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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 321/2017

LALIT KUMAR SAXENA ..... Petitioner

Through: Counsel (appearance not given).

versus

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA & ANR ..... Respondents

Through: Mr G.S. Chaturvedi, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **08.04.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia,* praying that directions be issued to the respondents to issue a certificate certifying that the petitioner has passed the final examination of the Cost Accountants of India. Respondent no.1 is the Institute of Cost Accountants of India (ICAI) and has been constituted under the Cost and Works Accountants Act, 1959.

2. ICAI conducts an academic course for acquiring the qualification of a cost accountant. The said course is divided into two examinations, namely, intermediate and final. Both the examinations consist of two groups (referred to as 'Stages'). The intermediate examination comprises of Stage-I and Stage-II and the final

examination comprises of Stage-III and Stage-IV. Each of the group consists a number of papers and a candidate is required not only to achieve the passing marks in each of the papers comprising of a group, but is also required to achieve the specified aggregate marks to pass a group.

3. Students are granted registration for a specified period within which a student is required to clear both the examinations (intermediate and final). In terms of the Costs and Works Accountants Regulations, 1959 (hereafter 'the Regulations'), a student can be granted re-registration after the expiry of the final registration.

4. The petitioner was registered with ICAI (then known as "Institute of Cost and Works Accountants of India") in October, 1996. The said registration was granted after the petitioner had completed the foundation course for being enrolled for the certification course of a Cost Accountant.

5. The petitioner appeared for the first group (Stage-I) of the intermediate examination in June, 1997 comprising of four papers in and cleared the same.

6. The petitioner passed the second stage of the intermediate examination held in December, 1998. Accordingly, ICAI issued a certificate dated 18.03.1999, certifying that the petitioner had completed his intermediate examination held in December, 1998.

7. The petitioner then appeared for the final examination (Stage-

III) in December 1999 and cleared the same.

8. Thereafter, the petitioner's registration with ICAI expired sometime in the year 2002-03. Accordingly, the petitioner obtained a *de novo* registration (Registration No. RSW/77703) of the ICAI for clearing the last group (Stage-IV) of the final examination. However, despite his best efforts, the petitioner could not clear the second group (Stage-IV) of the final examination. After several years, the petitioner once again applied for a *de novo* registration on 05.01.2015 and was granted a *de novo* registration for the second time (Registration No. 24962008566). It is stated that at the material time, ICAI conducted the course for the final examination under the syllabus as prescribed in the year 2008 (Syllabus 2008) and the new syllabus as prescribed in 2012 (Syllabus 2012). The petitioner opted to take the final examination (Stage-IV) by opting for the Syllabus 2012. He appeared in the examination held in June 2015 but could not clear the same. Thereafter, the petitioner once again appeared for the final group (Stage-IV) of the final examination in June, 2016 and cleared the same.

9. The petitioner thereafter approached ICAI for issuance of the certificate for clearing the final examination, however, the same was declined by ICAI for the reason that the petitioner had not cleared Stage-III of the final examination. According to ICAI, the petitioner had cleared the first Group (Stage-III) of the final examination conducted in respect of the syllabus that was prescribed prior to 2002 and, therefore, the same could no longer be counted as clearing Stage-

III of the final examination.

10. In the aforesaid context, the principal issue to be addressed is whether Stage-III of the final examination cleared by the petitioner in December, 1999 is required to be considered for the final examination conducted in 2016.

11. The petitioner has relied upon Regulation 25A of the Regulations in support of his claim that he was entitled to examination for appearing in Stage-III of the final examination as he had cleared the same in December, 1999. The respondents, on the other hand, contended that in terms of Regulation 35 of the Regulations, the Council is empowered to decide as to which examination may be granted to the students. It is contended on behalf of ICAI that it had issued a circular dated 30.07.2015 clearly specifying that in case the student has passed any one group of the final course under any syllabus prior to the syllabus prescribed in 2002, he would be required to appear for both the groups at the respective level. Thus, according to ICAI, the petitioner's claim for exemption from appearing in Stage-III of final examination is not sustainable.

12. Before proceeding to examine the relevant Regulations, it would be necessary to note that the petitioner was registered with ICAI in October, 1996 and, at the material time, ICAI was conducting the course under a syllabus prescribed in the year 1994 (1994 Syllabus). The said syllabus was, subsequently, modified in 2002 (2002 Syllabus). The syllabus was once again modified in the year

2008 (2008 Syllabus) and thereafter, in 2012 (2012 Syllabus). There is no controversy with regard to the petitioner clearing the intermediate examination, as the petitioner had cleared both the groups (Stage-I and Stage-II) prior to 2002.

13. Although the petitioner had cleared one group of the final examination in December 1999, clearly the same was insufficient for the petitioner to have claimed that he has cleared the final examination. The petitioner was required to pass both the groups of the final examination for passing the final examination. As noticed above, the petitioner could not clear the remaining group (Stage-IV) of the final examination at the material time.

14. The petitioner once again applied for registration in 2002-03 but could not clear the second group (Stage-IV) of the final examination. At the material time, the 2002 Syllabus had come into force. The petitioner once again registered as a student in January, 2015 and opted for the 2012 Syllabus. The petitioner, thereafter, cleared his second group of the final examination under the 2012 Syllabus.

15. It is seen from the above that whereas the petitioner had cleared his first group (Stage-III) under the different syllabus, it has cleared the second group under a different syllabus. Once again, it is apparent that the decision of the ICAI to not consider the marks obtained by the petitioner in Stage-III in December, 1999 as a part of the final examination conducted under the 2012 Syllabus, cannot be faulted.

16. The Institute of Cost Accountants is incorporated by virtue of

Section 3 of the Cost and Works Accountants Act, 1959. Section 9 of the said Act provides for constitution of the Council of the Institute for Management of its affairs and for discharging the functions as assigned to it under the said Act. Section 15 of the said Act stipulates that ICAI shall function under the overall control and guidance of the Council. Section 15 of the said Act, is set out below:-

> "15. Functions of Council
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> . (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.
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> (2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include:
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> (a) to approve academic courses and their contents;
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> (b) the prescribing of fees for the examination of candidates for enrolment;
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> (c) the prescribing of qualifications for entry in the Register;
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> (d) the recognition of foreign qualifications and training for the purposes of enrolment;
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> (e) the prescribing of guidelines for granting or refusal of certificates of practice under this Act;
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> (f) the levy of fees from members, examinees and other persons;

(g) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(h) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(i) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;

(j) to enable functioning of the Quality Review Board;

(k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B, action taken thereon with a report to the Central Government within a period of three months, and their inclusion in the annual report; and

(l) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time"

17. It is clear from the above that the functions of the Council include approving academic courses and their contents. The Council is also charged with the function of regulating and maintaining the standard of professional qualifications of the members of the Institute.

18. In view of the above, the decision of the Council to prescribe a syllabus for its academic course is, squarely, within its jurisdiction.

19. In order to examine the rival contentions, it is also necessary to refer to Regulation 25A and Regulation 35 of the Regulations, which are set out below:-

> "**25A. Registration denovo** — A person whose registration has been cancelled under regulation 25 may apply in appropriate form along with the required fee to become a Registered Student denovo and on his application being granted, he shall be deemed for all purposes to have been admitted and he shall be entitled to the exemption from individual subjects/ stages of the Intermediate or Final Examination, as the case may be previously secured by him under his former registration, subject to the provision of regulation 41.
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> xxxx xxxx xxxx
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> **35. Exemption from the papers for appearing in Final Examination** :
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> (1) The Council may decide the individual paper from which exemption may be granted to students who have passed such examination of any University or professional institutes or professional bodies or on reciprocal basis of such University or professional institutes or professional bodies in India or abroad us may be recognized by it in this behalf.
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> (2) The Council shall also have the power to decide and shall decide the individual Subjects/Stages of the Final examination from which a candidate, who is admitted as a Fresh Registered Student under Regulation 25(a) shall be exempted on the basis of exemption from individual Subjects/ Stages previously secured by him/her under his/her former registration.
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> (3) The Council may decide giving exemptions to candidates for any examination conducted by it for any of the levels or papers already passed by a candidate for which examinations were conducted by the Council, on

the basis of such guideline as may be decided by the Council.

(4) A Candidate who has obtained exemption or obtained the benefit of carry forward of marks in any of the paper of the Final examination under old syllabus shall be emitted to exemption only in the corresponding equivalent papers of Final examination under the revised syllabus :

Provided that the benefit of carry forward of marks by virtue of the result of any examination under old syllabus shall not be available in any paper of Final examination under revised syllabus.

A candidate who has obtained exemption or obtained the benefit of carry forward of marks in any of the above paper of the Final Examination under old syllabus shall be entitled to exemption only in the corresponding equivalent papers of Final Examination under the revised syllabus. However, the benefit of carry forward of marks by virtue of the result of any examination under old syllabus shall not be available in any paper of Final Examination under revised syllabus.

Provided further that this regulation is subject to the provisions of regulation 41."

20. By virtue of Regulation 25A of the Regulations, a person whose registration has been cancelled may apply for a *de novo* registration. It further specifies that in such cases, the student would be entitled to exemption from individual subjects/stages of the intermediate/final examination, as the case may be. Thus, there is merit in the contention that the petitioner would be entitled to exemption in respect of the stages passed earlier. However, Regulation 25A has to be read in conjunction with Regulation 35 which expressly provides for the exemption as available. In terms of Sub-rule 2 of Regulation 35, the

Council is required to decide the individual subjects / stages of the final examination from which the exemption is available under Regulation 25A.

21. In the present case, the Council of ICAI has issued a circular dated 30.07.2015, issuing certain clarifications. Annexure III of the said Circular provides for a detailed clarification in respect of students who had registered under any syllabus prior to 2002 Syllabus. Annexure III of the said Circular is reproduced below:-

"ANNEXURE 3

Students registered to the Course under any syllabus prior to Syllabus 2002

Case 1

Students registered prior to syllabus 2002 ; Passed/qualified in any one group of Intermediate/Final Course, under any syllabus prior to Syllabus 2002; To avail benefit of passing a stage / group under any syllabus prior to syllabus 2002, require to fulfil the following condition: • Should have appeared under both syllabus 2002 and 2008 In such case, the exemption mapping will be in line with students under syllabus 2002 (as per Annexure 2)

Case 2

Students registered prior to syllabus 2002 ; Passed/qualified in any one group of Intermediate/Final Course, under any syllabus prior to Syllabus 2002; ❖ Not appeared under syllabus 2002; <u>or</u> ❖ Appeared under syllabus 2002 but not 2008. Hence, shall have to appear in both groups at the respective level, under syllabus 2012.

"

22. The petitioner's case clearly falls under "Case 2" as set out above.

23. In view of the above, the petitioner's result of the Stage-III examination cannot be counted towards passing the final examination. Thus, this Court is unable to accept that any relief can be granted to the petitioner.

24. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

APRIL 08, 2019
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