
(2003) 02 KL CK 0072
In the High Court Of Kerala
Case No : O.P. No. 3775 of 1991

Kamath

APPELLANT

Vs

Institute of Chartered Accountants

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Chartered Accountants Act, 1949 — Section 15, 30(1), 30(2)
Constitution of India, 1950 — Article 14, 19(1)
Income Tax Act, 1961 — Section 44B

Citation : (2004) 122 CompCas 825 : (2003) 185 CTR 90 : (2003) 1 KLT 769

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : K.P. Balasubramanyan, for the Appellant; C.M. Devan, Antony Dominic and K.V. Sabu, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J. 1. Article 19(1)(g) of the Constitution of India guarantees the right to freely practice any profession, or to carry on any occupation, trade or business subject to any law providing for reasonable restrictions in the interests of the general public. Institute of Chartered Accountants of India issued a notification specifying that a Chartered Accountant shall not accept more than the specified number of tax audit assignments referred to u/s 44AB of the Income Tax Act, 1961. Does it amount to an unreasonable restriction?

2. Ext. P1 notification issued by the first respondent is under challenge. By the said notification the first respondent introduced certain restrictions restricting the number of tax audit assignments u/s 44AB of the Income Tax Act, 1961 to 30 in a financial year in the case of an individual Chartered Accountant irrespective of the fact that he is having a proprietary concern or a firm. u/s 44AB of the Income Tax Act every person carrying on business, if his total sales turnover or gross receipts in business exceeds Rs. 40 lakhs in a year and every person carrying on the profession having gross receipts exceeding Rs. 10 lakhs in a year

is liable to have the accounts audited by a Chartered Accountant. The first respondent issued Ext. P1 notification under Part II of the II Schedule to the Chartered Accountants Act, 1949 (hereinafter referred to as the Act), wherein it is provided that a member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he accepts more than the specified number of tax audit assignments u/s 44AB of the Income Tax Act, 1961. The notification came into force on 1.4.1989 and 30 was fixed as the specified number.

3. It is the case of the petitioner that Ext. P1 is an unreasonable restriction on the right to carry on a profession and the same is also violative of Article 14 of the Constitution of India. According to the first respondent, there is no violation of the rights of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India, and Ext. P1 contains only a reasonable restriction permitted under Article 19 of the Constitution of India, in public interest.

4. Heard Sri. K.P. Balasubramanyan, learned counsel appearing for the petitioner and Sri. C.M. Devan, learned senior counsel appearing for the first respondent and the Senior Central Government Standing Counsel for the second respondent.

5. In order to properly understand the background of the impugned notification and the competence of the first respondent to issue such a notification, it is necessary to have an overview of the Scheme of the Act. It is seen from the Statement of Objects and Reasons of the Act that the second respondent sought to authorise, the incorporation by Statute "an autonomous professional body." Preamble of the Act says that it is an "Act to make provision for the regulation of the profession of Chartered Accountants." Institute of Chartered Accountants of India is incorporated as per Section 3. Section 9 deals with the constitution of the Council of the Institute designated and designated "for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act." Section 15 stipulates that "the duty of carrying out the provisions of this Act shall be vested in the Council." Section 30 deals with the power of the Council to make regulations "for the purpose of carrying out the objects of this Act." Section 30(2) provides for the scope and extent of the power. To the extent it is relevant, the same reads as follows:-

"30(2). In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters:-

XXX XXX XXX XX\ (k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute,"

Second Schedule to Part II deals with professional misconduct in relation to members of the Institute generally requiring action by a High Court. It is provided therein that;

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he -

(ii) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Gazette of India."

The impugned Ext. P1 notification is issued under the Second Schedule of Part II.

6. Looking at the scheme of the Act it can be seen that the Act is intended for regulating the profession of Chartered Accountants. The Council of the Institute is bestowed with the duty of carrying out the provisions of the Act. In order to carry out the duties effectively only the Council is given power to make regulations. Learned counsel for the petitioner contended that the impugned notification is beyond the power of the Council since the enumerated powers do not in any way specifically empower the Council to issue a notification which has the effect of regulating the professional work of a Chartered Accountant. I am afraid the contention cannot be accepted. For one thing it has to be seen that the power to make regulations u/s 30 is without prejudice to the generality of the power u/s 30(1) namely power to make regulations "for the purpose of carrying out the objects of the Act." Section 30(2) only enumerates some specific powers without in any way affecting the general power which is all pervasive. In other words, merely because certain regulation making areas are specifically enumerated u/s 30(2), it cannot be said that the Council cannot tread beyond the enumerated powers, since the general power for making regulations for the effective implementation of the Act is reserved to the Council. The object of the Act is to regulate the profession of the Chartered Accountants. Therefore the impugned notification cannot be held to be ultra vires the objects of the Act.

7. Section 30(2)(k) of the Act vests power on the Council to make regulations for regulating and maintaining the status of members of the Institute and standard of professional qualifications of members of the Institute. It is in this context the purpose of the impugned notification assumes importance. Tax audit assignment is a time bound assignment in every financial year. In order to maintain and also improve the quality of tax audit assignments in the case of those coming u/s 44AB of the Income Tax Act, 1961 the Council, on the basis of the recommendations of the Professional Development Committee of the Council, resolved to restrict the number of tax audit assignments to 30 in a financial year with effect from 1.4.1989. It is not quite clear as to whether the number 30 is in aggregate; the Madhya Pradesh High Court in *Arun Graver v. Institute of Chartered Accountants* ((1998) 93 Company Cases 618) has taken the view that the number is 30 in the case of businessman and 30 in the case of professional, thus in aggregate 60 in a financial year. Be that as it may; it has to be noted that this restriction confines only to the audit assignment u/s 44AB. In other words, there is no restriction as far as other audit works are concerned except of course the restriction u/s 224 of the Companies Act wherein a Chartered Accountant is not permitted to audit more than 20 companies in a financial year.

8. It is stated in the counter affidavit that such a restriction is intended to ensure an equitable distribution of work among the Chartered Accountants and prevent monopoly. Though it may appear to be an unreasonable restriction, in fact it is

not. Unlike other professional fields, the work of audit requires precision. The certificate of audit issued by a Chartered Accountant has statutory force for the purpose of the Income Tax Act. Audit is a time bound work. Taking note of all these relevant factors it cannot be said that the impugned provision is in any way unreasonable or discriminatory. In the nature of the work of the Chartered Accountants, in fact such provisions are required for ensuring quality in work and accuracy in execution of the work. Such reasonable restrictions are not only permitted but are mandated in the circumstances. After all it is the Council of Chartered Accountants which has issued the notification and that too on the basis of the recommendation of the Professional Development Committee. It is a Council of its members, it is a Council by the members and it is a Council for the members. As per Section 7 of the Act all members of the Institute are known as Chartered Accountants. Therefore, there is no basis for the contention of violation of Article 14 or Article 19(1)(g) of the Constitution of India. The Council which is to regulate the professional body, thought it fit to introduce such restrictions in the interests of the profession. It is regulatory in nature and such regulation is permissible under the Act. u/s 15 of the Act it is the duty and function of the Council to make provision for regulating and maintaining the status of the members of the Institute and Section 30(2)(k) empowers the Council to frame appropriate regulations in that regard. The source being thus traceable to the provisions under the Act, the impugned notification cannot be faulted on the ground of lack of power either. The regulation does not in any way affect the rights of the Chartered Accountants under the Constitution of India, being only a reasonable restriction.

9. Learned counsel for the petitioner relying on the decision of the Madras High Court in *Bhagavatheeswaran v. Institute of Chartered Accounts*, ((1998) 93 Company Cases 625) submits that introduction of such restrictions could be a serious inroad into the right to practice freely the profession. It is submitted that it is for the client to be concerned of the quality of the work and it is not just and proper to restrict the freedom of a client to choose a professional man for the only reason of workload. According to Y.Venkatachalam, J. "accepting a legitimate professional engagement by a professional can never be considered unprofessional and be made a misconduct" Therefore, the impugned notification was held to be discriminatory and unreasonable. A Division Bench of the Madhya Pradesh High Court, however, has taken a contra view in *Arun Grower v. Institute of Chartered Accountants* ((1998) 93 Company Cases 618). The Division Bench observed that the impugned notification does not take away the right of the Chartered Accountants to carry on the profession, but it only limits and places ceiling for the purposes of effective and business-like audit. The notification was issued in the background of the experience of the Council regarding the demand to maintain the high degree of efficiency in audits.

10. With great respect I am unable to follow the view of Venkatachalam, J. of Madras High Court. Unlike other professional bodies, Chartered Accountants Act it is enacted for regulating the profession and in the process regulating and

maintaining the status of the Chartered Accountants. Therefore, the measures now taken, which are intended to maintain and improve the quality of work and ensure equitable distribution of work among the Chartered Accountants cannot in any way be stated to be an unreasonable restriction since the opinion of the Council, such restrictions are necessary for maintaining the status of the Chartered Accountants and also for ensuring the quality of the work by the Chartered Accountants. The statutory body of professionals having taken a decision within their powers in the interests of the profession, the Court may not be justified in substituting its views.

11. In the nature of the work of Chartered Accountants only, a similar restriction was introduced u/s 224 of the Companies Act wherein a Chartered Accountant is permitted to audit only 20 companies in a financial year. That provision is there ever since 1974. It has to be appreciated that such regulatory measures are provided in view of the onerous and time-consuming nature of the work of the Chartered Accountant requiring accuracy and perfection. The Income Tax Act attributes much importance to the certificate of audit by the Chartered Accountant and therefore, it is in public interest also, as observed by the Division Bench of the Madhya Pradesh High Court to introduce certain restrictions in the volume of work lest it would affect the professional standard apart from affecting the professional status.

12. I do not find any unreasonable restriction. Ext. P1 notification is valid and validly issued by the first respondent. All this apart, there is no case for the petitioner that he has in any way suffered pursuant to the impugned notification. Looking from that angle also I do not find any justification in interfering with the impugned notification.

13. There is no merit in the Original Petition. It is dismissed.