

THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA & ORS.

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v.

SHAJI POULOSE & ORS.

(Transfer Petition (Civil) Nos. 2849-2859/2019)

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DECEMBER 09, 2020

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Transfer Petition – Constitution of India – Art. 139-A(1) – Supreme Court Rules, 2013 – Or. XL, Rule 1 – In the writ petitions, which are sought to be transferred, writ petitioners have challenged validity of chapter-VI of guidelines No. I-CA(7)/02/2008 dated 08.08.2008 issued by the Council of petitioner Institute on the ground that the same is violative of Art. 19(1)(g) of the Constitution – The said chapter VI of the guidelines dated 08.08.2008 stipulates that a member of the Institute in practice shall not accept, in a financial year, more than “specified number of tax audit assignments”, which is at present 60 u/s. 44 AB of the Income Tax Act, 1961 – Several writ petitions regarding the same were pending in the Kerala High Court, Madras High Court and Calcutta High Court – The Institute of Chartered Accountants of India being the regulatory body for the profession of Chartered Accountants has filed the present transfer petitions for transfer of all the aforesaid writ petitions to the Supreme Court for final and conclusive determination of the issues involved – Held: The guidelines which are impugned in the High Court and the consequent disciplinary proceedings initiated against various Chartered Accountants throughout the country is an issue of public importance affecting Chartered Accountants as well as the citizens who have to obtain compulsory tax audits – To settle the law and to clear the uncertainty among tax professionals and citizens, it is appropriate that the Supreme Court may transfer the writ petition, to authoritatively pronounce the law on the subject – However, the interim orders operating in different writ petitions which are sought to be transferred should be allowed to be continued till the Supreme Court considers the matter and passes any other order – In result, Transfer Petitions are allowed.

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- A *Institute of Chartered Accountants of India v. Southern Petrochemical Industries Corporation Limited and Another* (2007) 15 SCC 649 – referred to.

Case Law Reference

(2007) 15 SCC 649 referred to Para 14

- B CIVIL ORIGINAL JURISDICTION: Transfer Petition (Civil) Nos. 2849-2859 of 2019.

Petitions under Article 139-A(1) of the Constitution of India read with order XL Rule 1 of the Supreme Court Rules, 2013.

With

- C Transfer Petition (Civil) Nos. 727-728 of 2019.

Arvind Datar, Sr. Adv., Pramod Dayal, Nikunj Dayal, Advs. for the Petitioners.

- D N. Venkataraman, ASG, R. Basant, Sr. Adv., Raghenth Basant, E.M.S. Anam, Piyush Beriwal, Bhuvan Mishra, Ms. Anil Katiyar, B. Ramana Kumar, Raghunatha Sethupathy, K. Paari Vendhan, Krishanmohan, Goutham Shivshankar, Sajith P., Vishu P., Ashwin Kumar D.S., Ms. Surbhi Mehta, Tapesh Kumar Singh, Aditya Pratap Singh, Ms. Bhaswati Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

- E **ASHOK BHUSHAN, J.**

1. These transfer petitions have been filed by the Institute of Chartered Accountants of India under Article 139-A(1) of the Constitution of India read with Order XL Rule 1 of the Supreme Court Rules, 2013 for transfer of several writ petitions pending in the Kerala High Court, Madras High Court and Calcutta High Court.

2. Notices were issued in the transfer petitions. A counter affidavit has also been filed by one of the respondents, i.e., respondent No.1.

3. We have heard Shri Arvind Datar, learned senior counsel for the petitioners and Shri R. Basant, learned senior counsel and other counsel appearing for respondents.

4. In the writ petitions, which are sought to be transferred, writ petitioners have challenged validity of Chapter VI of Guidelines No.1-CA(7)/02/2008 dated 08.08.2008 issued by the Council of petitioner Institute on the ground that the same is violative of Article 19(1)(g) of the Constitution of India. The said Chapter VI of the Guidelines dated 08.08.2008 stipulates that a member of the Institute in practice shall not

accept, in a financial year, more than the “specified number of tax audit assignments”, which is at present 60 under Section 44AB of the Income-tax Act, 1961. Further, Section 22 of the Chartered Accountants Act, 1949 defines “professional or other misconduct” to include any act or omission provided in any of the Schedules to the Act. Clause (1) of Part II of the Second Schedule to the Act stipulates that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he contravenes any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council of the Institute. As such, if a member of the Institute contravenes the provisions of the aforesaid Chapter VI of the Guidelines dated 08.08.2008, he shall be deemed to be guilty of professional misconduct under the Chartered Accountants Act, 1949.

5. Learned senior counsel submits that in order to avoid multiplicity of proceedings, conflict of decisions and also settle the law comprehensively, which is a question of law of general public importance, the Institute of Chartered Accountants of India being the regulatory body for the profession of Chartered Accountants has filed the present transfer petitions for transfer of all the aforesaid writ petitions to this Court for final and conclusive determination of the issues involved.

6. Shri R. Basant, learned senior counsel appearing for the respondent and other counsels have submitted that there is no good reason for transfer of the writ petitions pending in the different High Courts. It is submitted that the only reason of transfer of the writ petitions is convenience of the petitioners, whereas the constitutional protection and right availed by the writ petitioners under Article 226 of the Constitution will be taken away, if the transfer is allowed. The provisions of Article 139A is an exception to the general rule of law, which can be exercised only rarely and in exceptional circumstances. By the impugned Guidelines, the applicants have introduced a cap on the number of audit assignments that can be taken up by each Chartered Accountant throughout the country irrespective of the nature of the audit, the nature and volume of business of the clients, the local conditions, local laws, the place of practice of each Chartered Accountant etc., all these questions are important while deciding the question of breach of Articles 14 and 19(1)(g) of the Constitution. It is necessary that this Court may have the advantage of the judgments of different High Courts in different parts of the country. It is submitted that there are earlier occasions where such transfer petitions

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A have been dismissed. It is further submitted that in event, it is found necessary to transfer all writ petitions be transferred to one High Court instead of transferring petitions to this Court. It is lastly submitted by learned counsel for the respondent that in several writ petitions, various interim orders are operating in favour of the writ petitioners, which may be allowed to continue.

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7. We have heard the learned counsel for the parties and have perused the records.

8. Section 44AB of the Income-tax Act, 1961 was inserted in the statute book by the Finance Act, 1984 and the same came into force w.e.f. 01.04.1985. Section 44AB provides that every person carrying on business, if his total sales, turnover or gross receipts exceed Rs.1 crore, and every person carrying on a profession, if his gross receipts exceed Rs.50 lakhs, in any previous year, is required to get his accounts of such previous year audited by a Chartered Accountant, and obtain before the specified date, a report of the audit in the prescribed form duly signed and verified by such Chartered Accountant. The said provisions are popularly called “compulsory tax audits”. The said Section 44AB had been enacted to prevent evasion of taxes, plug loopholes enabling tax avoidance and also facilitate tax administration, which would ensure that the economic system does not result in concentration of wealth to the common detriment. The said section therefore fulfilled the directive principles laid down under Article 39(c) of the Constitution of India.

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9. In exercise of the powers conferred by Clause (ii) of Part II of the Second Schedule to the Act, the council of the Institute issued a notification bearing No.1-CA(7)/3/88 dated 13.01.1989 specifying that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts in a financial year, more than specified number of tax audit assignments under Section 44AB of the Income-tax Act, 1961. The specified number being 30 in a financial year, whether in respect of corporate or non-corporate assesses. One K. Bhagavatheeswaran, who was a practicing Chartered Accountant, filed Writ Petition No.5925 of 1989 before the Madras High Court challenging the legality and validity of the Notification dated 13.01.1989 and Writ Petition No.5926 of 1989 challenging the legality and validity of the Notification dated 25.05.1987 being violative of Article 19(1)(g) of the Constitution. Misc. Petition No.2844 of 1989 - Prem Chand & Ors. Vs. Institute of Chartered Accountants of India & Anr. was filed before

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the High Court of Madhya Pradesh at Jabalpur, challenging the validity and legality of the Notification dated 13.01.1989. A

10. There were other writ petitions filed in different High Courts. The transfer petitions were filed by Institute of Chartered Accountants of India being Transfer Petition Nos. 614-615 of 1990, which were rejected by this Court on 03.04.1991 observing that the concerned High Courts may dispose of the writ petitions at an early date. A Writ Petition No.2085 of 1993 – Prakash Mehta Vs. ICAI where validity and legality of the Notification dated 13.01.1989 was challenged, was dismissed on 16.05.2005. Madhya Pradesh High Court vide its judgments dated 18.04.1995 in Writ Petition No.2844 of 1989 had held that the Notification dated 13.01.1989 does not take away the right of a Chartered Accountant to carry on profession, against which judgment, a Special Leave Petition No.21988 of 1995 was filed, in which leave was granted but Civil Appeal was dismissed as withdrawn by order dated 04.05.1999. Madras High Court vide its judgment dated 13.07.1998 had allowed the Writ Petition No.5925 of 1989 – K. Bhagavatheeswaran Vs. Vs. Institute of Chartered Accountants of India and Ors., which judgment was also confirmed by the Division Bench in a writ appeal. B C D

11. The Chartered Accountants Act, 1949 was amended by the Parliament by the Chartered Accountants (Amendment) Act, 2006, after which amendment, the erstwhile Notifications were superseded by Guidelines dated 08.08.2008. After the above Guidelines, this Court by order dated 01.04.2013 dismissed the Civil Appeal Nos.7208-7209 of 2005 having become infructuous, which order was to the following effect:- E

“In view of the above, we do not propose to hear the appeals on merit and the same are dismissed as having become infructuous. However, in case any member is aggrieved of the existing guidelines and files a representation before the appellant, the appellant shall consider it and pass appropriate order, and if any member is aggrieved thereof whether he has made representation or not, would have right to challenge it before the appropriate forum.” F G

12. After issuance of the Guidelines dated 08.08.2008, various writ petitions have been filed in different High Courts, details of various writ petitions as given in the transfer petition are as follows:-

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- A “(1) W.P. (C) No.25662/2016 titled as ‘Shaji Poullose vs. The Institute of Chartered Accountants of India & Ors.’ Pending before the Hon’ble High Court of Judicature of Kerala at Ernakulam;
- B (2) W.P. (C) No.12963/2017 titled as ‘T.R. Mohan Das vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court of Judicature of Kerala at Ernakulam;
- C (3) W.P. (C) No.19026/2017 titled as ‘E. Hrishikesan vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court of Judicature of Kerala at Ernakulam;
- D (4) W.P. Nos.17956 to 17958/2017 titled as ‘Mr. R. Murlidharan vs. The Comptroller & Auditor General of India & Ors.’ pending before the Hon’ble High Court of Judicature at Madras;
- (5) W.P. NO.22771/2017 titled as ‘Radha Kanta Das vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court of Judicature at Calcutta;
- E (6) W.P. (C) No.12273/2019 titled as ‘C. Suresh Kumar vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court of Judicature of Kerala at Ernakulam;
- F (7) W.P. No.19162/2019 titled as ‘Ms. V. Gayathri Devi vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court of Judicature at Madras;
- (8) W.P. No.18124/2019 titled as ‘Kamalesh Mitra vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court at Calcutta, and
- G (9) W.P. No.18590/2019 titled as ‘Pralay Chakraborty vs. The Institute of Chartered Accountants of India & Ors.’ pending before the Hon’ble High Court at Calcutta.

13. In various writ petitions filed in different High Courts apart from challenging the guidelines dated 08.08.2008, disciplinary proceedings

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initiated against the writ petitioner for violation of the guidelines dated 08.08.2008 were also challenged. For example, in writ petition No.25662 of 2016, Shaji Poullose versus Institute of Chartered Accountant of India and others, the guidelines dated 08.08.2008 as well as communication dated 28.03.2015, 23.06.2016 and 13.07.2016 were under challenge. The High Court issued notice and stayed the disciplinary proceeding against the writ petitioner therein.

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14. Learned counsel for the respondents have also relied on the judgment of this Court in **Institute of Chartered Accountants of India versus Southern Petrochemical Industries Corporation Limited and another, (2007) 15 SCC 649**, in which case the Transfer petition was filed in this Court by the Institute of Chartered Accountants of India for transferring writ petitions filed in different High Courts challenging Constitutional validity of paragraph 33 of Accounting Standard 22 framed by Institute of Chartered Accountant of India. This Court allowed the Transfer petition and directed all the writ petitions to be heard by Calcutta High Court. Learned counsel for the respondent submits that this Court may consider transferring all the writ petitions to any one High Court in the present matter also.

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15. The fact that this Court on 03.04.1991 had dismissed the Transfer Petition Nos.614-615 of 1990 observing that the concerned High Courts may dispose of the writ petition on early date cannot be treated any kind of bar in transferring the writ petition in the present batch of cases. At the time when the earlier transfer petition was dismissed, conflicting judgments on subject in issue by different High Courts had not come. As noted above, with respect to the cap on the number of audits, there are conflicting judgments of different High Courts taking different views on the similar guidelines. Further, this Court's judgment in **Institute of Chartered Accountants of India versus Southern Petrochemical Industries Corporation Limited and another (supra)**, transferring the writ petition to one High Court i.e. Calcutta High Court does not preclude the consideration of prayer of the petitioner for transferring the writ petitions to this Court in present matter.

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16. The guidelines which are impugned in the High Court and consequent disciplinary proceedings initiated against various chartered accountants throughout the country is an issue of public importance affecting Chartered Accountants as well as the citizens who have to

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A obtain compulsory tax audits. We are satisfied that to settle the law and to clear the uncertainty among tax professionals and citizens, it is appropriate that this Court may transfer the writ petition, to authoritatively pronounce the law on the subject.

17. We, however, find substance in the submissions made by
B learned counsel for the respondents-writ petitioners that the interim orders operating in different writ petitions which are sought to be transferred should be allowed to be continued till this Court considers the matter and passes any other order.

18. In result, these Transfer Petitions are allowed. The writ petitions
C mentioned above are withdrawn to this Court.

19. The Registry should transmit this order to the respective High Courts immediately. The interim orders passed in the writ petitions which are being transferred to this Court shall continue till any other order is passed by this Court.