on smoothly for all these years without any grievance or complaint from any quarter.

24.1 Mr. Arvind P. Datar contends that the information and documents already furnished by the members for the maintenance of the Register as

required u/s 19(1), read with section 2(1)(g), of the Act as well as regulation 3, read with Form T in Schedule A to the Regulations and the information and details furnished in the List of Members prepared u/s 19(3) of the Act, read with regulations 185 and 186(1) themselves are self-

sufficient for the purpose of empanelment. Assuming that the Council proposes to prescribe any other particulars in order to maintain the status and

standard of the professional qualification of the members of the Institute as required u/s 30(2)(c) or for the purpose of maintaining the said Register

of the Members of the Institute u/s 19(1), read with sections 19(2)(c) and 30(2)(b), (a), (e) and (h) or for publishing such list of members u/s 19(3)

of the Act or for any other matter to achieve the object of the Act as per section 30(2)(1) of the Act, the same shall be given effect to only by

framing appropriate regulation, getting the approval of the Central Government as per section 30(3), notifying the same in the Gazette of India by

exercising powers u/s 30(1) and tabling the same as per section 30B. Otherwise, the prescription of such particulars would suffer from want of

authority of law.

24.2 According to Mr. Arvind P. Datar, there is no necessity to insist for the details and production of the documents relating to the Income Tax

returns of the firm as well as the personal income of the individual partners of the firm and that of the companies audited with their respective net

worth/turnover, Income Tax returns and assessment order, except as provided u/s 138 of the Income Tax Act; the requirement to furnish the

Income Tax returns and assessment orders of the audit firms and the partners as well are highly arbitrary and irrational; and similarly there is no

requirement for furnishing the particulars relating to the indebtedness and the credit card details of the individual partners of the firm, professionals

employed in the firm such as Cost Accountants, Engineers, Lawyers, etc., and other employees of the firm.

24.3 Mr. Arvind P. Datar further contends that except a bald allegation, no material is placed before this Court as to the alleged malpractice of

furnishing false or incorrect particulars by the audit firms for the empanelment; nor any details are available as to the alleged mushroom growth of

bogus firms or as to the misuse of their office by filing wrong declaration for the purpose of empanelment. Placing reliance on the decisions in

Laxmi Khandsari and Others Vs. State of U.P. and Others, ; Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed

 

Usmanbhai and Another, and Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, , it is contended that the

onus of proving to the satisfaction of the Court that the restriction imposed is reasonable lies upon the State. However, it is contended that the

respondents have not discharged their onus to establish the mischief in the existing system.

24.4 Mr. Arvind P. Datar complains that rendering those who do not furnish such information and documents contemplated under the impugned

applications as ineligible for empanelment is punitive, unreasonable, arbitrary and violates articles 14 and 19(1)(g) as they would, consequently, be

deprived of the opportunity of being considered for appointment as auditors of the nationalised banks and regional rural banks under the control of

the RBI as well as that of Public Sector Undertakings under the control of C & AG.

24.5 Mr. Arvind P. Datar contends that the refusal to empanel the members who do not comply with the requirements under the impugned

application forms and the consequential classification created among the members whose names are found in the Register prepared u/s 19(1), read

with section 2(1)(g) as well as regulation 3 read with Form T in schedule A to the Regulations and those names found in the List of Members

prepared u/s 19(3), read with regulations 185 and 186 (1), cannot be said to be reasonable under article 19(6) inasmuch as the respondents have

not discharged their onus to prove that the information and documents are relevant for multipurpose empanelment and in this regard, Mr. Arvind P.

Datar has relied on the decisions in Laxyni Khandsari''s case (supra) and Indian Council of Legal Aid & Advice''s case (supra).

24.6 Even though the respondents would contend that the above particulars and documents called for from the members would be kept secret, the

respondents have also reserved their right to use such information and documents sought to be furnished by the petitioners for any other purpose

they deem fit, which is arbitrary and unreasonable and such reservation is punitive and violates the principles of natural justice.

24.7 Mr. Arvind P. Datar, while elaborating his arguments, further contends that the particulars relating to the professionals employed in the firm,

previous experience as statutory auditor of companies other than Government Companies and Banks and Insurance Companies, partners/

 

Proprietors those who have signed the audit report/ conducted the audit, previous experience as statutory auditor of Head/Central Office(s) or

branches of Insurance Companies, partners/ proprietor those who have signed the Audit Report/ conducted the Audit, experience as Concurrent/

Internal Auditor of Head/Central Office/Branches of Insurance Companies and the details of partners/ proprietor who have signed the audit report/

conducted the audit, previous experience in rendering professional services to Government Companies and the details of partners/proprietor who

signed the Audit Report/rendered the relevant service, and previous experience in rendering professional services to Co-operative Institutions

including Co-operative Banks and the details relating to the concern and partners/ proprietor who signed the audit report/ rendered the relevant

services vide Annexures J, K, L, M, N and 0, have no relevance to the object of preparation of panel. The creation of a category of foreign firms

will obviously discriminate against Indian firms not fulfilling the foreign criteria. Even assuming that the object and purpose behind insisting on

furnishing such information and documents are noble and laudable, the Institute have no legal sanctity or authority to insist on the same for the

purpose of empanelment, without following the procedure known to law. Placing reliance on (i) State of Uttar Pradesh Vs. Singhara Singh and

Others, and (ii) State of U.P. v. Kishori Lal Minocha : [1980]2SCR724 , it is contended that since there is no law under which the Institute could

ask for these informations and documents from the applicants, the applicants cannot be compelled to furnish such particulars and documents by

informing them that unless such informations and documents are furnished, their applications will not be considered f or empanelment. It is further

contended that the Institute cannot seek such particulars through the impugned application form indirectly which the Institute cannot seek directly

under Form - A of Schedule ""I"".

24.8 Mr. Arvind P. Datar contends that the Act itself intends to regulate the profession of Chartered Accountants and, therefore, these particulars

and documents are not at all relevant for assessing the professional and technical competency of the applicants for the purpose of empanelment.

The details relating to personal financial status of the members by any stretch of imagination cannot be construed as a legitimate yardstick to assess the professional and technical competency of the members; nor such criteria can be said to weigh the status and standard of professional

qualification of members of the Institute.

24.9 Mr. Arvind P. Datar further contends that even assuming that the Institute requires these particulars and documents in order to regulate the

profession of Chartered Accountants and to maintain the standard of profession, the Institute can call for these particulars and documents only by

framing appropriate regulation in that regard, approving the same by the Central Government as per section 30(3), tabling the same before each

House of Parliament as per section 30B and notifying the same in the Gazette of India as per sections 30(1) and 30B, but not by enlarging the

powers conferred under regulation 186(2). The ratio laid down in Singhara Singh''s case (supra) has been relied on in this regard.

24.10 Mr. Arvind P. Datar further contends that since the Act and Regulations itself provide for taking appropriate disciplinary action against the

erring members who furnish false and incorrect information for preparing the list u/s 19(3), read with regulations 185 and 186(1), there is no

necessity to call for these informations and documents through the impugned application forms from all the Chartered Accountants in the country.

That apart, in the absence of any guidelines as to how these particulars are to be used for the purpose of empanelment, the requirement of such

particulars by the Institute is arbitrary and unreasonable.

24.11 Referring to the decisions in (i) Mrs. Neera Mathur Vs. Life Insurance Corporation of India and another, and (ii) R. Rajagopal alias R.R.

Gopal and Another Vs. State of Tamil Nadu and Others, , wherein the Apex Court held that the right of privacy is implicit in right to life and liberty

guaranteed under article 21 of the Constitution, it is contended that the compulsion imposed by the respondents on the petitioners to produce such

particulars and documents relating to Income Tax returns, assessment orders and credit cards under Annexures G, J, K, L, M, N and 0 to the

impugned application forms is not only irrelevant, irrational, arbitrary, unreasonable and suffers from want of nexus to the purpose of empanelment,

but also infringes the right of privacy of individual partners protected under article 21. Placing reliance on the decision in Neera Mathurs case

(supra), it is contended that even though certain personal details are required for administrative reasons, such details should not be insisted upon if

they are embarrassing though not humiliating and, therefore, the details regarding the personal Income Tax return, Income Tax assessment orders

and credit cards of the members should not be insisted upon as it would otherwise offend article 21.

24.12 It is, therefore, contended that the decision of the Institute to call for such information and documents is arbitrary and unreasonable, violating

articles 14, 19(1)(g) and 2 1.

25. Per Conira, Mr. N.R. Chandran, the learned senior counsel, appearing for the Institute, at the outset, raised a preliminary objection that the

above writ petitions are not maintainable for the following reasons:

(i) Firstly, the decision of the Professional Development Committee, as approved by the Counsel of the Institute, requiring the members to furnish

the details and documents as per the impugned application form for the multipurpose empanelment as well as such decision of the C & AG are

policy decisions of statutory/ constitutional expert bodies, respectively, and such policy decisions cannot be challenged by seeking a writ of

declaration, and in such a case, the only proper remedy for the petitioners is to seek a writ of certiorari. In this regard, Mr. N.R. Chandran, the

learned senior counsel, cited the decision in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, .

(ii) Secondly, it is contended that many of the members of the petitioner societies have already submitted their application forms furnishing the

required particulars and documents and, therefore, the petitioners have no locus standi to maintain the above writ petitions.

25.1 Assuming the above writ petitions are maintainable, Mr. N.R. Chandran, the learned senior counsel, contends that the RBI is under a

statutory obligation to appoint auditors to audit the accounts of the nationalised banks and regional rural banks, as per sections 29,30 and 31 of the

Banking Regulation Act, 1949. Similarly, as per section 619(2) of the Companies Act, C & AG has an obligation to appoint the auditors to the

Public Sector Undertakings. Mr. N.R. Chandran, the learned senior counsel, points out that these appointment of auditors should satisfy section

226 of the Companies Act. It is optional for the members to apply for empanelment and same is not compulsory or mandatory as the empanelment

 

is totally different from the Register maintained by the Institute u/s 19(1), read with section 2(g) as well as regulation 3 read with Form 1 in

Schedule A to the Regulations and the list prepared u/s 19(3) read with regulations 185 and 186(1).

25.2 According to Mr. N.R. Chandran, the learned senior counsel, the empanelment of auditors is, thus, prepared by the Institute and C & AG for

the past 15 years. However, by experience, the Institute has come across certain failures on the part of the members in disclosing certain material

facts known to them, which are necessary to make their financial statements not misleading; failure to report the material mis-statement known to

them to appear in financial statement with which they are concerned in professional capacity; failure to notify attention to any material departure

from the generally accepted procedure of audit application to the circumstances, etc., and other discrepancies like filing multiple applications by the

firms having common partners, filing applications by members whose main occupation is not practising, etc. Taking note of these failures and

discrepancies, the Council, by exercising power u/s 17(2) of the Act, appointed an expert body, viz., Professional Development Committee, the

second respondent in W.P. Nos. 12479 and 12480 of 1999, to go into the above failures and discrepancies and provide appropriate

recommendations for preparing a multipurpose empanelment of the Chartered Accountants as per the requirements of the statutory authorities and

in accordance with the provisions of the Act.

25.3 Mr. N.R. Chandran, the learned senior counsel explains that these particulars and supporting documents are required to cheek certain alleged

malpractices that were brought to the notice of the Professional Development Committee.

25.4 Mr. N.R. Chandran, the learned senior counsel, contends that since the requirement of these particulars and documents does not amount to a

new regulation, there is no reason to test the same by the doctrine of mischief.

25.5 Mr. N.R. Chandran, the learned senior counsel further contends that these particulars are though diverse in nature relevant to the assessee,

the professional competency and experience of the Chartered Accountants.

25.6 Placing reliance on the ratio laid down in SEMAKURTI SOMANNA AND OTHERS Vs. VANKADARI SUBBARAO AND

 

ANOTHERS., that the Income Tax returns and assessment orders are public documents, Mr. N.R. Chandran, the learned senior counsel,

contends that the requirement to produce such Income Tax returns and assessment orders will not, in any way, offend the personal rights and

privacy of the petitioners inasmuch as they are intended to avoid multiple applications and to facilitate equal distribution of work to more members,

nor section 138 prohibits such disclosure. It is, therefore, clear that the impugned requirements have a direct nexus to the object of preparation of

multipurpose empanelment and, hence, it cannot be complained that the requirement of these details and documents suffers from want of nexus.

25.7 Mr. N.R. Chandran, the learned senior counsel further contends that the disciplinary powers available under the Act and Regulations cannot

be a bar for requiring the members to furnish the above details and documents to prepare a full panel of auditors in order to achieve the object of

the Act; the requirement of such details and documents, therefore, would not amount to a professional misconduct, nor a violation of article 14 of

the Constitution and the reservation of right to use the information received from the members for any purpose also cannot be complained of as

punitive and arbitrary.

25.8 Mr. N.R. Chandran, the learned senior counsel, contends that as the petitioners have no right to appointment merely because they were

empanelled as notified by the Institute, there is no violation of article 19(1)(g) of the Constitution and, consequently, there is no necessity for the

respondents to prove that these details and documents required under the impugned applications are reasonable nor to prove that the refusal to

empanel the members for want of such details and documents amounts to a reasonable restriction, within the meaning of article 19(6) of the

Constitution. Hence, the ratio laid down in Laxmi Khandsaris case (supra), Municipal Corpn.''s case (supra) and Indian Council of Legal Aid &

Advice case (supra) is not applicable to the facts and circumstances of the present case.

25.9 Mr. N.R. Chandran, the learned senior counsel further contends that the question of providing an opportunity before rejecting the application

for empanelment forwant of details and documents does not arise as such a decision is only ministerial in nature, but not a quasi-judicial decision inasmuch as even the inclusion of the members in the panel itself does not confer any right f or allotment of audit to the petitioner, and as such,

article 19(1)(g) is not attracted.

25.10 Placing reliance on the decision of the Apex Court in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, as followed

in Chandra Gupta, I.F.S. Vs. The Secretary, Govt. of India, Ministry of Environment and Forests and others, , Mr. N.R. Chandran, the learned

senior counsel, contends that the right to be considered for promotion is a condition of service, but the mere chance of promotion is not a condition

of service. Quoting the above ratio, Mr. N.R. Chandran, the learned senior counsel, argues that the petitioners get only a change of allotment of

work by being empanelled and, therefore, such chance of allotment of work by being on the panel or denial of work by not being on the panel, in

any way, will not attract article 19(1)(g) as the right to practice is not in any way curtailed and the mere inconvenience in the profession cannot be a

ground for widening the scope of article 19(1)(g).

25.11 Again, relying on the decision in Dr. Haniraj L. Chulani Vs. Bar Council of Maharashtra and Goa, , Mr. N.R. Chandran, the learned senior

counsel, contends that the impugned proposal of carving out and short listing the Chartered Accountants in the right of the details and documents

cannot be held to be arbitrary, attracting articles 14 and 19(1)(g) of the Constitution of India, nor it could be contended that the Institute and C &

AG proposed to act with unguided powers in rejecting the applications for want of such details and documents.

25.12 According to Mr. N.R. Chandran, the learned senior counsel, the contention that the requirement of details and documents violates the right

of privacy protected under article 21 of the Constitution is misconceived and the decisions in Neera Mathur''s case (supra) and R. Rajagopal''s

case (supra), relied upon on behalf of the petitioners in this regard, are inappropriate and do not fit in the facts and circumstances of the case.

25.13 Placing reliance on the decisions in S. Narayan Iyer Vs. The Union of India (UOI) and Another, and Krishnan Kakkanth Vs. Government

of Kerala and ohters, , Mr. N.R. Chandran, the learned senior counsel, contends that the impugned decision of the statutory and constitutional

authorities viz., the Institute and C & AG, respectively, being based on the recommendations of the Expert Committee, cannot be challenged by

the petitioners by way of judicial review. Again, placing reliance on the decisions in (1) Shyam Babu Verma and Others Vs. Union of India (UOI)

and Others, , (ii) Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., , (iii)

Farida Shaukath v. Unit Trust of India (1999) CTC 736, (iv) Punjab Communications Ltd. Vs. Union of India and Others, , and (v) E.

Chandravadanam and 4 others Vs. The State of Tamil Nadu and 2 others, , Mr. N.R. Chandran, the learned senior counsel, contends that the

requirement of the impugned details and the documents are based on the policy decisions of the statutory and constitutional authorities, born out of

necessity and relevancy, and cannot be challenged under judicial review as the same satisfies the Wednesbury principles of rationality.

25.14 Relying on the decision in Krishnan Kakkanths case (supra), Mr. N.R. Chandran, the learned senior counsel, contends that when there are

substantial reasons for requiring these details and documents in the larger interest, as a matter of public policy, the same cannot be said to be

violative of articles 14 and 19(1)(g) of the Constitution.

25.15 Mr. N.R. Chandran, the learned senior counsel, placing reliance on the decision in Madan Lal and Others Vs. State of Jammu and Kashmir

and Others, , contends that in the absence of any allegation of bias and mala fide against the expert body, this Court cannot scrutinise the decision

of the expert body merely on imaginary and hypothetical grounds and this Court cannot sit in appeal over such decision of the expert body.

26. Mr. T. Srinivasamoorthy, the learned counsel for the respondents in W.P. Nos. 12630 and 12631 of 1999, adopting the arguments of Mr.

N.R. Chandran, the learned senior counsel, contends that these details and documents are required to assess the capability and suitability of the

members and to test not only the qualification but also to ensure that they are not disqualified in other aspects; there is no compulsion for the

petitioners to seek empanelment under any provision of the Act; nor the petitioners have any right for allotment of audit work on the basis of

empanelment; and in any event, quoting the averment in the counter/affidavit furnished by C & AG, the learned counsel states that if the information

furnished by the firms are found to be incorrect, C & AG would give a show-cause notice to the Chartered Accountants before refusing to

empanel them.

27. In reply, Mr. Arvind P. Datar, the learned counsel for the petitioners, contends that the particulars and documents that are required under the

impugned application forms for the purpose of empanelment are outside the scope and object of the Act and the Regulations and, therefore, the

same is ultra vires the Act and Regulations as well as violative of articles 14, 19(1)(g) and 21 of the Constitution and as such, the petitioners can

very well challenge the same by way of a writ of declaration. Even assuming that the petitioners have prayed for an improper relief of a writ of

declaration, this Court, exercising its extraordinary jurisdiction under article 226, can entertain the writ petitions, mould the relief sought for by the

petitioners and grant appropriate relief as deemed fit and necessary on the facts and circumstances of the case. Mr. Datar further contends that

assuming many of the members of the petitioner-societies apply for empanelment as per the impugned application form, the petitioners can still

maintain the above writ petitions as it is well-settled in law that there is no waiver of fundamental rights.

27.1 Mr. Arvind P. Datar strongly disputes the case of the respondents that the details and documents are required for assessing the professional

competency and potentiality of the Chartered Accountants, the reasons explained in the counter-affidavit cannot be substituted to substantiate the

decision of the respondents as there is no material before the Court to satisfy that these details and documents are reasonable and related to

professional expertise; since the respondents could disqualify the members for empanelment for want of information and documents required under

the application, the petitioners would not be considered for appointment of auditors in the Nationalised Bank/Regional Rural Bank as well as

Public Sector Undertakings and, therefore, their right conferred under the articles is certainly infringed, attracting article 19(1)(g), and such right

protected under article 19(1)(g) could be infringed for want of such details and documents unless they are proved to be reasonable and relevant

within the meaning of article 19(6) and, hence, the onus lies on the respondents to place substantial materials before this Court to prove that the

required details and documents are reasonable and relevant, as protected under article 19(6). Mr. Datar, therefore, contends that the phrase

''reasonable restriction'' in article 19(6) implies an intelligent care and deliberation, i.e., the choice of a course which reason dictates as held by the

Apex Court in Chintaman Rao Vs. The State of Madhya Pradesh, and further relying upon the decision in R.M. Seshadri Vs. The District

Magistrate, Tanjore and Another, , contends that any condition which is more in the nature of an imposition than a restriction, is held to be

abnoxious and unreasonable and cannot be considered as reasonable restriction within the meaning of article 19(6) of the Constitution. Relying on

the above ratio, Mr. Datar contends that the particulars and the documents required by the respondents are in no way relevant for assessing the

professional competency, as they are very personal and, therefore, rendering the members disqualified for want of such details and documents

which are irrelevant to assess the professional competency amounts to imposition but not a reasonable restriction.

27.2 Mr. Datar distinguished the decision in Krishnan Kakkanth''s case (supra) and contends that the petitioners are entitled to challenge the policy

decision of the respondents if the decision of the respondents requiring the petitioners to furnish the details and documents has no nexus for the

object to be achieved and the same is arbitrary, capricious and unreasonable and, therefore, violates articles 14, 19(1)(g) and 21.

27.3 Mr, Arvind P. Datar further replies that the details and documents required are attracted by the Wednesbury principles of irrationality and

perversity. Hence, it is contended that the decisions relied upon by the respondents, viz., S. Narayan Iyer''s case (supra), Sham Babu Verma''s

case (supra), Tala Iron & Steel Co. Ltd.''s case (supra), Farida Shaukath''s case (supra), Chandravadanam E.''s case (supra) and Punjab

Communications Ltd.''s case (supra), are not applicable to the f acts and circumstances of the instant case; since the refusal to consider the

members for empanelment for want of details and information ultimately deprives the right of the petitioners to be appointed as auditors in the

Nationalised Bank/ Regional Rural Banks by RBI and Public Sector Undertakings by C & AG, attracting article 19(1)(g), the onus lies on the

respondents to prove that the details and documents required in the impugned application form are relevant and reasonable; and in the absence of any material supporting such policy decisions, the same are held to be perverse and suffers from want of nexus and attracts articles 14, 19(1)(g)

and 21 of the Constitution of India.

27.4 Mr. Datar also contends that the respondents being statutory/ constitutional authorities, are expected to act transparently, fairly and openly, as

they are bound by public accountability. Placing reliance on the decisions in Mohinder Singh Gill and Another Vs. The Chief Election

Commissioner, New Delhi and Others, and Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , contends that in the absence of reasons

transparent on the Notification, the Institute of C & AG are not entitled to supplement fresh reasons by filing a counter affidavit substantiating their

action. Therefore, they should have disclosed materials and reasons for requiring these details and documents; or otherwise, such requirements are

held to be perverse, capricious and arbitrary, attracting article 14 of the Constitution.

27.5 Mr. Datar further contends that the respondents are not entitled to seek fishing information relating to personal and private affairs of the

individual partner with regard to their indebtedness and credit cards, as they are unrelated to professional competency and potentiality. In this

regard, he places reliance on the decision of D.B.S. Financial Services Pvt. Ltd. Vs. Smt. M. George, Second Income Tax Officer and others, .

He also contends that the refusal to consider the applications which do not contain the correct information, even without furnishing reasonable

opportunity to them is unfair, unreasonable and violative of the principles of natural justice.

28. I have given a careful consideration to the submissions of both sides.

29. The following issues arise for my consideration in the above writ petitions :

i. whether the above writ petitions are maintainable in law ? and

ii. whether the details and documents required in the impugned application violate articles 14, 19(1)(g) and 21 of the Constitution of India, as well

as the principles of natural justice ?

30.1 Point No. (i) whether the above writ petitions are maintainable in law?

In W.P. Nos. 12479 and 12480 of 1999, the petitioner seeks a writ of declaration, challenging the decision of an expert body, namely, the

 

Professional Development Committee, as approved by the counsel of the Institute, requiting the details and documents under the impugned

application for the empanelment of the Chartered Accountants. Similar decision of the C & AG, a constitutional authority, has been challenged by

the petitioner in W.P. Nos. 12630 and 12631 of 1999. The petitioners allege that the details and documents required in the impugned application

in the above writ petitions are arbitrary, perverse and violative of articles 14, 19(1)(g) and 21 of the Constitution and also violative of the principles

of natural justice and ultra vires the provisions of the Chartered Accountants Act and Chapter X of the Regulations framed thereunder. Argued Mr.

N.R. Chandran, learned senior counsel, placing reliance on the decision in Prabodh Verma''s case (supra) that a writ of declaration can be prayed

only where constitutional validity of the decision of a State or the authority is raised, but not otherwise.

30.2 In Prabodh Verma''s case (supra), the petitioners sought for a writ of certiorari to declare an Act or an Ordinance as unconstitutional and

void, but the Apex Court held that where the petitioners contend that an Act or an Ordinance is unconstitutional or void, the appropriate relief for

them is to seek only a writ of declaration and not a writ of certiorari which can be granted only against the inferior courts or Tribunals or authorities

to transmit the records of the proceedings pending before them for scrutiny of the same by the High Court or the Supreme Court, if necessary, and

for quashing the same. Inviting my attention to the observation of the Apex Court that in such case, the High Court ought not to have proceeded to

hear and dispose of the writ petition without insisting upon the petitioner to amend the prayer in the writ petition, Mr. N.R. Chandran, the learned

senior counsel, contends that the petitioner, having challenged the policy decision of the expert committee which has culminated in the impugned

application form required by the Institute and the C & AG in exercise of their statutory powers, ought to have sought for a writ of certiorari instead

of a writ of declaration, as constitutional validity of the impugned application form does not arise and, therefore, argues that the above writ petitions

are liable to be dismissed for improper relief sought for.

30.3 There is no dispute on the issue that the recommendations of the Professional Development Committee, an expert body, for a comprehensive application form seeking the impugned details and documents, had been approved by the statutory authority, viz., the Institute in W.P. Nos. 12479

and 12480 of 1999 and a similar decision had also been taken by the constitutional authority, viz., C & AG in W.P. Nos. 12630 and 12631 of

1999, is the subject-matter in all these writ petitions. It may be noted that the said policy decision of the statutory /constitutional authorities is

challenged not only on the ground that the same is unreasonable, unfair, arbitrary, capricious, violative of articles 14, 19(1)(g) and 21 of the

Constitution and also violative of the principles of natural justice, but also as ultra vires the provisions of the Act and Chapter X of the Regulations,

as pointed out by Mr. Arvind P. Datar, the learned counsel for the petitioners. Therefore, taking into consideration the substantial grounds raised in

the above petitions, it may not be proper for this Court to dismiss the above writ petitions merely because they have prayed for an improper relief.

Hence, in order to meet the ends of justice instead of refusing to hear the aggrieved party purely on a technical and narrow procedural ground, the

petitioners are required to be heard on merits, as the powers conferred on the courts under article 226 of the Constitution are wide and flexible to

mould the relief sought for, as held in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , B.R. Ramabhadriah Vs. Secretary,

Food and Agriculture Department, Andhra Pradesh and others, , M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd.,

Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, , Ashok v. State of Karnalaka AIR 1992 SC 80, State of Rajasthan Vs. Hindustan

Sugar Mills Ltd. and Others, and Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, and such a power of

judicial review can elastically be exercised to render ''justice'' wherever injustice is complained of; and, therefore, the exercise of judicial review

need not be restricted for want of proper relief. Hence, in my considered opinion, these writ petitioners deserve to be heard on merits irrespective

of the cob-webs of technicalities; otherwise, the petitioners would be let down to a bottomless pit.

30.4 Similarly, where the petitioners complain that their fundamental rights are infringed, it is well-settled in law that there cannot be any waiver f or

breach of the fundamental rights, as held in Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, . Therefore, refusing to hear the petitioners merely on a technical ground that some of the petitioners have already applied in a prescribed form, would render

the powers of judicial review of this Court conferred under article 226 of the Constitution to suffer from judicial shackle.

30.5 Point No. (i) is answered accordingly.

31. Point No. (it) whether the impugned details and documents required in the impugned application violate articles 14, 19(1)(g) and 21 of the

Constitution of India as well as the principles of natural justice? Section 226 of the Companies Act, contemplates that a person shall not be

qualified for appointment as auditor of a company unless he is a Chartered Accountant within the meaning of the Chartered Accountants Act and is

not disqualified for such appointment as prescribed therein. Therefore, apart from the ''Register'' maintained by the Institute as per section 19(1)

and the ''list'' prepared as per section 19(3), the Institute is also required to prepare a panel of Chartered Accountants as per the requirement

contemplated u/s 226 for appointment of auditors in the Nationalised Banks and Regional Rural Banks by the RBI. Similarly, the C & AG is

required to prepare a panel for appointing auditors, in the Public Sector Undertakings. Necessarily, the details and documents required by the

Institute and C & AG need not be the same as required for the purpose of maintaining the Register as per section 19(1) and for preparing the list

as per section 19(3).

32. It appears that certain discrepancies were brought to the notice of the Institute by the RBI as well as to the C & AG in furnishing information

for empanelment of auditors. It is also felt by the Institute as well as the C & AG that the informations furnished by the auditors in the existing

system are insufficient for preparing the panel as per the requirement of law or give way for growth of bogus firms, depriving the legitimate rights of

the qualified auditors. These alleged malpractices include (a) showing members as partners who are not in fact associated with the functioning of

the firm; (b) showing branch office/head office at places where they are not actually functioning; (c) inclusion of members who are in full-time

employment as partners without disclosing the f act of their employment; (a) showing the members as in-charge of the branch office without fulfilling

the prescribed conditions and (c) showing the members as partners who are also engaged in other occupations without disclosing the fact about the

engagement. Unmistakably, these malpractices are considered as detrimental not only to the public image of the profession of Chartered

Accountants but also to the very interest of the society at large.

33. The Professional Development Committee, in order to check the mushroom growth of bogus audit firms, to arrest malpractice in furnishing

false, incorrect and misleading particulars by the audit firms and to prepare a panel of genuine and bona fide firms to protect the interests of the

financial institutions in the larger interest of the society, recommended to seek the impugned details and documents in a composite application form

from the members of the Institute who apply for empanelment, which are relevant for the appointment of Auditors in Nationalised Banks and

Regional Rural Banks by the RBI. After the approval of the Council, the Institute invited the impugned details and documents in a prescribed

format from the members of the Institute for empanelment of Chartered Accountants, for the appointment of auditors of the banks, notifying that

the applications which do not contain the impugned details and documents would not be considered for empanelment.

34. These details and the documents required under the impugned application as well as in the Annexures G, H, 1, J, K, L, M, N and 0 are related

to the income and net worth of the firms as well as the individual partners; the constitution of the firm; the name of their bankers; credit limit and

bank account number; latest balance sheet; standing of the firms with the details of empanelment with RBI and C & AG, length of empanelment;

past assignment; maximum size of project handled and value of the project and infrastructure, manpower with list of senior executives and other

professionals like Cost Accountants, lawyers, engineers, etc. These particulars are required to prepare a fool-proof panel of auditors supported

with authenticated information from the applicants themselves, which would enable the Institute to check the malpractice at the threshold and also

to hold the erring members with accountability and, therefore, there is no reason to feel either aggrieved or prejudiced by such measures which are

purely intended to ensure credibility to the empanelment mechanism and to enhance the image of the profession in the eye of public. Further, as

rightly pointed out by Mr. N.R. Chandran, the learned senior counsel, the details of indebtedness including the outstandings in respect of credit

cards which exceeds Rs. 1,000 of the Public Sectors Banks/Regional Rural Banks, as required in Annexure G and the details of directorship in

Public Sector Banks/Regional Rural Banks, as required in Annexure H, are required to ensure that the applicants are in no way disqualified u/s

226. Similarly, particulars, as required in Annexures 1, K, L, M, N and 0 with the details of partners who have signed the audit report, are

required to assess the quantum of work they had undertaken, professional competency and their association with Public Sector Banks/ Regional

Rural Banks so that the conflict of interest between the banks and the applicants could be avoided. The particulars of professionals employed in

the firm, as required in Annexure J, are relevant to assess the professional potentiality, 1 am satisfied that these details are neither intended to

favour any multinational firms nor to interfere with the personal right of the individual member, much less the privacy, but they are intended to

assess the qualification, experience, competency, as well as to ensure that they are not disqualified in any manner as per section 226. Similarly, I

am satisfied that the documents to be attached with the application, viz., the partnership deed, the balance sheet, profit and loss account, latest

Income Tax returns and assessment order of the firms as well as individual partners, are necessary to cross-verify the details that are relevant for

the purpose of appointment of the auditors to the Public Sector Undertakings and the banks and that the production of Income Tax returns and the

assessment orders of the firm as well as individual partners would enable the Institute to (a) shortlist the applications by avoiding multiple

applications, and (b) to avoid the members who are actually not practising, so that the practising members would get job, thus, in overall, the

members who are actually practising would be benefited and the work would be distributed equally and impartially. Consequently, the

concentration of work with a few members who are partners in different firms would be avoided in order to facilitate equal distribution of work to

more members, according to their professional competency. No doubt, the Income Tax returns and the assessment orders, per se, would enable

the Institute to verify and eliminate the dummy and non-practising partners and to enlist the genuine and bona fide members in the panel, by crosschecking the information and the supporting documents of the firms as well as individual partners. I am also unable to appreciate the contention of

Mr. Arvind P. Datar that the requirement of such information relating to Income Tax returns and the assessment orders of the firms and the

individual partners cannot be caused to be disclosed, except as ordered u/s 138. Section 138 enables the authorities mentioned therein, to furnish

or cause to be furnished such information received or obtained by any Income Tax authorities. That are necessary to perform his or its functions

under the law mentioned therein, as per clause (1) of section 138, and further authorities the Central Government to direct by appropriate

Notification in the Official Gazette that no information or document shall be furnished or produced by a public servant in respect of such matters

relating to such class of the assessees or except such authorities, as may be specified in the order.

Notwithstanding anything contained u/s 138(1) or any other law for the time being in force, as per section 138(2). Section 138, thus, enables the

authorities mentioned therein or the Central Government to pass appropriate order in the matter of disclosure of the particulars of the assessees,

notwithstanding anything contained in any law in force. Therefore, in the absence of any Notification by the Central Government u/s 138(2), the

Institute and C & AG are not barred to seek disclosure of information relating to the assessees. When such information is relevant and necessary

to suit other statutory requirements for empanelment of the Chartered Accountants for the appointment of auditors in the Nationalised Banks and

Public Sector Undertakings as per section 226 and to achieve the object of the Chartered Accountants Act, viz- to regulate the profession of the

Chartered Accountants, and, hence, such disclosures would not in am way run counter to section 138 as rightly pointed out by Mr. N.R.

Cliandrall. To contend that such details would prejudice the persorial rights and privacy in my considered opinion is unsustainable in law as the

Income Tax returns and the assessment orders are public documents as held in Somanna''s and, therefore, the production of the same could not be

said to prejudice any one.

35. I am, therefore, satisfied that there are sufficient and tangible reasons to justify the requirement of the impugned details and documents. The

 

Professional Development Committee and the Council of the Institute are competent to take appropriate decision requiring all relevant particulars

for preparing a multipurpose empanelment and such efforts could not be termed either as irrelevant or unwise attempt; nor would amount to

framing of new regulation, requiring it to be notified in the Official Gazette as per section 30(1); not to be approved by the Central Government as

per section 30(3) nor to be laid before each House of Parliament as per section 30B and, therefore, the requirement of the impugned details and

documents are not in violation of sections 30(1), 30(3) and 30B.

36. As 1 am satisfied that the requirement of impugned details and documents has strong nexus with the object to be achieved under the Act and

rendering the members disqualified for want of impugned details and documents, the same could not be said to be unreasonable, arbitrary and

perverse, attracting articles 14, 19(1)(g) and 21. Further, as observed in detail, the Notification of the Institute as well as of the C & AG

apparently discloses the reasons for seeking the impugned details and documents. Nine discrepancies that were noticed while processing the

applications submitted by the members of the firms and seventeen points that are to be taken note of by the applicants while filling up the

applications for empanelment are expressly stated in the Notification. Therefore, 1 do not find any merit in the contention of Mr. Arvind P. Datar

that the impugned Notifications do not reflect any reason and that the respondents had f ailed to place materials to satisfy this Court for requiring

the impugned details and documents. Hence, 1 do not find any force in the arguments of Mr. Arvind P. Datar, relying on the decisions in Mohinder

Singh Gill''s case (supra) and Gordhandas Bhanfl''s case (supra) that the respondents are trying to supplement fresh reasons by filling counter to

substantiate their action.

37. The ratio laid down by the Apex Court in Dutta Associates (P.) Ltd. (1997) 1 SCC 53 that the decision-making process should be

transparent, fair and open and that the authorities have public accountability to maintain the fairness in their action without giving room for abuse of

powers for extraneous reasons, are not in any way attracted in the instant case.

38. I am also not impressed with the submission of Mr. Arvind P. Datar, placing reliance on D.B.S. Financial Services (P.) Ltd.''s case (supra),

 

that the respondents seek'' fishing information'' relating to personal and private affairs. Even though the impugned details and documents are related

to personal and private affairs, it cannot be disputed that these details and documents reflect the indebtedness of the members, which is directly

relevant to ensure that they are not in a way disqualified u/s 226. Hence, I do not agree that the impugned details and documents relating to the

personal income and credit cards of the petitioners offend the right to life and liberty of the petitioners, attracting article 21 and, therefore, the

reliance placed in Neera Mathurs case (supra) and R. Rajagopal''s case (supra) is of no avail.

39. Various decisions cited by Mr. Arvind Datar, viz., Laxmi Khandsaris case (supra), Municipal Corpn.s case (supra) and Indian Council of

Legal Aid & Advice''s case (supra), unmistakably support the proposition that, where there is a clear violation of article 19(1)(g), the State has to

justify, by acceptable evidence, inevitable consequence or sufficient materials that the restrictions, whether partial or incomplete, is in the public

interest and contains the quality of reasonableness; when the exercise of fundamental right is prohibited, the burden of providing that a total ban on

the exercise of the right alone may ensure the maintenance of the interest of general public, lies heavily upon the State; but the question as to what

are the reasonable restrictions, would naturally depend on the natural circumstances of the case, character of the statute, object which it seeks to

serve, and the existence of the circumstances. Therefore, to decide on violations of article 19(1)(g) in terms of any reasonable restriction, ''keeping

the public interest as a parameter'' should be the cardinal principle; but not the mere inconvenience of the individuals as complained.

40. The principles laid down in Papnasam Labour Union Vs. Madura Coats Ltd. and Another, that the restriction sought to be imposed on the

fundamental rights guaranteed under article 19 must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of

the society and object sought to be achieved; and that there must be a direct and proximate nexus or a reasonable connection between the

restriction imposed and the object sought to be achieved; cannot have universal application in all cases, as the question of reasonableness varies

from case to case. The reason that weighed for requiring the impugned details and documents in the instant case, does not, in any way, derogate the well-found principles laid down in the case referred to above.

41. As rightly contended by Mr. N.R. Chandran, the learned senior counsel, the mere disciplinary powers available under the Act, cannot, in any

way, disable the Institute to seek the impugned details and documents from & members who desire to apply for empanelment, in order to avoid

any malpractice at the threshold, and to achieve the object of the Act and to satisfy the requirement of the statutory authorities. Since the Institute

itself requires the members to furnish the details relating to the names of companies audited by the members and their networth and turnover,

furnishing of such details would not amount to a professional misconduct; but a member shall be deemed to be guilty of professional misconduct

only if he does not supply the information called for. Further, reservation of right to use the information received from the members for any purpose

in the interest of profession in addition to submitting the same to the appropriate authorities also cannot be complained of as arbitrary,

unreasonable, mala fide and violative of article 14. From the Notification, 1 find that the Institute does not undertake any responsibility with regard

to the allotment of audit or other assignment to any of the applicants and, therefore, as explained by Mr. N.R. Chandran, the learned senior

counsel, the empanelment will not confer any right for appointment of auditors. in other words, the members who apply for empanelment have no

right of appointment as auditors automatically, by virtue of such empanelment. Therefore, the refusal to consider the petitioners who have not

furnished the required details and documents, will not, in any way, violate article 19(1)(g) of the Constitution. Consequently, there is no necessity

for the respondents to satisfy that these required details and documents amount to reasonable restriction within the meaning of article 19(6). Hence,

I am unable to appreciate the arguments of Mr. Datar, basing on the ratio laid down in (i) Laxmi Khandkaris case (supra), (ii) Jan Mohamed

Usmanbhais case (supra), and (iii) Indian Council of Legal Aid & Advice''s case (supra), that the onus lies on the respondent-Institute/ C & AG to

place the materials before the Court, to prove that the impugned details and documents required are reasonable, relevant and necessary for the

multipurpose empanelment. In any event, there are substantial, relevant and tangible reasons to justify the requirement of these details and documents for. preparing the multipurpose empanelment. Further, as rightly contended by Mr. N.R. Chandran, the learned senior counsel, if article

19(1)(g) is not attracted, there isno obligation for the respondents to produce the materials to satisfy that the impugned details and documents are

reasonable and relevant.

42. As I am satisfied with the corporeal reasons for the requirement of the impugned details and documents, the ratio laid down in Chintaman rao''s

case (supra) as well as in R.M Seshadris case (supra) that ''reasonable restriction'' required within the meaning of article 19(6) should be based on

intelligent care, what the reason dictates and that any condition which is more of nature imposition than a restriction is held to be abnoxious, cannot

be considered as reasonable within the meaning of article 19(6), do not come in aid of the petitioners.

43. In Dr. Haniraj Chulani''s case (supra), the Apex Court has held that the rule restricting the entry of persons already carrying on other

professions for the enrolment as Advocate neither could fail foul on the alter of articles 14 and 19(1)(g), read with article 19(6), nor could be said

that unguided and unchartered powers are handed over on a plater to the Bar Council for regulating entry to the legal profession. Applying the

above ratio to the instant case, the impugned proposal of carving out and shortlisting the Chartered Accountants in the light of the details and

documents to be furnished with the impugned application form, cannot be complained as arbitrary and unreasonable, attracting articles 14 and

19(1)(g) of the Constitution, as such details and documents are required to prepare a multipurpose empanelment of auditors germane to high and

exacting the standards of auditing and to maintain the status and standard of professional qualification of the members of the Institute. Therefore,

refusing to consider the applications for want of such relevant details and documents, in my considered opinion, will not amount

to''conferring''unguided and unchartered powers on the Institute or C & AG. On the other hand, taking note of the reasonableness, relevancy and

necessity of these details and documents into consideration, it could be safely concluded that the same is found to be well-sustainable in law, not

attracting articles 14 and 19(1)(g) and once such conclusion is reached, the absolute requirement of article 21 would be out of way, and the petitioners, therefore, cannot be said to have been deprived of their right to livelihood by not being empanelled for want of such details and

documents and, therefore, the requirements under the impugned application cannot be faulted on the touchstone of article 2 1.

44. I am also unable to appreciate the arguments of Mr. Datar basing on the decision in Indian Council of Legal Aid & Advice''s case (supra), that

the requirement of impugned details and documents affects the right of the petitioners to practice, attracting articles 14 and 19(1)(g) of the

Constitution. In the said Bar Council''s case, the Apex Court considered the rule barring persons who have completed 45 years of age, from

enrolment as Advocate and held the same as ultra vires articles 14 and 19(1)(g), finding that there is no reliable, statistical or other materials placed

on record in support of the interference that ex-Government or quasi-judicial Government servants or the like indulged in undesirable activity, after

entering the profession, and held that the said rule is unreasonable and arbitrary, as the choice of the age of 45 years is made, keeping only a

certain group in mind, excluding the vast majority of other persons who are in service of the Government or quasi-judicial Government or similar

institutions at any point of time and, therefore, violates the principles of equality enshrined in article 14 of the Constitution. But, in the instant case,

the Institute and C & AG have come out with sufficient and convincing reasons for the requirement of the above details and documents and all the

members of the Institute are permitted to apply of empanelment uniformally, by furnishing all the relevant details and documents required in the

impugned application. Therefore, 1 do not see that the Institute and C & AG have arbitrarily and unreasonably insisted upon these details and

documents, offending article 14 and, hence, the reliance placed on the ratio laid down in Indian Council of Legal Aid & Advice''s case (supra) is

inappropriate.

45. In S. Narayanyer''s case (supra), the Apex Court has held that the subscriber, under the Telegraphic Act, is not entitled to maintain the writ

petition challenging the increase in telephone tariff rates recommended by the Tariff Enquiry Committee which was subsequently placed before the

House in the shape of budget proposal. The Apex Court observed that the Parliament, having gone into all the budget proposals and sanctioned the same, such tariff ratio had become the legislative policy as well as the legislative process and, therefore, the Court has no jurisdiction under

article 226 to go into the reasonableness of such rates, which are decided as policy matters in fiscal planning, which cannot be subjected to any

judicial determination. Applying the ratio laid down in the above decision to the facts and circumstances of the instant case, 1 am satisfied that the

impugned application form, having been recommended originally by an expert body and subsequently approved by the Council as required by the

statutory and constitutional authorities, viz., Institutes and C & AG as the matter of policy decision, cannot be questioned by the petitioners by way

of Judicial review under article 226 of the Constitution and the Court, therefore, would not interfere with the decision of the body of experts in the

absence of any unreasonableness. The requirement of reasonableness in the action of the authorities is one of the most active criteria but not a mere

empty formality and the same would mean not what the authorities like but what they ought, by ascertaining and following the course which reason

directs, which could be conveniently explained as a test of ''Wednesbury principles of reasonableness''. In other words, mere discretion of the

authorities to take appropriate decision on a particular subject and exercise of such discretion itself would not be sufficient, if such discretion is

exercised not satisfying the principles of reasonableness. The discretion, which does not stand the test of reasonableness, would thwart and run

counter to the object of conferring such discretion on the authorities. Any policy decision derived as a result of such defective exercise of discretion

for want of reasonableness, is not entitled to the protection of the Court. If the decision of requiring the impugned details and documents is tested

by the ''Wednesbury principles of rationality'', 1 am satisfied that there are sufficient and strong reasons f or requiring such details and documents in

order to satisfy the requirement of statutory/ constitutional authorities, viz., RBI & C & AG. The impugned policy decision which stands the test of

reasonableness, cannot thereafter, be challenged under article 226 of the Constitution, by way of judicial review, as held in (i) Tata Iron & Steel

Co. Ltd.''s case (supra), (ii) (1999) CTC37 1, (iii) Punjab Communications Ltd.''s case (supra), and (iv) Chandravadanain E.''s case (supra). That

apart I am of the firm opinion that the mere inconvenience would not amount to a legal prejudice and such inconvenience cannot be a ground to allege violation of articles 14,19(1)(g), 21 of the Constitution.

46. In Krishnan Kakkants case (supra), the Apex Court has upheld the decision of the Government that the subsidy can be paid only to the

approved dealers, and such decision, being a policy decision, cannot be challenged by way of a judicial review on the ground of violation of article

14. Applying the above ratio, 1 have no option except to hold that if the petitioners want to be empanelled, they have to furnish the details and

documents in accordance with the terms and conditions of the application, inasmuch as the same are reasonable, relevant and, therefore, required

in the public interest to assess the professional competency and potentiality as explained above. The reasonableness of such requirement has to be

determined in an objective manner by a standpoint of the interest of the general public and not by a standpoint of the interest of individuals upon

whom the requirements were contemplated on abstract arid imagine/ inconvenience.

47. The allegation that the petitioners would be prejudiced by furnishing the details and documents required in the impugned application form is

nothing but imaginary surmise and hypothetical, and not based on reasons, and such a grievance cannot be gone into under article 226 unless the

petitioners are legally prejudiced, and this Court, rather, cannot act as a Court of appeal on such issues as per the ratio laid down in Madan Lal''s

case (supra).

48. As discussed in details, the decision taken by the Institute and the C & AG in conformity with the respective provisions of the Act as well as

the Companies Act, for substantial and tangible reasons referred to above, to avoid the discrepancies in preparing the panel of auditors as per the

statutory requirements of RBI and C & AG and to prepare a fool-proof panel of Chartered Accountants for the appointment of auditors in the

Nationalised Banks and Regional Rural Banks as well as in Public Sector Undertakings, in my considered opinion, cannot be complained of that

the said authorities, viz., RBI and C & AG have acted in the manner not conferred on them. Therefore, the arguments of Mr. Arvind Datar, placing

reliance on the decision in Singhara Singh''s case (supra), following the decision in Taylor v. Toylor (1876) 1 Ch. D. 426 that, where the power is

given to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily

forbidden, does not fit into the facts of the instant case. Since the impugned decision of the Institute and C & AG is intended to avoid malpractice

by the bogus firms, to weed out the mushroom growth of bogus firms and to cull out the authentic and correct information from Chartered

Accountants taking note of the discrepancies that were experienced by the Institute and C & AG during the previous years, 1 am unable to

appreciate the contention of Mr. Datar that the impugned requirement of details and documents are attracted by Heydon''s rule, as the Institute and

C & AG have not explained the mischief in the existing system. Similarly, the argument of Mr. Datar, placing reliance on the decision in Kishori Lal

Minocha''s case (supra), that the requirement of the details and documents by the Institute and C & AG has no authority of law, cannot be

accepted, as the source of authority for such decision is distinctly traceable under the provisions of the Act, read with sections 226 and 619.

49. In my well-considered opinion, audition of the Nationalised Banks/ Regional Rural Banks and the Public Sector Undertakings is a matter of

statutory necessity. It has a direct bearing on the financial and economic management of the country. As the allotment of such audit by RBI and C

& AG, has a driving force in the country''s fiscal operation, the preparation of panel of the Chartered Accountants for such allotment has become

an integral part of the statutory obligation of the concerned authorities. Discharging the vital role of empanelment of Chartered Accountants by the

Institute and C & AG, therefore, cannot be complained of as lacking statutory source of authority. Where the statutory and constitutional

authorities, in exercise of their powers, are of the expert opinion that the existing system suffers from stigma and lacks required strength to fully

integrate with the statutory demands and, therefore, the existing framework needs complete renovation to suit the statutory requirements, the efforts

of the Institute and the C & AG to develop and strengthen the institutional facilities and infrastructure in order to provide a ''Zero Detect ''panel of

auditors as per the statutory requirements, cannot be said to be devoid of nexus. If a particular system is found to be defective, by experience, no

arbitrariness, much less perversity, could be attributed in removing such defects and finding a solution for giving equal opportunity to all similarly placed Chartered Accountants. Our intelligentsia should not be either misunderstood or underestimated, as many Indians have proved equally

good or excelled whenever and wherever they are given equal opportunity. The defects observed, by experience, in the existing system, if

warranted to be rectified, by an expert body, as Saner thought will always throw more light even on the same subject, and the consequential policy

decision intending to remove disparity among the similarly placed Chartered Accountants in order to provide adequate and equal opportunity to all

qualified Chartered Accountants, cannot be quoted as arbitrary or perverse, attracting articles 14,19(1)(g) and 21. Failure to take such efforts by

the Institute and the C & AG alone would paralyse the progress in the system and cause stagnation in the financial and economic management of

the country, which in turn, would affect the standard of living and quality of life from all concerns. I am, therefore, satisfied that there is a need to

search for a remedial measure to rectify the defects in the existing system, which even if causes any inconvenience or hassles to some individuals,

including the petitioners, the same will not, in any way, amount to violation of the fundamental rights conferred under articles 14, 19(1)(g) and 21.

50. Whether the details and documents required under the impugned application violates the principles of natural justice, and if so, to what extent,

remains to be answered. If the ''principles of reasonableness'' are held to be the most active, conspicuous and substantial ground to challenge the

action of the authorities on the substantive side, the violation of the principles of natural justice is equally a dynamic weapon to attack the action of

the authorities on the procedural side. Of course, no one can complain of violation of principles of the natural justice in the matter of legislative or

policy-making powers of the State or the authorities. Therefore, the petitioners are not entitled to complain for want of any opportunity, much less

reasonable opportunity, against the impugned policy decision of the Institute and C & AG. Argued Mr. N.R. Chandran, the learned senior counsel,

that the petitioners are not entitled for an opportunity before refusing to empanel them for want of details and documents, as such rejection is only

ministerial in nature. Of course, the ministerial act can be performed in a given set of facts and in a prescribed manner, in obedience of the mandate

of law, without having regard to his own judgment on the propriety of the act of being done and, therefore, the ministerial duty is simply an administrative duty, which could be exercised without any discretion. In other words, the discretionary act is distinguishable from that of a

ministerial act as the discretionary act requires to be exercised, not as a matter of routine, but it should stand to the test of reasonableness in the

Wednesbury sense and in compliance it the principles of natural justice. Even though Mr. N.R. Chandran, the learned senior counsel, rightly

contends that there is no compulsion for the petitioners to apply for empanelment, not- the empanelment, b '' v itself, will confer any right for

allotment of audit, it cannot be concluded that the petitioners are not aggrieved in any way, by not being empanelled out rightly, as the right of

allotment of audit flows from empanelment. Thus, in my considered opinion, the principles of natural justice come in aid of the petitioners, where

their right to be considered for allotment, by not being on the panel, is at stake and, therefore, the petitioners are entitled to be ensured with a

reasonable opportunity by the Institute and C & AG before the petitioners are refused to be empanelled. The principles of natural justice are

violated, not while the Institute and C & AG take a policy decision requiring the particulars under the impugned application form, but when refusing

them empanelment for want of all or any of the particulars, as required under the impugned application form, as such refusal, ultimately offends the

right of Chartered Accountants to be considered for allotment of audit, guaranteed under article 19(1)(g). Hence, the compliance of the principles

of naturaI justice in the matter of empanelment cannot be lightly disregarded, as the empanelment, even if it does not confer any right for allotment

still confers a right for being considered for allotment by being on the panel, and the same is definitely protected within the meaning of article 19(1)

(g), as held in Moliallitnad Shuiat Ah''s case (supra). Therefore, such right to be considered for allotment of audit by being on the panel, as

guaranteed tinder article 19(1)(g), necessarily mandates the Institute and C & AG to provide an opportunity to the petitioners if the information

furnished by thein is found to be incorrect, before refusing to empanel them, as rightly weighed by the C & AG. Denial of such opportunity to the

petitioners by the Institute before refusing them empanelment for want of details and documents required in the impugned application, in my

opinion, violates the principles of natural justice.

 

51. On the totality of the facts and circumstances of the case and for the reasons discussed above, 1 do not find any reason to grant the relief as

prayed for or to grant any other relief. However, I am obliged to direct the Institute and C & AG to give opportunity to the petitioners before

refusing to empanel the petitioners if the information furnished by them is found to be incorrect, and the Institute, as well as the C & AG are,

therefore, directed to reschedule the time to enable the Chartered Accountants who desire to seek empanelment, to submit their applications, and

to finalise the empanelment in the light of the directions stated above.

The writ petitions are dismissed with the above direction. Consequentl the connected W.M.Ps. are also dismissed. No costs.

 