

INSTITUTE OF CHARTERED FINANCIAL  
ANALYSTS OF INDIA AND ORS.

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v

COUNCIL OF THE INSTITUTE OF  
CHARTERED ACCOUNTANTS OF INDIA AND ORS.

MAY 16, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Chartered Accountants Act, 1949—Sections 7, 22 and 24A—Chartered Financial Analyst (C.F.A.) Course/Programme offered by a registered society—Council of Institute of Chartered Accountants of India issuing notification prescribing that its members i.e. Chartered Accountants (C.A.), who had obtained qualification from that Society, if they did not surrender same by a prescribed date, they would be guilty of professional misconduct under the Act—Correctness of—Held—Functions of C.F.A. were altogether different from those of a C.A., and did not include those in exclusive domain of latter—Similarly in designation on premise that three papers taught by Institute were also taught by Society was immaterial—Society did not commit offence under Section 24A(1) of awarding degree similar to that of Institute, and award of qualification by it could not be said to be nullity—Section 7 only debarred member of Institute from using a qualification; it did not prohibit C.A. from acquiring a qualification—Acquisition of a qualification being an inherent and human right, it could not be prohibited except by a statutory interdict—Use of same as permitted by Section 7 was not per se illegal, and no misconduct arose as a result thereof—Section 24A could not be read with Section 7, and being a penal provision, had to be construed strictly—Otherwise too, notification was impermissible as professional misconduct having been defined under Section 22, a statutory authority could not transgress its authority to say by an administrative order that acquisition of a qualification by a member of Institute shall itself constitute a misconduct—Notification issued by Council, being a law within meaning of Article 13(3)(a) of Constitution, 1950 and violative of Articles 14 and 19 (1) (g) thereof, is quashed.*

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*Words and phrases—Any other qualification that he may possess—In*

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A *context of Section 7 of Chartered Accountants Act, 1949.*

*Words and phrases—Misconduct—In context of Section 22 of Chartered Accountants Act, 1949.*

B Appellant is a registered Society offering the Chartered Financial Analyst Course/Programme. Respondent issued a notification prescribing that if any of its members i.e. any Chartered Accountant, had obtained the qualification from appellant and did not surrender the same by a prescribed date, they would be held to be guilty of professional misconduct under the Chartered Accountants Act, 1949. Aggrieved by this, appellant filed a writ petition before High Court, but same was dismissed. Hence the present appeal.

C Appellant contended that (i) the notification issued by respondent was violative of fundamental rights under Articles 14 and 19(1) (g) of the Constitution of India, 1950; (ii) second part of the proviso to Section 7 of the Act enables the member of the Institute to use any qualification and in that view of the matter the qualification acquired by any Chartered Accountant from them being a matter of statutory right, it cannot be taken away by a delegated notification.

D Respondents contended that (i) under Section 7 of the Act, a Chartered Accountant was prohibited from using any other description, whether in addition thereto or in substitution thereof; (ii) the letters 'CFA' closely resemble 'FCA' and are capable of misleading the lay public and also conveying the entirely erroneous impression that a FCA with a CFA is superior to a mere 'FCA'; (iii) proviso to Section 7 permits addition of a description or letters to name to indicate membership of another Institute of Accountancy, only if that other Institute, has been recognized by them and not otherwise; (iv) the 'other qualification' occurring to in the latter part of the proviso to Section 7 refers to the qualification other than membership of an Institute of Accountancy such as LL.B., Ph.D, MBA, MBBS etc; (v) the proviso cannot be so construed as to nullify completely the prohibition in the opening part of Section 7; (vi) their view that appellant is an institute of accountancy should not be interfered with by the Court having regard to their expertise in the field of accountancy in general; (vii) item No. (i) of Part II of the Second Schedule of the Act makes contravention of any provision of the Act or of the regulations made there under, amount to a misconduct.

H Allowing the appeal, the Court

**HELD (per. S. B. Sinha, J):**

**1.1. The Institute is constituted under a parliamentary Act. It is governed by the provisions thereof as also the rules and regulations framed thereunder. It being a statutory authority must confine its activities within the four-corners of the statute. Section 7 of the Act debars a person from using a qualification; it does not prohibit him from acquiring a qualification. If, therefore, any member of the Institute intends to acquire a qualification, the same being an inherent and human right cannot be a subject-matter of prohibition until and unless there exists any statutory interdict therefor. [Para 18] [1144-F, G]**

**1.2. If a notification issued under a statute is a law within the meaning of Article 13(3)(a) of the Constitution, the same is liable to be struck down if it is contrary to any of the fundamental rights guaranteed under the Constitution of India. [Para 32] [1148-C, D]**

*Indian Express Newspapers (Bombay) Private Ltd. v. Union of India*, [1985] 1 SCC 641, relied on

**1.3. The notification dated 03.08.1989 issued by respondent No. 1 violates Articles 14 and 19 (1) (g) of the Constitution and is hereby quashed. [Para 32] [1148-D]**

**2. Section 7 cannot be read with Section 24A of the Act. An institute may commit an offence for awarding a degree in respect of attainment of any qualification or competence similar to that of a member of institute. But answer to such a question must be rendered as and when the same is raised. It is not for the Court to proceed on the presumption that the appellant has committed an offence. It is also not possible to hold that the appellant has committed, in the event such an offence has been committed, awarding of any degree in violation of Clause (ii) of Sub-section (1) of Section 24A of the Act would be a nullity. In any event, so long awarding of any degree is not held to be illegal or a nullity, using the same as permitted in terms of Section 7 of the Act would not per se be illegal. If it is not per se held to be illegal, the concept of misconduct arising as a result thereof, would not arise. Reasonableness is the soul of law. A law is said to be the perfection of reason. Even otherwise, Section 24A of the Act is a penal provision. It must receive a strict construction. What is, therefore, not contemplated is a misconduct under the Act, cannot be termed to be a misconduct by reason of an administrative order. A statutory authority, as is well-known, must not only act within the four-corners of the statute, it also must act fairly and reasonably.**

**[Para 28] [1147-D, E, F, G]**

**A** 3.1. Even otherwise the notification is impermissible. What is a professional misconduct has been defined. The statutory authority, therefore, cannot transgress its authority to say that acquisition of a qualification by a member of the Institute shall itself constitute a misconduct.

[Para 19] [1144-H; 1145-A]

**B** 3.2. The provision of Section 22 of the Act must be considered widely. It must take within its sweep the misconduct of a member of the Institute, which would disentitle him from pursuing a noble profession.

[Para 19] [1145-A]

**C** *The Council of the Institute of Chartered Accountants of India v. B. Mukherjea*, [1958] SCR 371 and *H.A.K. Rao v. Council of Institute of Chartered Accountants of India, New Delhi*, AIR (1967) SC 1257, distinguished

**D** 3.3. Whether misconduct has been conducted or not would depend upon the statute in question and the nature of misconduct said to have been committed. A misconduct must be definite or precise but subject to its generic meaning in absence of any statutory definition. [Para 25] [1146-D]

3.4. When a person is otherwise entitled to acquire any additional qualification, such qualification per se, cannot be termed to be a misconduct in its generic sense. [Para 25] [1146-D]

**E** 'M' an Advocate Re, AIR (1957) SC 149 and *Probodh Kumar Bhowmick v. University of Calcutta and Ors.*, (1994) 2 C.L.J. 456, relied on

*State of Punjab and Ors v. Ram Singh Ex. Constable*, AIR (1992) SC 2188, *B.C. Chaturvedi v. Union of India*, [1995] 6 SCC 749, referred to.

**F** 3.5. A distinction must be drawn between a misconduct committed by an employee and a professional misconduct. In the case of the latter, the person in the profession precisely knows what is expected of him.

[Para 26] [1146-E]

**G** 3.6. It may not be possible to lay down all such misconducts but, it would be too much to contend that even an acquisition of an additional qualification would come within the purview thereof. Such a broad meaning defy all norms.

[Para 26] [1146-E]

**H** *B. P. Sharma v. Union of India and Ors.*, [2003] 7 SCC 309, relied on

4. Similarity in the designation on the premise that three of the papers taught by the appellant institute are also taught by Respondent No. 1 was immaterial. [Para 31] [1148-C] A

5.1. A proviso may restrict the operation of the main provision, but by reason thereof the rights and liabilities contained in the main provision cannot altogether be taken away. [Para 15] [1144-B] B

5.2. The main provision of Section 7 contains the prohibition, but the proviso appended thereto only lifts such prohibition to the extent mentioned therein, in respect of the other Institutes of Accountancy, the degrees granted in respect thereof are six in number, as would appear from Appendix No. (8) of the said Act. The expression 'any other qualification that he may possess', therefore, must be read as qualification other than conferred upon the member by other Institutes of Accountancy. [Para 16] [1144-C] C

5.3. The explanatory statement appended to the notification does not state that the same had been issued for the purposes sought to be achieved by Section 7 of the Act. [Para 19] [1144-G] D

6. Interpretation of law is the job of the superior court. An opinion of an expert is not beyond the pale of judicial review. It would certainly not be so when the statutory authority transgresses its jurisdiction. A decision taken in excess of jurisdiction would render the same a nullity. E

[Para 30] [1148-B]

*Vasu Dev Singh & Ors. v. Union of India & Ors.*, (2006) 1 SCALE, 108 relied on.

(*Markandey Katju, J (supplementing):* F

1.1. It is difficult to understand how does the term 'professional misconduct' apply to a Chartered Accountant seeking additional training and qualification of CFA? The impugned notification clearly and flagrantly violates the fundamental rights of the writ petitioners under Articles 14 and 19 (g) of the Constitution of India. [Para 13] [1150-H] G

1.2. It is strange that the ICAI, renowned in its own field and with various statutory responsibilities, should go out of its way to stop its members i.e. Chartered Accountants from enhancing their knowledge, training and ability by acquiring a 'CFA' qualification. Instead of appreciating such aspirations of Chartered Accountants who seek to widen their know-how and horizons H

A they are sought to be harassed and termed as being guilty of 'professional misconduct' Surely this cannot be regarded as reasonable.

[Para 12] [1150-G]

B 2.1. The court below has obviously misunderstood the difference between the nature of functions of the Chartered Financial Accountant Analyst and Chartered Accountant. [Para 14] [1151-B]

C 2.2. The CFA programme does not give training to become Auditors or Accountants or Cost Accountants or Income Tax or Direct or Indirect Laws advisers etc. These functions are performed and remain in the exclusive domain of Chartered Accountants, Cost Accountants, and lawyers (though it is true that the CFA course includes some study of accountancy)

[Para 7] [1149-G, H]

D 2.3. The main function of the CFA is to study and analyse the financial markets and advise his clients accordingly, whereas the main function of a C.A. is to do auditing of a firm's (company's) balance sheet and profit and loss account. These are two altogether different functions. Of course, if a person audits a firm's balance sheet and P & L accounts, there may be a conflict of interest if he also advises the same firm about its investments. An auditor is a watchdog on behalf of the shareholders, whereas a financial adviser advises the management. Such a possible conflict of interest can no doubt be prohibited by law, and such prohibition would be reasonable and in the public interest. [Para 8] [1150-B, C]

F 2.4. The notification dated 3-8-1989 goes far beyond such a reasonable restriction. It prohibits all C.As. from joining C.F.A. course A.C.A can do auditing work for one firm and can be financial adviser for another, in which case there is conflict of interest. It is only for the same firm (or company) that he should not do both work. Moreover, a C.A. can switch over and become exclusively C.F.A. [Para 9] [1150-D]

G 2.5. Thus the notification dated 3-8-1989 amounts to excessive restriction, and it is settled that excessive restriction which is not required in public interest is not reasonable and hence not saved by Article 19(6).

[Para 10] [1150-E]

*Maneklal Chotelal v. M. E. Makwana*, AIR (1967) SC 1373 and *Express Newspapers Ltd. v. Union of India*, AIR (1958) SC 578, relied on

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**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6835 of 2000.** A

From the Final Judgment and Order dated 29.4.1999 of the High Court of Andhra Pradesh at Hyderabad in WA No. 1407 of 1990.

K.K. Venugopal, Parag P. Tripathy, Sr. Adv., Ankur Y. Ramesh, Arathi Gupta, Y. Vismai Rao and Y. Raja Gopala Rao for the Appellants. B

S. Ganesh, Sr. Adv, K.K. Jain, Rakesh Agarwal and Pramod Dayal for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Appellant No. 1 herein is a Society registered under the Andhra Pradesh (Telangana Area) Public Societies Act, 1350F. At the time of its registration it was known as 'Institute of Certified Financial Analysts', which was changed to 'The Institute of Chartered Financial Analysts of India'. Appellants contend that it offers the Chartered Financial Analyst Course/Programme, which is entirely different form that offered by Respondent No. 1. It has sought for opinion from the Director General of Investigation and Registration in terms of Sections 11 and 36 of the Monopolies and Restrictive Trade Practices Act, 1969 on 11.02.1988, whereto a reply was sent by the appellants on 24.02.1988. A notice, however, was published in the journal of Respondent No.1 herein, wherein a purported caution to members about the appellant-Institute was published in the following terms: C D E

"It has come to the notice of the Institute that the Institute of Chartered Financial Analysts of India, Hyderabad is conferring the designation of "Chartered Financial Analyst" and permitting its members to use the letters 'C.F.A.' after their names. The Additional Solicitor General of India has opined that the designation "Chartered Financial Analyst", would seem to be similar to the designation Chartered Accountant especially when the letters 'C.F.A.' are added to the name, which is very close to the letters 'F.C.A.' conferred by the Institute of Chartered Accountant of India. He has further opined that the activities of the Institute of Chartered Financial Analysts of India are violative of Section 24A of the Chartered Accountants Act, 1949. The Institute has already filed an application under Section 36 of the MRTP Act, 1969 with the Director General, MRTP Commission, New Delhi against the activities of the said Institute and the matter is under investigation by the Commission." F G H

A 2. It is, however, not in dispute that no investigation was initiated by the MRTP Commission in that behalf. A notice was sent by Appellant No. 1 to Respondent No. 1, asking for a copy of the opinion of the Additional Solicitor General so as to enable it to know the facts placed before him for his opinion. But no response was received thereto. A reminder thereto was sent on 15.06.1989 and by a letter dated 11.07.1989, the Secretary of Respondent B No. 1 refused to send the copies of the case and the opinion of the Additional Solicitor General. On or about 03.08.1989, a notification was issued by Respondent No. 1 herein prescribing that if any member of the Respondent-Institute i.e. any Chartered Accountant, who obtained the qualification of the Chartered Financial Analyst on or after 01.01.1990; or having obtained the C said qualification earlier did not surrender the same before the said date, would be held to be guilty of professional misconduct in term of the provisions of the Chartered Accountants Act, 1949 (for short, 'the Act').

D 3. A writ petition was filed before the Andhra Pradesh High Court by Appellant No. 1 herein on or about 16.11.1989. The said writ petition was dismissed by a learned Single Judge by a judgment and order dated 21.11.1990, *inter alia*, opining:

E "The proviso to a section cannot be expected to nullify the effect of the main Section. The proviso must be treated as an exception and subservient to the object sought to be achieved by the main Section. Under Appendix No. (8) it was agreed that the Institutes previously recognized under the Auditor's Certificate Rule, 1932, be recognized for the purposes of Section 7 for the use of letters, F.S.A.A. Further the Council decided that letters or description in respect of membership of bodies other than Accountancy Institutes can be used provided F such use does not amount to the use of designation and in the case of Accountancy Institutes prior recognition of the Council in this behalf is necessary. He was also decided that in respect of Accountancy Institutes prior recognition of the Council in this behalf is necessary. It was also decided that in respect of Accountancy Institutes, which are recognized and in respect of Institutes other than G Accountancy Institutes the word 'London' in brackets may be allowed to be added provided that in each case the respective Institutes had permitted such addition. The Council also decided that the Institute of Costs and Works Accountants is not an Accountancy Institute within the meaning of Section 7 and therefore there was no bar to the H use of these letters by the members of that Institute, if they happen



to be their members.

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A combined reading of Section 7 and the Appendix (8) makes it clear that Chartered Accountants who have been registered as members of the 1st respondent-Institute alone are permitted to use the letters or description which are recognized by it. Therefore it is clear that the designation of 'Chartered Financial Analyst' is not recognized by the 1st respondent-Institute or for that matter by the Central Government or by any Statute. Therefore, under Section 24A of the Act the 1st respondent-Institute can impose restrictions on all the members of the 1st petitioner-Institute not to use the unrecognized diploma or designation that has been awarded by the 1st petitioner-Institute. Section 24A clearly provides penalty for using the name of the Council, awarding degree of chartered Accountancy etc. Section 24A of the Act reads as follows:

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"24A-Penalty for using name of the Council awarding degree of chartered accountancy, etc.

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"(1) Save as otherwise provided in this Act, no person shall –

(i) use a name or the common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

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(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute; or

(iii) seek to regulate in any manner whatsoever the profession of chartered accountants."

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Sub-section (2) of Section 24A deals with the penalty to be imposed in case of contravention of the provisions of sub-section (1). Under sub-section (3) it is stated that nothing contained in this section shall apply to any University established by law or to any body affiliated to the Institute. The 1st respondent-Institute can also impose restrictions on its own members and also impose penalty for using the name of the Council, awarding degree of chartered accountancy. Section 24 deals with the penalty for falsely claiming to be a member of the Institute (R-1)

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A According to the petitioners, the course of study that is being taught at the Institute is different. But the 1st respondent Institute contends that the course of study is similar. The respondents filed an Annexure-X to the counter giving a comparative table of syllabi of ICFAI and ICAI. But one should not forget the fact that the 1st respondent-Institute has got authority to change the syllabus from time to time depending upon the changes in the economic environment in the national and international sphere and the Chartered Accountants can function not only as Accountants, Auditors, Financial Advisors, but also as Financial Analysts. The Chartered Accountancy course is fairly exhaustive and includes areas in financial and investment management, micro economics and security evaluation, project appraisal and Indian financial system.

D Section 2(b) of the Act defines 'Chartered Accountant' as to mean a person who is a member of the Institute and the persons who have passed such examination and complete such training as may be prescribed for members of the Institute shall be entitled to have their names entered in the Register of the Institute and no member of the Institute shall be entitled to practice whether in India or elsewhere unless he has obtained from the Council a Certificate of practice. According to Section 7, every member of the Institute in practice shall, any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor. The members of the Institute are divided into two classes viz., associates and fellows. Any person whose name is entered in the Register is deemed to have become an associate member of the Institute and is entitled to use the letters "A.C.A." after his name to indicate that he is an associate member of the Institute of Chartered Accountants. A member, being an associate, who has been in continuous practice in India for at least five years as a Chartered Accountant is entitled to use the letters F.C.A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants and his name will be entered in the Register as a fellow of the Institute."

It was further held:

H "There are many Analysts in different fields such as Food Analyst and Chemical Analyst. But when the 1st petitioner-Institute is dealing

with the accountancy profession and training people in one form or the other, the 1st respondent-Institute which is a statutory body is perfectly justified in restraining their own members in using some other designation which is akin or which resembles the designation along with the designation that is being conferred by the 1st respondent-Institute, which will give rise an impression in the minds of the general public or the persons connected with the accountancy profession that the designation 'C.F.A.' is an additional qualification to the persons that were already holding 'C.A.' or 'F.C.A.'. Such preference cannot be taken advantage of by the members of the 1st respondent-Institute and Section 24A of the Act gives ample power to the 1st respondent-Institute to issue the impugned Notification as well as the 'caution'.

4. A writ appeal filed thereagainst was dismissed by a Division Bench of the High Court relying on or on the basis of a decision of this Court in *Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa*, JT 1996 4 SC 162 : [1996] 3 SCC 342, holding:

"...In the instant case too what is sought to be prevented is membership of a Chartered Accountant, who is governed by the Chartered Accountants Act, 1949 from being a member of the 1st appellant-institution and should a Chartered Accountant not like this imposition, he may be free to resign from being a Chartered Accountant and then can be free to choose to be a member of any other institution including that of the 1st respondent. But, so long as he continues to be the Chartered Accountant under the Act, his degree and practice can be regulated only under the provisions of the said Act. The authorities under the Act also found that the degree of C.F.A. affixed is causing confusion and gullible public may be misguided and in order to streer clear off such confusion and a larger public interest, the authorities thought that the Chartered Accountants registered under the Act and governed by the Council of the Institute of Chartered Accountants of India not to acquire the C.F.A. and if already acquired, shed the said membership. Having regard to the reasons stated in the impugned notification as also the reasoning given by the learned single Judge, it cannot be said that there is no nexus for the object to be achieved and that the impugned notification is irrational. Fundamental right to practice a profession guaranteed under Article 19(1)(g) of the Indian Constitution can always be hedged with

A restrictions; but the said restrictions should be reasonable restrictions and in the instant case, having regard to the facts and circumstances discussed and legal it cannot be said that the restrictions imposed are unreasonable so as to negate the fundamental rights of the Chartered Accountants to practice their profession.”

B 5. Mr. K.K. Venugopal, the learned Senior Counsel appearing on behalf of the appellants, would submit:

C (i) The High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that in terms of Section 7 of the Act any Chartered Accountant whether in profession or not is entitled to use any degree and in that view of the matter, the prohibition purported to have been imposed by reason of the impugned notification dated 03.08.1989 must be held to be arbitrary.

D (ii) The said notification is violative of a person’s fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

(iii) The power to issue such a notification being hedged with excessive delegation, the same would otherwise be ultra vires Article 14 of the Constitution of India.

E 6. Mr. S. Ganesh, the learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit:

F (i) Section 7 of the Act prohibits a Chartered Accountant from using any other description, whether in addition thereto or in substitution thereof. A Chartered Accountant is, therefore, prohibited from using the description ‘Chartered Financial Analyst’ or its abbreviation ‘CFA’.

G (ii) Proviso to Section 7 permits a Chartered Accountant to add a description or letters to his name to indicate membership of another Institute of Accountancy, only if that other Institute, has been recognized by the Council and not otherwise. Consequently, addition of a description or letters to indicate membership of a non-recognized Institute of Accountancy is prohibited, even by the proviso to Section 7 of the Act. The ‘other qualification’ occurring to in the latter part of the proviso to Section 7 refers to the qualification other than membership of an Institute of Accountancy such as LL.B., Ph.D, MBA, MBBS etc. The proviso

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cannot possibly be so construed as to nullify completely the prohibition in the opening part of Section 7. A

(iii) The appellant Institute is an Institute of Accountancy because:

(a) There is a very substantial overlapping of the curriculum of the ICFII and that of ICAI. B

(b) A Chartered Accountant is exempted from giving 3 out of the 6 examination papers of the ICFAI. B

(c) Strictly financial analysis is only study and analysis of accounts. C

(d) A Chartered Accountant is trained to do financial analysis and ordinarily does it as part of his practice of accountancy. C

(iv) In any event, the considered view of the ICAI that ICFAI is an institute of accountancy should not be interfered with by the Court, having regard to the materials on record and expertise of the Institute in the field of accountancy in general. D

(v) The ICAI is also of the considered view that the diploma/certificate bestowed by ICFAI does indicate 'the position or attainment of any qualification or competence similar to that of a member of the Institute' which attracts the prohibition in Section 24A(1)(ii) of the Act. E

(vi) Further, the letters 'CFA' closely resemble 'FCA' and are capable of misleading the lay public and also conveying the entirely erroneous impression that a FCA with a CFA is superior to a mere 'FCA'. This will directly result in the dilution and debasement of the value of the membership of the Institute. F

(vii) Item No. (i) of Part II of the Second Schedule makes it clear that contravention of any provision of the Act or of the regulations made thereunder amount to a misconduct. Section 22 defines 'professional misconduct' in the widest possible terms. This Hon'ble Court has also read and construed Section 22 and clause (ii) of Part II of the Second Schedule in the broadest manner. G

(viii) The impugned notification seeks to make effective the prohibition contained in Sections 7 and 24A of the Act, the constitutional validity of which has not been challenged by the appellant before the High Court. The notification is, therefore, not unreasonable H

A or arbitrary.

7. The Act was enacted to make provision for the regulation of the profession Chartered Accountants. Section 2 thereof provides for definition clause. 'Institute' has been defined in Section 2(e) of the Act to mean the Institute of Chartered Accountants of India constituted under thereunder.

B Sub-section (2) of Section 2 creates a legal fiction to define a member of the Institute to be in practice, when individually or in partnership with Chartered Accountants (in practice) as a person in consideration of remuneration received or to be received. Sub-Section (2) of Section 2 of the Act reads as under:

C "A member of the Institute shall be deemed "to be in practice", when individually on 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

D (ii) 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

E (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

F (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.

G Explanation – An associate or a fellow of the Institute who is a salaried employee of a chartered accountant (in practice) or (a firm of such chartered accountants) shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articulated clerks."

H 8. Section 3 of the Act provides for incorporation of the Institute. Section 7 of the Act, which is relevant for determination of the case, reads under:

“7. Members to be known as Chartered Accountants

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Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto in substitution therefor:

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Provided that nothing contained in this section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognized in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.

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Sub-section (1) of Section 21, *inter alia*, lays down the manner in which an enquiry relating to misconduct of members of the Institute shall be instituted.

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Section 22 of the Act defines professional misconduct to mean:

“22. Professional misconduct defined

For the purpose of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.”

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Section 22A of the Act provides for a statutory appeal to a High Court against the order of the disciplinary committee. Section 24A was introduced in the year 1949 containing a penal provision for using the name of the Council, awarding degree of chartered accountancy, etc. The said provision reads as under:

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“(1) Save as otherwise provided in this Act, no person shall-

(i) use a name or the common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

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A (ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute; or

B (iii) seek to regulate in any manner whatsoever the profession of chartered accountants.”

Sub-section (2) of Section 24A provides for punishment for violation of the provisions of sub-section (1) thereof.

C 9. Part I of the First Schedule appended to the Act lists the professional misconducts in relation to Chartered Accountants in practice; whereas Part II deals with professional misconduct in relation to members of the Institute in service. Part III deals with professional misconduct in relation to members of the Institute generally. Part I of the Second Schedule appended to the Act deals with professional misconduct in relation to Chartered Accountants in practice requiring action by a High Court; whereas Part II provides for professional misconduct in relation to members of the Institute generally requiring action by a High Court, whether in practice or not.

E 10. A resolution has been passed by the Council under Section 2(2)(iv) of the Act exempting a member who is holding a Certificate of Practice from the Institute of Cost & Works Accountants of India or the Institute of Company Secretaries of India or from the Bar Council or such other bodies, as may be specified in that behalf, by the Council, from the purview of clause (3) thereof which reads as under:

F “(3) “Pursuant” to Section 2(2)(iv) of the Chartered Accounts Act, 1949, the Council herein reiterates its opinion that a member shall be deemed to be in practice if he, in his professional capacity and neither in his personal capacity nor in his capacity as an employee, acts as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matters or takes up an appointment made by the Central Government or a State Government or a Court or law or any other legal authority or acts as a Secretary unless his employment is on a salary-cum-full-time basis;”

Clauses (2) and (3) of Appendix No. (8) read as under:

H “The Council decided that letters or description in respect of



membership of bodies other than Accountancy Institutes can be used provided such use does not amount to the use of designation and in the case of Accountancy Institutes prior recognition of the Council in this behalf is necessary. It was also decided that in respect of Accountancy Institutes which are recognized and in respect of Institutes other than Accountancy Institutes the word London in brackets may be allowed to be added provided that in each case the respective Institutes had permitted such addition.

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(3) The Council also decided that the Institute of Cost and Works Accountants is not an Accountancy Institute within the meaning of Section 7 and therefore there was no bar to the use of these letters by the members of that Institute, if they happen to be our members."

11. The High Court proceeded on the basis that the notification is covered under Sections 7 and 24A of the Act.

12. Before proceeding to consider the respective contentions raised by the learned counsel for the parties, we may notice that the constitutionality of the provisions of the Act are not in question. What was in question before the High Court was merely the validity of the said notification dated 03.08.1989.

13. Section 7 of the Act prohibits any member using the designation of a Chartered Accountant from using any other description, whether in addition thereto or in substitution therefor. Proviso appended thereto, however, *inter alia*, permits the member of the Institute to describe any other qualification that he may possess. The proviso is in three parts. The first part lifts the embargo provided under the main provision in respect of membership of such other Institute of Accountancy, whether in India or elsewhere may be recognized in that behalf by the Council. The second part enables the member of the Institute to add any other qualification that he may possess; and third part prohibits a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants. We are not herein concerned with the third part.

14. Whereas submission of Mr. Venugopal is that the second part of the proviso appended to Section 7 of the Act enables the member of the Institute to use any qualification and in that view of the matter the qualification acquired by any member from the appellant Institute being a matter of statutory

A right cannot be taken away by reason of a delegated notification; the submission of Mr. Ganesh is that the second part of the proviso must be given a contextual meaning in the light of the first part thereof.

15. The role of a proviso is well-known. A proviso may restrict the operation of the main provision, but by reason thereof the rights and liabilities contained in the main provision cannot altogether be taken away.

16. The main provision contains the prohibition, but the proviso appended thereto only lifts such prohibition to the extent mentioned therein, in respect of the other Institutes of Accountancy, the degrees granted in respect thereof are six in number, as would appear from Appendix No. (8) of the said Act. The expression 'any other qualification that he may possess', therefore, must be read as qualification other than conferred upon the member by other Institutes of Accountancy. Such qualification of accountancy may be conferred even by other Institutes. But as noticed hereinbefore, an exemption had been granted by reason of a resolution of the Institute in relation to the Institute of Cost and Works Accountants. Furthermore, a degree conferred by any university also is subject to an exemption from the rigour of the provisions of Section 7 of the Act.

17. There cannot, therefore, be any doubt whatsoever that 'the other qualification' would mean a qualification other than granted by an Institute of Accountancy, subject of course to recognition thereof by the Institute.

18. The questions, however, which is required to be posted and answered inter alia is whether by reason of a notification, acquisition of a qualification itself can be prohibited. The Institute is constituted under a parliamentary act. It is governed by the provisions thereof as also the rules and regulations framed thereunder. It being a statutory authority must confine its activities within the four-corners of the statute. Section 7 of the Act debars a person from using a qualification; it does not prohibit him from acquiring a qualification. If, therefore, any member of the Institute intends to acquire a qualification, the same being an inherent and human right cannot be a subject-matter of prohibition until and unless there exists any statutory interdict therefor.

19. The explanatory statement appended to the notification does not state that the same had been issued for the purposes sought to be achieved by Section 7 of the Act. Even otherwise it is impermissible. What is a professional misconduct has been defined. The statutory authority, therefore, cannot transgress its authority that acquisition of a qualification by a member

of the Institute shall itself constitute a misconduct. We have no doubt in our mind that the provision of Section 22 of the Act must be construed widely. It must take within its sweep the misconduct of a member of the Institute, which would disentitle him from pursuing a noble profession. A

20. Our attention, in this behalf, has been drawn to two decisions of this Court in *The Council of the Institute of Chartered Accountants of India & Anr. v. B. Mukherjea*, [1958] SCR 371 : AIR 1958 SC 72 and *H.A.K. Rao v. Council of Institute of Chartered Accountants of India, New Delhi*, AIR (1967) SC 1257. They were, however, rendered in different fact situation. B

21. In *B. Mukherjea* (supra), the question which arose for consideration before this Court was as to whether a Chartered Accountant while acting in the capacity of a liquidator appointed by the High Court could refuse to furnish any information to this Court and, thus, committed a misconduct. C

22. In *H.A.K. Rao* (supra), the question which arose was as to whether canvassing for the purpose of contesting an election to the post of an Institute is permissible in law. D

23. We are herein concerned with the term 'misconduct'. The word 'misconduct' which in generic sense would mean, as held in *Probodh Kumar Bhowmick v. University of Calcutta and Ors.*, (1994) 2 C.L.J. 456 is as under: E

"Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, 'improper behaviour; intentional wrong doing on deliberate violation of a rule of standard or behaviour: F

Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Indian Penal Code is equally a misconduct." G

[See also *State of Punjab and Ors. v. Ram Singh Ex. Constable*, AIR (1992) SC 2188 : 1992 4 SCC 54 and *B. C. Chaturvedi v. Union of India*, [1995] 6 SCC 749].

A 24. In '*M' an Advocate Re*, AIR (1957) SC 149, this court dealt with professional misconduct in the following terms:

B "As has been laid down by this Court in the matter of 'G', a Senior Advocate of the Supreme Court (A) (supra) the Court, in dealing with cases of professional misconduct is "not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to their men and which do not attach even to them in a non-professional character ...he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable professional the whose privileges he has so long been admitted; and if he departs from the high standards which that professional has set for itself and demands of him in professional matters, he is liable to disciplinary action."

D 25. Whether misconduct has been conducted or not would depend upon the statute in question and the nature of misconduct said to have been committed. A misconduct must be definite or precise but subject to its generic meaning in absence of any statutory definition. When a person is otherwise entitled to acquire any additional qualification, such qualification per se, in our opinion, cannot be termed to be a misconduct in its generic sense.

E 26. There is another aspect of the matter. A distinction must be drawn between a misconduct committed by an employee and a professional misconduct. In the case of the latter, the person in the profession precisely knows what is expected of him. It may not be possible to lay down all such misconducts but, in our opinion, it would be too much to contend that even an acquisition of an additional qualification would come within the purview thereof. Such a broad meaning in our opinion defy all norms.

F 27. In *B.P. Sharma v. Union of India and Ors.*, [2003] 7 SCC 309, this Court held:

G "14. The right which is guaranteed to all citizens under Article 19(1)(g) of the Constitution of India is to practise any profession or to carry on any calling, trade or business. Clause (6) of Article 19, however, places a restriction that nothing would prevent the State from making any law imposing reasonable restrictions in exercise of the right in the interest of the general public. Sub-clauses (i) and (ii) further provide

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that professional and technical qualifications, as may be thought necessary for practising the profession, can always be prescribed and exclusion of carrying on of any calling, trade or business etc. is also envisaged which is also carried on by a State or by a corporation owned and controlled by the State. Subject to the abovenoted restrictions the valuable right as provided under Article 19(1)(g) is available to all the citizens who are free to choose any trade, business, calling or profession etc. It obviously, also includes the manner and terms in which they will carry on their profession, but again subject to reasonable restrictions which may be thought necessary by the State in the interest of the general public. On the other hand, once a citizen voluntarily chooses to join government service or any other service, he would obviously be free to do so but he would be bound by the terms and conditions of the service as may be provided under the law or by contract of service.”

28. Submission of Mr. Ganesh that Section 7 should be read with Section 24A of the Act, in our opinion, cannot be accepted. An institute may commit an offence for awarding a degree in respect of attainment of any qualification or competence similar to that of a member of institute. But answer to such a question must be rendered as and when the same is raised. It is not for us to proceed on the presumption that the appellant has committed an offence. It is also not possible to hold that the appellant has committed an offence. It is also not possible to hold that in the event such an offence has been committed, awarding of any degree in violation of Clause (ii) of Sub-section (1) of Section 24A of the Act would be a nullity. In any event, so long awarding of any degree is not held to be illegal or a nullity, using the same as permitted in terms of Section 7 of the Act would not per se be illegal. If it is not per se held to be illegal, the concept of misconduct arising as a result thereof, in our opinion, would not arise. Reasonableness is the soul of law. A law is said to be the perfection of reason. Even otherwise, Section 24A of the Act is a penal provision. It must receive a strict construction. What is, therefore, not contemplated is a misconduct under the Act, in our opinion, cannot be termed to be a misconduct by reason of an administrative order. A statutory authority, as is well-known, must not only act within the four-corners of the statute, it also must act fairly and reasonably.

29. Our attention has been drawn to certain subsequent events. We do not think that we should go thereinto. It would be for the appropriate authority to take a decision on the basis of the said subsequent events. Submission

A of Mr. Ganesh that the decision taken by Respondent No. 1 having been taken by an expert decision and, thus, the same does not deserve any interference at the hands of the court, in our opinion, is misconceived.

B 30. Interpretation of law is the job of the superior court. An opinion of an expert is not beyond the pale of judicial review. It would certainly not be so when the statutory authority transgresses its jurisdiction. A decision taken in excess of jurisdiction would render the same a nullity. [See *Vasu Dev Singh & Ors. v. Union of India & Ors.*, (2006) 11 SCALE 108]

C 31. In any event, similarity in the designation on the premise that three of the papers taught by the appellant institute are also taught by Respondent No. 1 cannot be a ground to uphold the contention of Mr. Ganesh.

D 32. If a notification issued under a statute is a law within the meaning of Article 13(3)(a) of the Constitution, the same is liable to be struck down if it is contrary to any of the fundamental rights guaranteed under the Constitution of India. [See *Indian Express Newspapers (Bombay) Private Ltd. and Ors. v. Union of India and Ors.*, [1985] 1 SCC 641]. In our opinion the notification dated 03.08.1989 issued by respondent No. 1 violates Articles 14 and 19(1)(g) of the Constitution and is hereby quashed.

E 33. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.

**MARKANDEY KATJU, J.** 1. I have perused the judgment of my learned brother Hon'ble S.B. Sinha, J. and am in respectful agreement with the same. However, I wish to add some of my own reasons.

F 2. In recent years, the country has witnessed phenomenal growth in the field of financial markets. The funds raised by the corporate sector from the capital market have increased exponentially, the number of stock exchanges have increased, the investor community has multiplied. The structural developments in the markets are the inclusion of institutional and corporate members, of stock exchanges, and formation of the regulatory authority 'SEBI' to oversee the functioning of the capital market.

H 3. In recent decades the financial services industry has matured in our country. A large number of mutual funds have been set up by the banks, insurance companies and the corporate sectors, leasing and hire purchasing companies have grown in size, content and operations. Credit rating services

have been launched. Venture Capital Funds have been set up to meet the requirements of diversified industrial, research and entrepreneurial enterprises. Reliance on international capital markets has become an important source for financing many other developments as well in the country. This makes it all the more important for India to have effective management, controls and practices in line with those in the international financial markets.

4. In view of these developments corporate financial management and controls have become very sophisticated and, therefore, demand highly specialized skills for planning, decision making and controls, consistent with the practices of the world's leading financial markets.

5. Obviously, to meet the growing professional requirements of the financial industry, it became essential to set up an institute for education and training of professionals in accordance with the norms, content, practices and standards of the leading international markets. It is in this context that at the request of the Indian financial industry, some eminent professionals with extensive background in Finance/RBI/UTI/Stock Exchanges etc. promoted and helped establishing the Institute of Chartered Financial Analysts of India (in short 'ICFAI') in active collaboration with the Institute of Chartered Financial Analysts of USA.

6. This collaboration helped ICFAI in establishing educational standards in the field of financial analysis, training people, conducting examinations and awarding the qualification of 'Chartered Financial Analyst' (hereinafter referred to as 'CFA') - an internationally acclaimed qualification in the field of financial management.

7. Similar institutions have been established by many other countries, including Europe, Japan, Australia, Singapore etc. The profession of CFA is now internationally highly regarded and recognized as vital for modern and orderly development of financial markets. The response to the CFA programme in India has been enormous. This is confirmed by the large number of students who have been enrolled with the Institute. The students also include Chartered Accountants and professionals from other fields. The CFA programme does not give training to become Auditors or Accountants or Cost Accountants or Income Tax law or Direct or Indirect Laws advisers etc. These functions are performed and remain in the exclusive domain of Chartered Accountants (hereinafter referred to as "C.A.") Cost Accountants, and lawyers (though it is true that the C.F.A. course includes some study of accountancy).

- A 8. The submission of learned counsel for respondent no.1, Mr. Ganesh, is that the object of the impugned notification dated 3.8.1989 is to avoid conflict of interest. In our opinion this submission suffers from a total misunderstanding of the functions of a C.F.A. *vis-a-vis* a C.A. The main function of the former is to study and analyze the financial markets and advise his clients accordingly, whereas the main function of a C.A. is to do auditing
- B of a firm's (or company's) balance sheet and profit and loss account. These are two altogether different functions. Of course, if a person audits a firm's balance sheet and P&L Accounts, there may be a conflict of interest if he also advises the *same* firm about its investments. An auditor is a watchdog on behalf of the shareholders, whereas a financial adviser advises the management.
- C Such a possible conflict of interest can no doubt be prohibited by law, and such prohibition would be reasonable and in the public interest.

9. However, the notification dated 3.8.1989 goes far beyond such a reasonable restriction. It prohibits all C.As. from joining a C.F.A. course. A C.A. can do auditing work for one firm and can be a financial adviser for
- D another, in which case there is no conflict of interest. It is only for the *same* firm (or company) that he should not do both work. Moreover, a C.A. can switch over and become exclusively a C.F.A.

10. Thus the notification dated 3.8.1989 amounts to excessive restriction, and it is well settled that excessive restriction which is not required in the
- E public interest is not reasonable and hence not saved by Article 19(6) *vide* *Maneklal Chotetal v. M.E. Makwana*, AIR (1967) SC 1373 (para 46), *Express Newspapers Ltd. v. Union of India*, AIR (1958) SC 578 (para 168), etc.

11. In our opinion the contentions of the learned counsel for respondent no.1 are not tenable. By the notification dated 3.8.1989 it was directed that
- F Chartered Accountants shall be deemed to be guilty of 'professional misconduct' if they become members of the ICAI. The C.As. had been directed to surrender their membership of ICAI before 1st January, 1990.

12. We find it strange that the ICAI, renowned in its own field and with various statutory responsibilities, should go out of its way to stop its members
- G i.e. Chartered Accountants from enhancing their knowledge, training and ability by acquiring a 'CFA' qualification. Instead of appreciating such aspirations of Chartered Accountants who seek to widen their know-how and horizons they are sought to be harassed and termed as being guilty of 'professional misconduct'. Surely this cannot be regarded as reasonable.

- H 13. We find it difficult to understand how does the term 'professional



misconduct' apply to a Chartered Accountant seeking additional training and qualification of CFA ? In our opinion the impugned notification clearly and flagrantly violates the fundamental rights of the writ petitioners under Articles 14 and 19(1)(g) of the Constitution of India. A

14. With respect to the court below it has obviously misunderstood the difference between the nature of functions of the Chartered Financial Analysts and the Chartered Accountants. Thousands of Chartered Accountants who have become students and/or have qualified as CFAs from the Institute of Chartered Financial Analysts of India could not have done so if the CFA programme did not offer training and education that was not available in the CA programme. Their involvement in such large numbers is in itself the testament to the CFA qualification. B C

15. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside and the notification dated 3.8.1989 issued by the respondent No.1 is quashed.

VS.

Appeal allowed.