

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.4785 of 2021

Reserved on:20.03.2023

Pronounced on: 23.03.2023

M/s Dhawan and Company & Others Petitioners

Versus

State of Himachal Pradesh & Others ...Respondents

Coram:

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?

For the petitioners : Mr. Neeraj Gupta, Senior Advocate
with Mr. Vedhant Ranta, Advocate.

For the respondents : Mr. Anup Rattan, Advocate General
with Mr. Rakesh Dhaulta, Additional
Advocate General.

Sabina, Acting Chief Justice

Petitioners have filed the writ petition under Article 226 of the Constitution of India, seeking following relief(s):-

- (a) *By issuing a writ, order or direction in the nature of writ of Certiorari to quash the impugned Notification Annexure P-6, to the extent of insertion of Rule 83-A(b) which mandates considering of Chartered Accountants having their Head Office within the State of H.P. for being considered for empanelment with respondents.*

- (b) *By issuing a writ, order or direction in the nature of writ of Certiorari to quash Annexure P-7 issued in furtherance of impugned Notification.*
- (c) *By issuing a writ, order or direction in the nature of writ of Prohibition injuncting and restraining respondents to give effect to or to implement the same in any manner (to the extent of the prayer made in the petition), more particularly, restraining respondents from finalizing the names of Firms for empanelment to conduct the audit of accounts of Societies in furtherance of the impugned Notification.*
- (d) *By issuing a writ, order or direction in the nature of writ of prohibition to stay the implementation, execution, operation of the impugned Notification till disposal of the petition.”*

2. Case of the petitioners, in brief, is that the petitioners' Firms comprised of duly qualified Chartered Accountants, registered under the Institute of Chartered Accountants of India, as per requirement of provisions under the Chartered Accountants Act, 1949 (hereinafter referred to as the “Act” in short). The Act had come in force with a view to regulate the profession of Chartered Accountants and the Institute of Chartered Accountants of India. As per Section 4 of the Act, a person was entitled to get his name entered in the Register, duly maintained by the Institute of Chartered Accountants of India, in case, he met with the

qualifications set therein. Once a Certificate was issued in favour of an individual under the Act, he could practice anywhere in India or elsewhere in terms of the Section 6 of the Act. The members of the Institute, who were in practice, were known as “*Chartered Accountants*”. The petitioners’ Firm comprised of various Chartered Accountants, who had collectively grouped themselves to form a Firm, which had been duly registered with the Institute of Chartered Accountants of India. The State had enacted Himachal Pradesh Cooperative Societies Act, 1968 and as per Section 61 of the said Act, every Society, registered under the provisions of the Act, was liable for audit of its accounts at least once in each cooperative year, as may be prescribed and audited by the Registrar. In order to conduct an Audit of Cooperative Societies and Banks, registered under the Act, the office of Registrar of Cooperative Societies, Himachal Pradesh, maintained a panel of firm of Chartered Accountants. Before the insertion of Rule 83-A(1)(b) of Himachal Pradesh Cooperative Societies Rules, 1971, all the Firms for empanelment which were having their Head Offices outside the State of Himachal Pradesh and/or Branch Offices within the State, were included in the panel of Chartered Accountants. However, after insertion of Rule 83-A(1)(b), only that firm could be impaneled for audit, if it had its Head Office in the

State of Himachal Pradesh. Hence, the writ petition has been filed, challenging the insertion of Rule 83-A(1)(b) of the Rules.

3. Respondents, in their reply, averred that no injustice had been caused to the petitioners. Impugned Rule 83-A(1)(b) of the Rules was reasonable and had been inserted in a larger public interest to achieve the objects detailed in Sub-paras “a to c” of Para 5 of the preliminary objections.

4. *Paras 2 to 6 of the preliminary objections, read as under:-*

“2. That the State Government has carried out amendment in the H.P. Cooperative Societies Act, 1968 (hereinafter ‘the Act’) in the year 2020, called ‘the Himachal Pradesh Co-operative Societies (Amendment) Act, 2020’ as assented to by the Governor on 27th October, 2020. Copy of Gazette Notification of the Himachal Pradesh Co-operative Societies (Amendment) Act, 2020 is annexed at Annexure R-1. As per the amended Act, section 61 of the Act Provides as under:-

“61. Audit, - (1) Every co-operative society shall cause to be audited its accounts by an auditor, within six months from the close of a co-operative year to which the accounts relate.

(2) The accounts of a co-operative society shall be audited by an auditor approved in the general meeting of the society from the panel of auditors notified by the Government in this behalf. The qualifications,

experience, manner of preparation of the panel of auditors and authorization thereof, and audit fee or remuneration to be paid by the society along with the manner of making payment shall be such, as may be prescribed.

(3) If at the time of audit, the accounts of a society are not complete, the auditor authorized under sub-section (2) may cause the accounts to be written up at the expense of the society.

(4) The audit fee or the remuneration, if any, due from any society or the expenses incurred in writing up the accounts of a society shall be recoverable in the manner as provided in section 90.

(5) Where a co-operative society fails to get its annual accounts audited as per sub-Section (1), the Registrar shall get the accounts of the society audited at the expense of the society.

(6) Where the Registrar is of the opinion that the affairs of any society aided as per the provisions of section 48, are not being managed in accordance with the cooperative principles or prudent commercial practices or the provisions of this Act, the rules or the bye-laws, he may by an order, provide for such special audit and the provisions of this Act, and the rules applicable to the audit shall also apply to such special audit:

Provided that the Registrar, if satisfied, may order special audit of a society not being aided as per the

provisions of section 48, if a request to this effect is made by at least one-fourth members of the society.”

Prior to the amendment, section 61 of the Act provided as under:-

“61. Audit: - (1) The accounts of every society shall, at least once in each Co-operative year and by such date as may be prescribed be audited by the Registrar or any person authorized by him in this behalf by general or special order in writing.

(2) In respect of the audit of accounts, the society shall pay such audit fee, if any, and within such time limit as may be prescribed.

(3) If, at the time of audit, the accounts of a society are not complete, the Registrar, or the person authorized by him under sub-section (1) to audit, may cause the accounts to be written up at the expenses of the society.

(4) The audit fee, if any, due from any society or the expenses incurred in writing up the accounts of a society shall be recoverable in the manner as provided in section 90.”

As per the un-amended provisions of section 61 of the Act read with un-amended rule 83 of the H.P. Co-operative Societies Rules, 1971 (hereinafter ‘the Rules’), it was the statutory obligation and duty of the Registrar to get the accounts of every cooperative society audited at least once in each co-operative year either by himself or by any person authorized by him in this behalf and the audit was to be completed

within the current co-operative year but not later than 15 months from the previous date of audit of the society. Whereas, after the amendment in section 61 of the Act read with amended rules 83 of the Rules, it is now statutory duty and obligation of every co-operative society to get its accounts audited from the panel of auditors notified by the Government in this behalf within six months from the close of a co-operative year.

3. That the State Government thereafter, to carry out the purposes of the Himachal Pradesh Co-operative Societies (Amendment) Act, 2020, proposed to make rules further to amend the Himachal Pradesh Co-operative Societies Rules, 1971 and, accordingly, vide notification dated 22.06.2021 (Annexure P-4) notified the Draft Rules for information/ objection(s)/ suggestion (s), if any, of general public likely to be affected by these rules.

4. That in response to notification dated 22.06.2021 (Annexure P-4), the replying respondents received number of suggestion (s)/ objection (s) from the general public including several such suggestion (s) from the firms of Chartered Accountants and also from the Chairman, HP Branch of NIRC the Institute of Chartered Accountants of India, Shimla. Copies of the suggestion (s)/ objection (s) received from the firms of Chartered Accountants and also from the Chairman, HP Branch of NIRC the Institute of Chartered Accountants of India, Shimla are annexed

at Annexure R-2 (Colly.). The firms of Chartered Accountants as well as the Chairman, HP Branch of NIRC the Institute of Chartered Accountants of India, Shimla had suggested to make amendments in rule 83- A (1) (a) and (b) so as to incorporate the condition for the firms of Chartered Accountants having its Head Office within the State of H.P. on the following grounds:-

(a) The condition for the Chartered Accountants having their Head Office within the State for being considered for empanelment in the department of Co-operation is also prevalent in Delhi, Madhya Pradesh, Gujrat, Karnatka, Chhattisgarh and Jharkhand. The firms of Chartered Accountants also annexed copies of the empanelment orders of the above mentioned States along with their objection(s)/ suggestions.

(b) This condition is also in line with the HP Government instructions dated 6th March, 2005 for engaging local/ State Based Chartered Accountants for any type of professional services like audit, consultancies etc. for all the PSUs and the departments of the State.

That the General Body meeting of H.P. Branch of NIRC of Institute of Chartered Accountants of India had unanimously resolved to make a representation to the authorities of the department with the request that Audit Firms having their Head Office registered in the State of H.P. be considered for the allotment of

audit of the society and such resolution was already submitted to the RCS, HP on 13th March, 2014.

(d) Even as per policy of the RBI and the CAG, the audit of nationalized banks is preferably allotted to the CA firms in the respective states where the Head Office of the CA firm is situated.

(e) This condition will bring down the cost of travelling by CA firms for conducting the audits which is ultimately borne by the societies.

5. That the State Government, thereafter, considered the suggestions/objections along with the grounds of such suggestions as discussed in para-4 supra, specifically with regard to insertion of condition in Rule 83-A (1) (b) of the Rules for the Chartered Accountants of having their Head Office within the State of H.P. for being considered for empanelment with the replying respondents. After a thoughtful consideration into the matter, the State Government found following reasons which have proximate and direct nexus with the following objectives sought to be achieved in the interest of the public at large by insertion of condition in Rule 83-A (1) (b) of the Rules for the Chartered Accountants of having their Head Office within the State of H.P. for being considered for empanelment with the replying respondents ☺

(a) Prior to amendment in Section 61 of the Act read with rule 83 of the Rules, the audit was to be completed within fifteen months from the previous date of audit of the society, whereas, after the

amendment in section 61 of the Act, now the audit is to be completed within six months from the close of a co-operative year to which the accounts relates. Secondly, prior to the amendment, the audit was allotted by the Registrar to the auditor out of the panel of auditors prepared by him, however, after the amendment, the society shall allot the audit work to the auditor from the panel of auditors notified by the State Government. Thus, in order to achieve the objective of the Act to complete the audit work within six months from the close of a co-operative year, the firms of Chartered Accountants having their Head Offices within the State would be easy for the societies to communicate and to make further correspondence in relation to the audit of the society. Further, the time spent on journey of the firms of Chartered Accountants having their Head Offices outside the State can be saved by empanelling the Firms of CAs having Head Office within the State. Thus, this would also help the societies to complete the audit work within six months of the close of a co-operative year. Hence, by restricting the firms of Chartered Accountants having their Head Offices outside the State, the co-operative societies and the public at large can be facilitated to complete the audit work within the time limit of six months and this would also make the societies easy in corresponding with the Firms of CAs at local level with regard to audit of the societies because after the amendment, the duty

of the State Government is only to prepare the panel of the auditors and thereafter, selection of the auditor out of the approved panel of auditor and appointment of the auditor thereof will be made by the society and all correspondence with the auditors will be made at the level of the societies.

(b) The Chartered Accountants and the entire audit team also claims TA/DA and halting charges while conducting audit of the societies from the societies on the rates as fixed by the replying respondent from time to time. Such rates were lastly fixed by the replying respondent on 2nd June, 2018, a copy of which is at Annexure R-3. Thus, the condition for the Chartered Accountants of having their Head Office within the State of H.P. for being considered for empanelment with the replying respondents will bring down the cost of TA/DA and halting charges as claimed by the CA firms for conducting the audits which is ultimately borne by the societies.

(c) As per the documents annexed with the objections suggestions of the Chairman, HP Branch of NIRC the Institute of Chartered Accountants of India, Shimla (Annexure R-2 (Colly.)), the condition for the Chartered Accountants having their Head Office within the State for being considered for empanelment in the department of Co-operation is also prevalent in Delhi, Madhya Pradesh, Gujrat, Karnatka, Chhattisgarh and Jharkhand.

The State Government after taking into consideration, the above reasons which have proximate and direct nexus with the objectives, as shown in sub-paras (a) to (c) of para-5 supra, sought to be achieved in the interest of the public at large by insertion of condition for the Chartered Accountants of having their Head Office within the State of H.P. for being considered for empanelment with the replying respondents, inserted the same in Rule 83-A (1) (b) of the Rules by way of notification dated 03.08.2021 (Annexure P-6).

6. That the petitioners have laid challenge to the condition as contained in Rule 83-A (1) (b) of the Rules (Annexure P-6), for the Firms of Chartered Accountants of having their Head Office within the State of H.P. for being considered for empanelment with the replying respondents mainly on the ground that same is violative of Article 14 and 19 (a), (b) and (g) of the Constitution of India as it puts unnecessary restriction which has no nexus with any objective sought to be achieved. In this behalf it is submitted that the Fundamental Rights guaranteed under Article 19 (1) of the Constitution are subject to the power of the State to impose restrictions on the exercise thereof. The restrictions may be imposed to regulate private rights in the public interest. The fundamental rights guaranteed under Article 19 (1) (g) are not absolute or uncontrolled. Their enjoyment is subject to such reasonable restrictions as may be deemed essential in the interest of general public. The

restriction imposed on the Firms of CAs as contained in Rule 83-A (1) (b) of the Rules (Annexure P-6), is in the interest of general public i.e. the members of the cooperative societies as this conditions will enable the societies to get its audit work completed within the time limit of six months from the close of the co-operative year and will also bring down the cost of TA/DA and halting by CA firms for conducting the audits which is ultimately borne by the societies. It is also pertinent to submit here that such condition is also prevalent in Delhi, Madhya Pradesh, Gujrat, Karnatka, Chhattisgarh and Jharkhand. Even, as per policy of the RBI and the CAG, the audit of nationalized banks is preferably allotted to the CA firms in the respective states where the Head Office of the CA firm is situated. Thus, in view of the submissions made hereinabove, it is quite evident that the restriction imposed by the State Government as contained in Rule 83-A (1) (b) of the Rules (Annexure P-6), is reasonable and has been imposed in the interest of public at large, hence the petition deserves to be dismissed.”

5. Learned Senior Counsel for the petitioners has submitted that the impugned Rule 83-A(1)(b) was irrational and had no purpose to achieve. There had been no complaints from the work staff. An unnecessary distinction was sought to be drawn between a class of Chartered Accountants. There is no

justification in inserting the rule in question by insisting that a firm must have its Head Office in the State of Himachal Pradesh.

6. In support of his arguments, learned Senior Counsel for the petitioners, has placed reliance on the decision given by the Hon'ble Supreme Court in ***State of Tamil Nadu & Anr. versus National South Indian River Interlinking Agriculturist Association, Civil Appeal No.6764***, dated 23rd November, 2021, wherein, it was held as under:-

*“32 The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a ‘rational nexus’ to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision. The Indian Courts do not apply the proportionality standard to classificatory provisions. Though the two-judge Bench in **Anuj Garg** (supra) articulated the proportionality standard for protective discrimination on the grounds in Article 15; and Justice Malhotra in **Navtej Singh Johar** (supra) held that less deference must be allowed when the classification is based on the ‘innate*

and core trait' of an individual, this is not the case to delve into it. Since the classification in the impugned scheme is based neither on the grounds in Article 15 nor on the 'innate and core trait' of an individual, it cannot be struck down on the alleged grounds of under-inclusiveness and over-inclusiveness.

33 The Scheme in issue was introduced in pursuance of an electoral promise made by the then party in power in Tamil Nadu. The High Court seems to have been of the view that because the scheme was in pursuance of an electoral promise, it is constitutionally suspect. This view was made on an assumption that no study must have been conducted before the electoral promise was made. It is settled law that a scheme cannot be held to be constitutionally suspect merely because it was based on an electoral promise.²⁴ A scheme can be held suspect only within the contours of the Constitution, irrespective of the intent with which the scheme was introduced. The scheme propounded by the State of Tamil Nadu passes muster against the constitutional challenge. The High Court has erred in holding otherwise. During the pendency of the proceedings the State has granted a broader coverage, based on its assessment of the situation."

7. Learned Advocate General, on the other hand, has opposed the petition and has submitted that the impugned rule had been inserted as some objections had been received with

regard to the prevailing rules. The Societies are required to conduct the audit within six months. The societies were being audited after 2/3 years. In order to check the embezzlement prevailing in the Societies, it was necessary to conduct audit within six months and due to this reason, the impugned rule had been inserted. The impugned rule was in the interest of depositors as well as public in large and was only regulatory in nature. No malice could be attributed to the State for insertion of the impugned rule, as everybody would be treated equally. There was no colourable exercise of power while inserting the impugned rule by the State.

8. In support of his arguments, learned Advocate General, has placed reliance on the decision given by the Hon'ble Supreme Court in ***Christian Medical College Vellore Association versus Union of India and Others***, reported in ***(2020) 8 SCC 705***, wherein, it was held as under:-

“22. In sidhrajibhai Sabbai v. State of Gujarat, the Court again considered the matter and observed that educational institutions cater to the needs of the citizens or section thereof. Regulation made in the real interests of efficiency of instruction, discipline, health, sanitation, morality, public order, and the like may undoubtedly be imposed. Such regulations are not restrictive on the substance of the right, which is

guaranteed, they secure the proper functioning of the institution in the matter of education. It was also observed that regulation must satisfy a dual test - the test of reasonableness and that it is regulative of the educational character of the institution and is conducive to making the institution a capable vehicle of education for the minority community or other persons who resort to it. In W. Proost v. State of Bihar, the Court observed thus:

“8. In our opinion, the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language, script, or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script, or culture, and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.”

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25. In The Gandhi Faiz-e-am-College v. University of Agra, the Court considered whether statute framed by

University of Agra infringed fundamental rights of the minority community and observed thus:

“16. The discussion throws us back to a closer study of Statute 14A to see if it cuts into the flesh of the management’s right or merely tones up its health and habits. The two requirements the University asks for are that the managing body (whatever its name) must take in (a) the Principal of the College; (b) its seniormost teacher. Is this desideratum dismissible as biting into the autonomy of management or tenable as ensuring the excellence of the institution without injuring the essence of the right? On a careful reflection and conscious of the constitutional dilemma, we are inclined to the view that this case falls on the valid side of the delicate line. Regulation which restricts is bad, but regulation which facilitates is good. Where does this fine distinction lie? No rigid formula is possible, but a flexible test is feasible. Where the object and effect is to improve the tone and temper of the administration without forcing on it a stranger, however superb his virtues be, where the directive is not to restructure the governing body but to better its performance by a marginal catalytic induction, where no external authority’s fiat or approval or outside nominee is made compulsory to validate the Management Board but inclusion of an internal key functionary appointed by the autonomous management alone

is asked for, the provision is salutary and saved, being not a diktat eroding the freedom of the freedom."

The majority negated the challenge. It was held that regulation which restricts is bad, but provision which facilitates is good."

9. Learned Advocate General has next placed reliance on the decision given by the Hon'ble Supreme Court in ***Gujarat Mazdoor Sabha and Another versus State of Gujarat***, reported in **(2020) 10 SCC 459**, wherein, it was held as under:-

"11.The principle of proportionality has been recognized in a slew of cases by this Court, most notably in the seven-judge bench decision in K.S. Puttaswamy (Privacy-9 J.) v. Union of India. The principle of proportionality envisages an analysis of the following conditions in order to determine the validity of state action that could impinge on fundamental rights:

11.1. *A law interfering with fundamental rights must be in pursuance of a legitimate state aim.*

11.2. *The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection*

between those measures, the situation in fact and the object sought to be achieved.

11.3. *The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim.*

11.4. *Restrictions must not only serve legitimate purposes; they must also be necessary to protect them.*

11.5. *The State should provide sufficient safeguards against the abuse of such interference.*

11.6. *However before adverting to an analysis on the proportionality of the Respondent's action in issuing the notifications, it would be important to determine, at the threshold, whether the notifications have been validly issued, in conformity with the scope of power envisaged under Section 5 of the Factories Act."*

10. Learned Advocate General has next placed reliance on the decision given by the Hon'ble Supreme Court in ***Internet and Mobile Association of India versus Reserve Bank of India***, reported in **(2020) 10 SCC 274**, wherein, it was held as under:-

"173. *But the above contention is completely misconceived. There can be no quarrel with the*

proposition that RBI has sufficient power to issue directions to its regulated entities in the interest of depositors, in the interest of banking policy or in the interest of the banking company or in public interest. If the exercise of power by RBI with a view to achieve one of these objectives incidentally causes a collateral damage to one of the several activities of an entity which does not come within the purview of the statutory authority, the same cannot be assailed as a colourable exercise of power or being vitiated by malice in law. To constitute colourable exercise of power, the act must have been done in bad faith and the power must have been exercised not with the object of protecting the regulated entities or the public in general, but with the object of hitting those who form the target. To constitute malice in law, the act must have been done wrongfully and willfully without reasonable or probable cause. The impugned Circular does not fall under the category of either of them.”

11. Prior to the impugned insertion, Rule 83-A(1) of Rules, reads as under:-

“83-A. Qualifications, experience, manner of preparation of the panel of auditors and authorization thereof:- (1) For the purpose of section 61 of the Act, the qualification and experience of the auditors for being included in the panel duly notified by the Government shall be as under:-

- (a) a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;*
- (b) a firm of more than one Chartered Accountants within the meaning of the Chartered Accountants Act, 1949;*
- (c) the certified auditors empanelled by the Registrar under self employment scheme for the unemployed youth of the State.*
- (d) the retired Officers, including the District Audit Officers, the District Inspectors and the Inspectors of the Cooperation Department of the State Government; and*
- (e) the Additional Registrars, the Joint Registrars, the Deputy Registrars, the Assistant Registrars, the District Audit Officers, the District Inspectors and the Inspectors of the Co-operation Department of the State.”*

12. The *lis* involved in the present case, is with regard to insertion of Rule 83-A(1)(b) of the Rules. Now, Rule 83-A(1) reads as under:-

“83-A. Qualifications, experience, manner of preparation of the panel of auditors and authorization thereof.- (1) For the purpose of section 61 of the Act, the qualification and experience of the auditors for being included in the panel duly notified by the Government shall be as under:-

- (a) a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 and is holding a valid certificate of practice within State of Himachal Pradesh;*
- (b) a firm of more than one Chartered Accountants within the meaning of the Chartered Accountants Act, 1949 having its head office within the State of H.P.;*
- (c) the certified auditors empanelled by the Registrar under self employment scheme for the unemployed youth of the State;*
- (d) the retired Officers, including the District Audit Officers, the District Inspectors and the Inspectors of the Co-operation Department of the State Government; and*
- (e) the Additional Registrars, the Joint Registrars, the Deputy Registrars, the Assistant Registrars, the District Audit Officers, the District Inspectors and the Inspectors of the Co-operation Department of the State.”*

13. A perusal of the Rule 83-A reproduced above, reveals that by way of impugned insertion, vide Notification dated 3rd August, 2022, a Firm of more than one Chartered Accountants within the meaning of Chartered Accountants Act, 1949, having its Head Office within the State of Himachal Pradesh, was to be included in the panel, duly notified by the Government. Prior to the impugned insertion, a Firm of more than one Chartered

Accountants, within the meaning of the Act, having its branch office in the State of Himachal Pradesh, could be included in the panel, duly notified by the Government. However, by way of impugned insertion, the Firm was required to have its head office within the State of Himachal Pradesh.

14. Admittedly, petitioners' firms are duly registered with the Institute of Chartered Accountants of India, but they (firms) do not have their head office in the State of Himachal Pradesh.

15. As per the terms and conditions for empanelment of Chartered Accountants for audit of Cooperative Societies, the Chartered Accountant should have been registered with the Institute of Chartered Accountants of India and should be an ordinary resident of Himachal Pradesh and having his registered office in Himachal Pradesh and should have required infrastructure, i.e. trained staff, office etc., for undertaking the job. A clarification had been issued by the Registrar, Cooperative Societies, Himachal Pradesh, vide Annexure P-3, dated 03.05.2014, that *'the term registered office'* used in terms and conditions for empanelment, issued by the said office on 12.08.2009, meant a *"Functional Branch Office"*. There is no dispute with regard to the fact that the petitioners' firms are having functional branch office in the State of Himachal Pradesh.

However, petitioners (firms) are not having their head office in the State of Himachal Pradesh.

16. It is not a case that there was any complaint against the petitioners' firms with regard to the audit conducted by them prior to the insertion of the impugned rule. Even otherwise, the competent authority is only required to empanel the Firms of Chartered Accountants, who are having the required registration with them and thereafter it is for the competent authority to appoint any particular Firm for audit of a Cooperative Society out of the empanelled Firms of the Chartered Accountants. There is no doubt that the State has the power to impose certain restrictions, but such restrictions should subserve the intent of the Act and have also to be reasonable and fair. The impugned insertion has rather taken away the rights of those firms who are duly registered with the Institute of Chartered Accountants of India and are having the necessary experience and before the insertion of the amended rule, had been performing the audit work, as assigned to them. Chartered Accountants, who have to conduct audit individually, are not required to have their head office in the State of Himachal Pradesh but firms of Chartered Accountants are now being insisted upon to have their head office in the State of Himachal Pradesh. The said classification has no object to

achieve and has unnecessarily created discrimination and hurdle for the firms of Chartered Accountants. Thus, the impugned insertion cannot be said to be reasonable or fair.

17. So far as the petitioners are concerned, they were/are having functional offices in the State of Himachal Pradesh and there was no complaint against their working. The impugned insertion to Rule 83-A has no proximate and direct nexus with any object to be achieved. Rather, it has created a class between a similarly situated Chartered Accountants and Firms of Chartered Accountants. With the insertion of the impugned rule, the panel for professional services has been narrowed down and deprived the public in general for opting/appointing the best available firms of Chartered Accountants for better audit. The Institute of Chartered Accountants of India do not place any restriction on the registered Chartered Accountant firms from practicing anywhere in India.

18. Hence, we are of the opinion that the impugned insertion in Rule 83-A, has no object to achieve and is liable to be set-aside. We have carefully gone through the judgments relied upon by the learned Advocate General, but the same fail to advance the case of the State, as they are based on different facts.

19. In the present case, even if the Firms, who do not have their head office in the State of Himachal Pradesh, are included in the panel, even then, the competent authority has the power to choose the best and competent firm for allotment of audit of a Cooperative Society/Bank.

20. Keeping in view the totality of the circumstances, we are of the opinion that the instant petition deserves to be allowed and the impugned insertion to Rule 83-A of the Rules deserves to be set-aside. Accordingly, the petition is allowed. Impugned insertion to Rule 83-A(1)(b), whereby, a Firm of Chartered Accountants was required to have its head office within the State of Himachal Pradesh, is set aside.

21. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Sabina)
Acting Chief Justice

March 23, 2023
(Yashwant)

(Satyen Vaidya)
Judge