

Rajasthan High Court

Shri Dinesh Mehta vs The Institute Of Chartered ... on 8 January, 1992

Equivalent citations: 1992 (1) WLN 469

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Bench: B Arora

JUDGMENT B.R. Arora, J.

1. The petitioner, by this writ petition, has prayed that the respondents No. 1 and 2 may be directed to suitably amend the regulation No. 38 by incorporating or inserting the provision like regulation No. 37(I)(C) of the Chartered Accountants Regulations, 1988 (hereinafter referred as 'the Regulations'] and declare the petitioner as successful in the Final Examination of Chartered Accountancy, held in the months of May, 1991.

2. The petitioner, after passing his B.Com. Examination, got himself registered as an Articled Clerk for pursuing his studies in the Chartered Accountancy Course. He appeared in the Intermediate Examination and passed the same. After clearing the Intermediate Examination, he appeared in the Final Examination of Chartered Accountancy Course. He got 192 marks out of 400 in Group-I and 210 marks out of 400 in Group-II. He was declared successful in Group-II examination, but declared 'failed' in Group-I as he did not obtain the requisite 50% marks. Dissatisfied with the result, the petitioner has preferred this writ petition.

3. It is contended by the learned Counsel for the petitioner that the regulation 38 of the Regulations, which deals with the requirement of passing the Final Examination, is discriminatory because it provides a different standard to qualify the Intermediate Examination and Final Examination. According to the learned Counsel for the petitioner, the standard for qualifying the Intermediate and Final Examinations should be the same as they form the same class. It is further submitted by the learned Counsel for the petitioner that the Council has proposed an amendment in the regulation No. 38 and the provisions of that amended regulation should be applied to the case of the petitioner and he be declared as successful in the examination. The learned Counsel for the respondent, i.e., the Institute of Chartered Accountants, on the other hand, submitted that the Council has been bestowed with the powers to maintain, control and regularise the standard and status of the profession and the Members of the Institute. The Council, in exercise of the powers, looking into the responsibility bestowed upon the profession on the basis of the recommendations made by the Experts, enacted regulation 38 prescribing the minimum requirement of passing the Final Examination. It has, further, been argued by the learned Counsel for the respondents that the Intermediate Examination and the Final Examination form two separate classes and greater responsibility lies upon the Members after qualifying the Final Examination and, therefore, the level of knowledge and expertise is more expected from the examinee for the Final Examination and there is no discrimination as suggested by the learned Counsel for the petitioner. It is further submitted by the learned Counsel for the respondents that the amendment has only been proposed in regulation 38 and the objections have been invited, but regulation 38 has not yet been amended and, therefore, the benefit of the provisions of the proposed amendment to regulation 38 is not available to the petitioner.

4. I have considered the rival submissions made by the learned Counsel for the parties.

5. The first controversy in the present case is: whether regulation 38 of the Regulations, which prescribes that a candidate for the Final Examination can be declared to have passed the examination provided he secures minimum of 50% of the total marks of all the papers of each Group, is discriminatory and in excess of the powers of the Council. The council has been setup under Section 9 of the Chartered Accountants Act, 1949. As per Section 15 of the Act, which deals with the functions of the Council, it is the duty of the Council to carry-out the provisions of the Act and to regulate and maintain the status and standard of the professional qualifications of the Members of the Institute. Section 30 authorises the Council to make regulations for the purpose of carrying-out the objects of the Act, by way of Notification in the Gazette of India. One of the purpose, for which the Council is authorised to make the regulation, is for prescribing the standard and conduct of the examination under the Act. Chapter-II of the Regulations of the Chartered Accountants Regulation 1988, deals with the requirement for the passing of Intermediate Examination while regulation No. 38 deals with the Final Examination. According to regulation 37, a candidate for being declare Successful in the Intermediate Examination has to obtain at least 40% marks in each subject and 50% marks in aggregate in both the groups, while according to regulation 38, a candidate for being declared successful in the Final Examination, has to obtain 50% marks in each group. It is exclusively within the province of the Council to determine as a matter of policy how the provisions of the Act can be best implemented and what measures have to be incorporated in the Regulation for the efficacious achievement of the object and the purpose of the Act. It is not open for the Court to examine the merit and de-merit of the policy laid down by the Regulation making body and the scrutiny is to be limited to the extent as to whether the impugned regulation falls within the scope of Regulation-making power conferred on the Council. Any deviation in the policy incorporated in the Regulation will not render it ultra-vires if two different standards have been provided for examining the standard at the Intermediate Examination and the Final Examination as there is a reasonable nexus in providing two different requirements for passing the Intermediate Examination and the Final Examination, and the Court cannot strike down the regulation on the ground that in its view the policy is not a wise and prudent. Candidates appearing in the Intermediate Examination and Final Examination cannot be treated equally as they do not form the same class. After qualifying the Intermediate Examination, a student has to undergo the further training and has to appear in the Final Examination, which requires a greater scrutiny and the Final Examination to the Chartered Accountancy Course stands on a different footing with that of Intermediate Examination. The level of knowledge and expertise expected of an examinee of the Final Examination is higher and stricter than that of the examinee of Intermediate Examination, which proceeds the Final Examination since the Final Examination is a professional examination and after qualifying the same, the person enters in the profession and the greater responsibility lies upon these professional Accountants. After qualifying the Final Examination, the candidate becomes a professional Chartered Accountant and it is the solemn responsibility of the Council to provide to the society the Professional Accountants who could be upto the expectations of the society- both in terms of scope and quality of the services rendered by them. As a greater responsibility lies on these Chartered Accountant therefore, high standard has to be provided for passing the Final Examination in order to maintain the standard and excellence of the profession. By reducing the pass- marks, the standard of the profession, expected from a professional,' cannot

be sacrificed and a standard of the Chartered Accountant should not be compromised in the national interest, also. There has been a perceptible fall in the national standard and general efficiency of the professional-men and as such, in the national interest, the Council has fixed these minimum marks for passing the Chartered Accountancy Course on the recommendations of the Expert-body, which has taken all the facts and circumstances into consideration and fixed two different standards for passing the Intermediate Examination and that of Final Examination and that cannot be said to be discriminatory as both of them form separate classes in themselves. It is exclusively within the domain of the Council to see what measures for maintaining the standard have to be taken for the efficacious achievement of the object and the purpose of the Act. The authority of the Council extends to the sphere of maintaining proper professional standard. By virtue of the authority, it is open to the Council to lay down the scheme for holding the examination and the requirement of the minimum marks to qualify the same. If the Council, in order to maintain the high standard of the profession and looking to the faith, which the legislature has imposed in the Chartered Accountants coming-out in the field, has fixed 50% marks as the minimum pass-marks in each group to qualify in the Final Examination then such decision, taken by the Council on the recommendation of the Experts Committee, cannot be challenged on the ground of being illegal, arbitrary or discriminatory and the norms laid down by the Council for judging the suitability of the Examinees is not likely to be interfered by the Courts. The conduct of the examination and the fixation of the standard are within the jurisdiction of the academic authority- the Council in the present case- which acts on the advice of the Experts and the Court should be reluctant to substitute its view as to what is the wise, prudent and proper in relation to the academic matter in preference to those formulated by the professional-man possessing the technical expertise and which has experience of day to day actual working of the system and is acquainted with the actual reality and grass-root problems thereof.

6. Now, coming to the question: whether the proposed amendment can be made applicable in the present case, suffice it to say that it is only the amendment that has been proposed in regulation No. 38 and the objections have been invited, but it has not taken the final shape and unless and until the regulation is amended, the benefit of the regulation cannot be made available to the petitioner and the alike. The amendment will be operative only from the date when it is made effective. At this stage, it is not even sure whether after receiving the objections, the amendment itself will be made or not and as such, the benefit of the proposed amendment in regulation 38 of the Regulations cannot be given to the petitioner.

7. In the result, I do not find any merit in the writ petition and the same is hereby dismissed.