

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04..06..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.1363 to 1367 of 2012 and
33784 of 2013

W.P.No.1363 of 2012

A.IRUDAYAM

..Petitioner

Versus

1. UNION OF INDIA
NOTICE TO BE SERVED THROUGH SECRETARY
MINISTRY OF CORPORATE AFFAIRS A WING
SHASTRI BHAVAN RAJENDRA PRASAD ROAD NEW
DELHI-110001.
- 2 INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA NOTICE TO BE SERVED
THROUGH SECRETARY INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA P.O.BOX NO.7100-I.P.
MARG NEW DELHI-110002.
- 3 SECRETARY
ICAI INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA P.O.BOX NO.7100-I.P.MARG NEW DELHI-
110002.
- 4 UNION OF INDIA
NOTICE TO BE SERVED THROUGH SECRETARY
MINISTRY OF LAW 4TH FLOOR A WING SHASTRI
BHAVAN DR.RAJENDRA PRASAD ROAD NEW DELHI-
110001.

5 UNION OF INDIA
 NOTICE TO BE SERVED THROUGH SECRETARY
 MINISTRY OF HUMAN RESOURCES DEVELOPMENT
 SHASTRI BHAVAN DR.RAJENDRA PRASAD ROAD NEW
 DELHI-110001. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records from 2nd & 3rd Respondents relating grant of approval of Regulation 25C notified under Notification No.1-CA(7)/92/2006 dated 13th September 2006 published under Gazette of India Extraordinary Part III Section 4 dated 13.09.2006 titled as Registration to Common Proficiency Test under a feigned Scheme of non-existent CPT Course and quash the same on the grounds of colourable exercise of powers in enacting such regulations lack of competence for regulation making power on the subject matter malafide ultra vires of the Chartered Accountants (Amendment) Act 2006 void ab-initio and in transgression of Rule of Law thus infringing the Fundamental Rights guaranteed under Article 14 in respect of the students joining Chartered Accountancy Course at the entry level and consequently direct the second and third respondents to stop levy and collection of fee in the name of Registration of non-existing CPT course.

For Petitioner :: Mr.A.Irundayam in all W.Ps.,

For Respondents :: Mr.Krishna Srinivasan for
 M/s.S.Ramasubramanian Associates
 for RR2&3 in all W.Ps.,

Mr.V.T.Balaji for RR1, R4 & R5 in all W.Ps.,

Mr.P.R.Gopinathan for R6 in W.P.No.33784

COMMON ORDER

(Order of the Court was delivered by T.S.SIVAGNANAM,J.)

These Writ Petitions designed as Public Interest Litigations have been filed Mr.A.Irudayam, a practising Advocate with varied prayer. The petitioner would state that he served as a Teacher in a Higher Secondary School at Madurai for about 7 ½ years, thereafter, joined the services of the E.S.I., Corporation where he worked for about 10 years and then joined the second respondent organisation namely The Institute of Chartered Accountants of India as an Assistant Secretary in the Head Office at New Delhi. The petitioner would further state that functioned as the Head of the Southern Region of the second respondent Institute from June 2002 to August 2007 exercising jurisdiction over the Institutes in Tamil Nadu, Andhra Pradesh, Karnataka, Kerala and Pondicherry. The petitioner would state that he is conscious of the problems faced by the Chartered Accountant students and he has filed these Writ Petitions to seek justice for the student community alleging that their fundamental rights are violated due to arbitrary exercise of power and actions, which are ultra vires the provisions of the Chartered Accountants Act. The petitioner has filed six Writ Petitions for varied prayers, which are set out as hereunder:-

(i) In W.P.No.1363 of 2012 the petitioner has prayed for issuance of a writ of Certiorarified Mandamus, to quash the proceedings of the 2nd & 3rd Respondents relating grant of approval of Regulation 25C notified under Notification No.1-CA(7)/92/2006 dated 13th September 2006 published under Gazette of India Extraordinary Part III Section 4 dated 13.09.2006 titled as Registration to Common Proficiency Test under a feigned Scheme of non-existent CPT Course, on the grounds of colourable exercise of powers in enacting such regulations lack of competence for regulation making power on the subject matter malafide ultra vires of the Chartered Accountants (Amendment) Act 2006 void ab-initio and in transgression of Rule of Law thus infringing the Fundamental Rights guaranteed under Article 14 in respect of the students joining Chartered Accountancy Course at the entry level and consequently direct the second and third respondents to stop levy and collection of fee in the name of Registration of non-existing CPT course.

(ii) In W.P.No.1364 of 2012 the petitioner has prayed for issuance of a writ of Certiorarified Mandamus, to quash the proceedings of the 2nd & 3rd Respondents relating grant of approval of Regulation 28D of Chartered Accountants Regulations 1988 (Amendment 2006) for issue of Notification No.1-CA(7)/123/2008 dated 2nd December 2008 published under Gazette of India

Extraordinary Part III Section 4 dated 3.12.2008 relating to Integrated Professional Competency Course (IPCC) cum Accounting Technician (ATC) Courses registration levy and collection of fee thereto issued by the 2nd and 3rd Respondents under the approval of 1st Respondent on the grounds of colourable exercise of powers lack of competence of regulation making powers on the subject matter as it is ultravires of Chartered Accountants (Amendment) Act, 2006, void ab initio, arbitrary, malafide, excessive and in violation of Rule of Law thus infringing upon the Fundamental Rights of students of Chartered Accountancy Courses guaranteed under Article 14 of the Constitution with concurrent directions to 2nd and 3rd respondents to stop registering students by way of levy and collection of fee towards the non-existing 'Study Course' under the nomenclature "Integrated Professional Competency Course (IPCC)".

(iii) In W.P.No.1365 of 2012 the petitioner has prayed for issuance of a writ of Certiorarified Mandamus, to quash the proceedings of the 2nd and 4th respondents by calling for the relevant proceedings of the Council Meetings of the 2nd respondent in which a decision was taken to collect an amount of Rs.10 000/- per student called as Tuition fee for Final Course from students who have passed both the groups of Integrated Professional Competence Examinations intending to appear for Final Examination published vide a bare cum

void Announcement No. BOS/Announcement/227/09 dated 16.11.2009 issued by the 4th respondent for which he is neither authorised to issue such announcement nor is there any provision whatsoever to collect any amount called as Tuition fee under the nomenclature Final Course in the Chartered Accountants (Amendment) Act, 2006 and or the Chartered Accountants Regulations, 1988, based on the patently illegal decision by the second respondent to levy and collect such an amount called as tuition fee as the decision to collect Rs.10,000/- published by the fourth respondent at the behest of the second respondent against the non-existing Final Course' aggravated by 'non-existing tuition' thereof being patently illegal, colourable exercise of powers, ultra vires of Chartered Accountants (Amendment) Act, 2006, and also of Chartered Accountants Regulations, 1988, arbitrary, malafide, in gross violation of Rule of law, oppressive, against the interest of the students of Chartered Accountancy Course and in infringement of Article 14 of the Constitution.

(iv) In W.P.No.1366 of 2012 the petitioner has prayed for issuance of a Writ of Mandamus, to direct the 1st and 4th respondents to invoke their powers vested under Sections 30A and 30C(1) of the Chartered Accountants (Amendment) Act 1949 as amended in 2006 for giving Directions to 2nd and 3rd Respondents to formulate notify and enact fresh regulations under sub-sections (1) (2) and (3) of

Section 15A of the said Act by way of discharging their statutory duties for imparting theoretical education to all the students of the different levels of Chartered Accountancy course under a new Chapter Theoretical Education for Academic Courses on the subjects covered by the academic courses of the Institute as approved under clause (a) under subsection (2) of Section 15 of the said Act 2006 independent of the regulations under the Chapter III titled as 'Examination', by removing all regulations relating to academic courses therein such as Regulations 25A, 25C, 28A, 28D of Chartered Accountants Regulations, 1988, which were surreptitiously, and illegally interpolated under the regulations pertaining to Examinations, so as to ensure all students desirous of pursuing the Chartered Accountancy course for a career necessarily undergo and complete the academic courses conducted by the Universities or Bodies to be affiliated with the second respondent under Section 15A of the Amendment Act, 2006 thus enabling the students of the Chartered Accountancy Courses to receive their rightful comprehensive education towards passing the examinations being conducted by the second and third respondents with more confidence and assurance for their future career.

(v) In W.P.No.1367 of 2012 the petitioner has prayed for issuance of a Writ of Mandamus, to direct the 1st respondent to

invoke its powers vested under Sections 30A and 30C(1) of the Chartered Accountants (Amendment) Act 2006 in turn to give Directions to the 2nd and 3rd Respondents to amend Regulations 43 to 80 of the Chartered Accountants Regulations 1988 titled under Chapter IV - Articled and Audit Assistants as scheme of regulations seeking to impart practical training warranting article assistants to work full time in CA firms for a period of 3 years under very stringent conditions akin to more of employment to the advantage of the CA firms but a discernible and proven disadvantage to the article assistants as the so called compulsory practical training of three years under a chartered accountant to the exclusion of any theoretical training, has been proven to be not efficacious enough in ensuring such article assistants ultimately becoming Chartered Accountant professionals by passing Final Examinations by end of such period, therefore requires appropriate restructuring of the entire scheme of article training so as to provide corresponding or a period not less than a 18 months for imparting comprehensive Professional Theoretical Education by Universities and Bodies to be affiliated under section 15A of the Amendment Act, 2006 with the second respondent complemented by inclusive assessment of the skills developed by the article/audit assistants during such training by a competent Assessment Body, which in turn should be factored into the overall

evaluation article/audit assistants in passing final examination in such a way so as to fulfil the 'legitimate expectations' of students of the Chartered Accountancy Course, entitling them non-discriminatory, uniform, comprehensive and efficacious quality Education and Training, both practical and theoretical, enabling them to pass all the professional examinations thus ensuring equality before Law and equal opportunity as guaranteed under Article 14 and 16 of the Constitution.

(vi) In W.P.No.1365 of 2012 the petitioner has prayed for issuance of a Writ of Mandamus, directing the 6th respondent to discharge his statutory duty in accordance with the provisions under section 15A of the Chartered Accountants (Amendment) Act 2006 Act enacted and notified w.e.f. 8.8.2006 by way of imparting education to the students of the Chartered Accountancy in respect of the Academic Courses to be approved by the 2nd respondent under clause (a) of subsection (2) of section 15 of the Chartered Accountants (Amendment) Act 2006 and award degree diploma or certificate thereof as the case may in consultation with the other respondents by evolving the regulatory and administrative frame work.

2. The sum and substance of the allegations made by the petitioner in all these Writ Petitions is by contending that the Chartered Accountants Act, 1949, as amended by Amendment Act,

2006, (hereinafter referred to as the 'Act') specify the object of the Act, namely, to make provision for the regulation of the profession of Chartered Accountants and for which purpose to establish an Institute of Chartered Accountants and the legislation does not intend to provide any theoretical education to the students of Chartered Accountancy while enacting the Act. By referring to Section 15(2) of the Act, it is stated that the functions of the Council is to approve academic courses, examination of candidates for enrolment, engagement and training of articled assistants, prescribing qualification for entry into Register and recognition of foreign qualification and the functions under the Act does not provide for imparting theoretical education other than practical training component to articled assistants. Further, by referring to Section 15A of the Act, it is submitted that the provision was introduced to the effect that any University establish by law or any body affiliated to the Institute may impart education on the subjects covered by the academic courses of the Institute and therefore, the second respondent are only competent to impart education on subjects covered by academic courses coming under Section 15(2)(a) of the Amended Act, 2006, and the respondents 1 to 3 have miserably failed in their statutory duty of providing theoretical education envisaged under Section 15A to the students of Chartered Accountant courses.

3. Further, it is submitted that there is no provision in the Act for registration of students for courses, levy and collection of fee for the students and therefore, all the activities of the second respondent is ultra vires in the Parent Act. It is further submitted that the Common Proficiency Test (CPT) was launched with effect from 13.09.2006, which has been continuing and fee is being collected without any jurisdiction or power and by that means several crores of money has been collected and the CPT fee is disproportionately high, when compared to the other Common Entrance Test fees collected by the various other institutions. Therefore, the petitioner would state that the approval granted to the registration to CPT has to be quashed.

4. The averments in the other Writ Petitions are substantially similar and in fact the contentions which have been set out above have been referred to in the other Writ Petitions as well, though the prayers sought for are slightly different. However for the present, we do not propose to deal with the specific prayer made in each of the Writ Petitions in the light of the preliminary objection raised by the second respondent.

5. The learned counsel appearing for the second respondent submitted that the Writ Petitions have been filed as a Public Interest

Litigation and the fact remains that the petitioner was part of the second respondent organisation and he functioned as the Head of the Southern Region of the Institute of Chartered Accountants from June 2002 to August 2007 and after coming out of the services of the institute, the petitioner has resorted to filing these Writ Petitions as Public Interest Litigation and they lack bonafide. Without prejudice to such contention, it is submitted by the second respondent that as part of its responsibility to regulate the profession of Chartered Accountancy, the Institute enrolls students for the course, imparts theoretical education to them, and the students are required to undergo practical training and the institute monitors the training. It is submitted as of now that approximately 7,94,132 students have been registered on its rolls in different stages of Chartered Accountancy curriculum. It is further submitted that the Institute holds qualifying examination for the students and grants membership of ICAI to successful candidates and certificates of practice to members intending to practising the profession. It is further submitted that the institute has three educational wings, (i.e.,) the Board of studies, the Continuing Professional Education Directorate and the Technical Directorate. It is submitted that the Board of studies is a Non Standing Committee of the Institute constituted under Section 17(2) of the Act and works under the control and guidance of the Council as

specified under Regulation 177 of the Chartered Accountants Regulation, 1988. Further, it is submitted that it functions on the terms of reference as decided by the Council in its meeting held during June 2001. By referring to Chapter IV of the Regulations, which deals with articulated assistance and audit assistance, it is submitted that the second respondent has been acting in accordance with the provisions of the Act, the Regulations and the Rules framed by the Central Government. It is further submitted that unlike The Bar Council of India, The Medical Council of India, second respondent imparts education through distance education mode and it imparts theoretical education through its Regional Council and branches as authorised by Regulation 130(2)(xi) of the Regulations. It is further submitted that since the Chartered Accountancy course is a distance education course with a view to support the students, oral coaching classes are organised through Regional Council and branches and through accredited institution and attending/undergoing oral coaching classes are optional. Further, it is submitted that in order to strengthen the accredited scheme, recently existing accredited scheme guidelines were reviewed and revised, guidelines have been issued, list of Accredited Institutions will be approved based on the revised guidelines and this is being done in order to regulate and monitor the students, who are pursuing Chartered Accountancy courses.

6. The allegations made by the petitioner that the second respondent is collecting Crores of Rupees from students, has been denied and in the counter affidavit, the second respondent seeks to justify the pattern of the course of study and the purpose and object behind the same. What is to be noted here is that the oral coaching classes against which the petitioner has raised a serious grievance is optional.

7. The University Grants Commission in their counter affidavit contended that the second and third respondents are neither an University or a deemed University under Section 2(f) and Section 3 of the UGC Act, 1956 and therefore, the Institute will not come under the purview of the UGC and therefore, the prayer to regulate the Institute does not arise. Further, it is submitted that the second respondent institute is not awarding any degree and therefore, the question of interference by the UGC does not arise.

8. We have heard the petitioner appearing in person and the learned counsels appearing for the respondents and carefully perused the materials placed on record.

9. As noticed above, these Writ Petitions have been filed as Public Interest Litigation for varied prayers, all of which are directed

against the second respondent namely the Institute of Chartered Accountants of India. The focus is on the CPT conducted by the second respondent alleging that crores of money have been collected as course fee and that the Chartered Accountants Act, 2006 and the 1988 Regulations do not provide for such imparting education. Therefore, it is contended by the petitioner that what is being done by the Institute is wholly illegal.

10. Before we venture into the merits of the contentions raised, it would be first necessary to examine as to whether the petitioner would be justified in maintaining these Writ Petitions as Public Interest Writ Petitions. As noticed above the petitioner has earlier held various positions and joined the second respondent Institute as the Assistant Secretary during October 1990 in the Head Office of the second respondent in New Delhi and he served in various Department of the second respondent organisation such as Administration, Examination, Disciplinary, Information technology. That apart, the petitioner has served as the head of the Southern Region of the second respondent Institute at Chennai for five years from 2002 to 2007. Thus, the petitioner was part of the organisation functioned under its Rules and Regulations and was bound by the directions and the decisions taken/issued by the second respondent. The CPT against which the

petitioner raises an "hue and cry", was introduced during September 2006, (this is admitted by the petitioner). During the relevant time, the petitioner was holding the position as the head of the Southern Region of the second respondent Institution. Thus, it is clear that the petitioner accepted the regulations as such, functioned under the second respondent in various capacities including the matters concerning examinations.

11. Curiously enough after he came out of the Institute he has resorted to filing these Writ Petitions designed as "Public Interest Litigations". We are not inclined to accept the contention of the petitioner that these Writ petitions are being filed to seek justice for the Chartered Accountancy students. The Common Proficiency Test (CPT) has been in vogue since 2006 and there appears to have been no complaint from any students till date nor any such complaint has been placed before us. It is stated by the second respondent that as on date approximately 7,94,132 students have been registered on its rolls and they are in different stages of the Chartered Accountancy curriculum. Therefore, we are of the firm view that these Writ Petitions at the instance of the present petitioner cannot be treated as "Public Interest Litigations". Furthermore, the oral education imparted by the Institute is neither compulsory nor mandatory, but optional.

The petitioner while in office as head of the Southern Region of the second respondent functioned with the system and took decisions which according to him now are now faulty. We are not convinced to entertain these Writ Petitions as "Public Interest Litigations" at the instance of the Writ Petitioner.

12. For all the above reasons, we are not inclined to entertain these Writ Petitions designed as "Public Interest Litigations" at the instance of the petitioner and the same are dismissed. However, we leave it open that as and when any genuine grievance raised by an aggrieved person, the same could be examined in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

(S.K.K.,CJ.) (T.S.S., J.)

04.06.2015

Index :Yes/No
Internet:Yes/No
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**The Hon'ble The Chief Justice
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T.S.SIVAGNANAM, J.**

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**Common Order in
W.P. Nos.1363 of 1367 of 2012 and
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