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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1605 OF 2011

Pune Chapter of Cost Accountants,
constituted under The Cost & Works
Accountants Regulations, 1959,
having its Office at Laxmi Nagar
Commercial Complex, Phase II,
Laxmi Nagar, Parvati, Shahu College
Road, Pune – 411 009

through its Chairman.

... Petitioner.

V/s.

1. The Union of India
through the Ministry of Corporate Affairs,
having Office at Shastri Bhavan,
New Delhi – 110 001.
2. The Institute of Cost & Works
Accountants of India,
a body established under The
Cost & Works Accounts Act, 1959

having its Office at 12, Sudder
Street, Kolkata – 700 016.

3. The President,

The Institute of Cost & Works
Accountants of India,
having its Office at 12, Sudder
Street, Kolkata – 700 016.

4. The Western India Regional Council

of ICWAI, a Regional Council
established under the provisions of
The Cost and Works Accountants Act,
1959, having its Office at Rohit
Chambers, 4th Floor, Janmabhoomi
Marg, Fort, Mumbai – 400 001.

... Respondents.

Mr. Y.S. Jahagirdar, Sr. Adv., with Mr. G.S. Godbole i/by

S.S. Kanetkar for petitioner.

Mr. Abhijit Desai for respondent no.1.

Mr. Abhijeet Chatterjee, Sr. Adv., with B. Boral i/by Ashwin Ankhad

for respondent nos. 2 & 3.

CORAM : P.B.MAJMUDAR & A.A.SAYED, JJ.

DATE : 1st APRIL, 2011

ORAL JUDGMENT (Per P.B. Majmudar, J.) :-

The petitioner is a local chapter of cost accountants with an extension in the area. By way of this petition, the petitioner has challenged the decision of the parent body i.e. respondent no. 2 by which the respondent no. 2 permitted additional chapter which can be described as a branch within 20 kms wherein the present chapter of petitioner is established. The grievance of the petitioner which is local chapter of Cost Accountants is that by permitting another chapter within a radius of 20 kms, it may result into unfair competition and that as per the bye laws which are amended in September 2010 and are known as Cost Accountants' Chapters (Amendment) Bye-Laws, 2010 particularly sub-clause (b) of Bye-Law 6 by which in a given case requirement of 20 kms is relaxed, is arbitrary and *ultra vires* the Cost and Works Accountants Act, 1959 and Regulations framed thereunder. The petitioner has also taken a ground in the petition i.e. ground (k) at page 19. The said ground reads as under :-

- “k) It ought to have been seen that opening a new Chapter within the area of an existing Chapter i.e. the Petitioner would cause tremendous loss in terms of revenue and other aspects and would set up a competition to the existing Chapter which is not contemplated by the provisions of the Act.”

2. Mr. Jahagirdar, the learned senior counsel for the petitioner submitted that even otherwise as per the amended bye law a new chapter can be established only at the recommendation of the Western India Regional Council and in the instant case since the Western India Regional Council has not recommended for opening of a new chapter by passing any resolution, the respondent no. 2 has no authority to open new chapter within the radius of 20 kms. It is submitted that in any case the bye law which provides relaxation in a given case to permit opening of the new chapter within a radius of 20 kms is arbitrary, discriminatory and violative of Article 14 of the Constitution of India and the said bye law is required to be struck down.

3. The petition is opposed by respondent no. 2 by filing affidavit in reply. In the affidavit in reply it is pointed out that so far as Western India Regional Council is concerned, at the relevant time four posts of its members were vacant and the Western India Regional Council consisted of six members and out six, four members have already given intimation to respondent no. 2 in favour of opening of new chapter. That, ultimately, after considering the material and evidence on record, a decision is taken by respondent no. 2 permitting an additional chapter to be established within a radius of 20 kms.

4. We have heard the learned counsel appearing in the matter at length. We have gone through the petition as well as the affidavit in reply and affidavit in rejoinder. So far as the relevant bye-law is concerned which is bye-law 6, it provides as under :-

“6. Constitution of Chapter--

(1) A Chapter may be constituted by the Council on the recommendation of a Regional Council operating in its area and the Chapter So constituted shall be governed by these Bye-laws.

(2) No Chapter shall be constituted -

(a) within the municipal or corporation limits of a city where a Regional Council of the Institute is having its headquarters; or

(b) within a radius of 20 km of any Chapter constituted under these Bye-laws and the chapters can establish extension centers with the concurrence of the Council to meet the needs of the students and members of the locality, and

(c) unless there are at least 50 Members in the Chapter of whom at least 25 should be Members of the Institute and at least 25 should be students, provided, however, that the Council may specify different minima for the number of Members and students of the Institute for different Chapters.

Provided however minimum number of members of a

proposed Chapter shall not include members under clause 9 (2).

(3) Notwithstanding anything contained hereinbefore under sub-clauses (1) and (2), the Council may recognize formation of Chapter, under Regulation 146 of the Cost and Works Accountants Regulations, 1959 based on merit on case to case basis by relaxing the conditions laid down hereinbefore as necessary and in the opinion of the Council such constitution would be conducive to the fulfillment of the objects of the Institute.”

5. It is not in dispute that respondent no. 2 Council is empowered to open a new Chapter in a particular area. Bye-law 6(2) (b) provides that no chapter shall be constituted within a radius of 20 km of any Chapter constituted under these Bye-laws and the chapters can establish extension centers with the concurrence of the Council to meet the needs of the students and members of the locality, However, sub-clause (3) of Bye-law 6 provides that notwithstanding anything contained hereinbefore under sub-clauses (1) and (2), the Council may recognize formation of Chapter, under Regulation 146 of the Cost and Works Accountants Regulations, 1959 based on merit on case to case basis by relaxing the conditions laid down hereinbefore as necessary and in the opinion of the Council such constitution would be conducive to the

fulfillment of the objects of the Institute. (Emphasis supplied).

6. In our view, respondent no. 2 which is a statutory institution regulating the profession and admission of the Cost and Works Accountants if in its wisdom decides for opening of a new Chapter within even radius of 20 kms, in our view, it cannot be said that such a decision is *de hors* rules. Even under sub-clause (3) of Bye-law 6, powers are given to the parent body i.e. respondent no. 2 to decide the matter on case to case basis when on the material on record the respondent no. 2 is subjectively satisfied that new Chapter is required to be established within the area of 20 kms, this Court cannot sit in appeal over the said decision by coming to the conclusion that there is no need to establish new Chapter. Though under sub-clause (3) the respondent no. 2 can even take an individual decision. Even in a case where there may or may not be any recommendation of the Regional Council, still under sub-clause (3) the respondent no. 2 being a parent body, when it is satisfied on the material on record, can take individual decision and it is not subject to the recommendation of the Regional Council. However, in the instant case, in the affidavit in reply, it is pointed out that even the Regional Council consisting of six members out of which four members have already sent their say in favour of opening of new Chapter. The learned counsel for respondent no. 2 has relied upon a letter written by the Secretary & Treasurer of Regional Council i.e. Western India Regional Council which is at page no. 308 of the compilation. In the

said letter he has mentioned as under :-

“I refer to your mail for constitution of Pimpri Chinchwad chapter and subsequent discussion we had at our RC meeting held on 2nd February, 2011.

This item was taken on agenda but the decision was deferred by the Chairman as the majority of the members present were in favour of constitution of the Chapter. It was then decided that members should communicate their views independently. Accordingly I have to state as under.

Pimpri Chinchwad Corporation is one of the fastest growing area in Maharashtra. We have a large number of CMAs and students of ICWAI working/residing in the Pimpri Chinchwad area. Other adjoining areas like Talegaon, Chakan, Alandi, Rajgurunagar and Lonawala are also undergoing rapid industrial growth. Even the new Airport will be located near Chakan that will give further boost to growth of industry and services in these areas. Considering these factors I support constitution of new chapter of ICWAI in Pimpri Chinchwad which will be in the long term interest of ICWAI, our profession, members and students.”

The Secretary & Treasurer of the Western India Regional Council has already informed the respondent no. 2 along with consent of other three members which are also annexed at page nos. 309, 310 and 311. It can be presumed that the majority of the members of the Western India Regional Council are in favour of establishing new Chapter. In paragraph 17 of the affidavit in reply of respondent no. 2 it is stated as under :-

“17. Pimpri-Chinchwad Corporation is Asia’s largest Municipal Corporation in terms of revenue due to its industrial growth and is surrounded by five star Mega MIDC of Govt. of Maharashtra, Chakan and Talegaon where in last 2-3 years more than Rs. 100,000 crores investment has taken place and huge industrial growth is taking place. Majority of our members in employment are directly connected with industries and are residing in the nearby areas and working in industrial belt like Pimpri Chinchwad, Akurdi, Nigdi Chakan, Talegaon in the radius of 20-25 kilometers. It has great potential for development of the profession and these factors are considered by the Council. The members of the area, keeping in mind these factors and for the benefit of the large number of members and students in the area

approached the Respondent No. 2 to form a new chapter in the name of Pimpri-Chinchwad Chapter of Cost Accountants. There more than 500 students on date which will grow once the independent chapter is formed. The relevant provisions of the Regulations and the Bye-laws have been strictly followed in the matter of consideration by the Central Council at its meeting held on 25th February, 2011 as to whether Pimpri-Chinchwad-Akurdi Chapter should be set up. I reiterate that the majority of the members of the Western Regional Council (4 out of 6 members) have expressed their views in favour of setting up of the said Chapter.”

7. It is required to be noted that simply because the petitioner might be affected in their income as some students may get themselves enrolled in newly opened chapter, however that itself is not a ground for striking down the decision of the competent body. It can be *damnum sine injuria* which means damage without legal injury. Apart from the same, the parent body after considering the material on record and need in the area has decided to open new chapter as per the recommendation of an expert professional body, the grievance made by a local chapter opposing such new chapter in the area is not justifiable at all. The existence of the petitioner itself is because of permission granted by respondent no. 2 to the petitioner regarding petitioner’s chapter. In our



view, the respondent no. 2 is the parent body of the petitioner and petitioner's existence is because of respondent no. 2. The respondent no. 2 in the affidavit in reply in paragraph 29 has stated as under :-

“29. With reference to Ground (f), it is denied that opening of a new Chapter at Pimpri-Chinchwad-Akurdi is within a radius of 20 Km. Of Pune Chapter or that the same is violative of clause 6 of the Bye laws as alleged or at all. The Respondent No. 2 has in existence 93 Chapters all over the country and there are many examples of constitution of new Chapters even within a radius of 20 km from another existing Chapter and/or Regional Council keeping in mind the interest of the members and students. (Ukkunagaram & Visakhapatnam; Konkan, Navi Mumbai & WIRC, EIRC, Howrah, Srirampore, Naihati-Ichapore, Faridabad-Ghaziabad).

8. In our view, the Council being the supreme parent body if it is empowered under the Regulations to decide a matter on case to case basis, the said regulation cannot be said to be violative of Article 14 of the Constitution of India especially when the petitioner has no fundamental right to challenge the establishment of new chapter in the area. As stated earlier, under sub-clause 3 of Bye-law 6 the respondent no. 2 is entitled to take a decision notwithstanding anything contained



under sub-clauses (1) and (2). However, in the instant case, from the material on record it is established that even majority of the members of the Regional Council have opted in favour of opening new chapter. Therefore, the requirement of sub-clauses (1) and (2) is fulfilled in the present case, especially when the Secretary & Treasurer of the Regional Council has informed this aspect to respondent no. 2. Once the respondent no. 2 on the basis of the material on record is satisfied that there is need for an additional chapter in the interest of students in the area, simply because the petitioner may be deprived of some students itself is no ground for quashing and setting aside the decision taken by the expert body – respondent no. 2. It is well settled principle in law that in educational matters when an expert body takes a decision on the basis of material on record, this Court will not sit in appeal over the decision of such a professional body. Even otherwise, on the basis of reply filed by the respondent no. 2, the respondent no. 2 has pointed out that there was need to establish an additional chapter in the area. The said decision, therefore, cannot be said to be illegal in any manner. Similarly, in view of the powers conferred under sub-clause (3) of Bye law 6, it cannot be said to be in any way discriminatory or violative of the fundamental rights of the petitioner. However, at the cost of repetition, we may say that the requirement regarding the say of the Regional Council is also fulfilled in the instant case in view of what is stated above.

9. The petition is, therefore, thoroughly misconceived especially when the petitioner wants to stall any other chapter in the area only with a view to see that it can be prospered in the matter of income by enrolling more students. On the other hand, the object of respondent no. 2 is to see the interest of the students in the area and which, according to respondent no. 2, is considered and on the basis of material on record, the decision is taken.

10. Though the learned counsel for respondent no. 2 has taken a preliminary objection that the petitioner is only a local branch of the Institute and it has no *locus standi* to file the present petition as the petitioner has tried to raise a dispute against its parent body especially when the additional chapter is established by respondent no. 2 institution which is a parent body and even the Regional Council has not challenged the said decision. However, since on merits, we found that there is no substance in any of the averments made in the petition or in the grounds raised before this Court and considering the fact that the interest of the students which is of paramount importance was taken into account by the respondent no. 2, this is not a fit case where this Court would be inclined to interfere in the matter on the basis of the material on record. There is no substance even in the challenge to sub-clause (3) of Bye law 6 as pointed out earlier. At this stage, reference is required to be made to an English case in the matter of Gloucester Grammer School case (1410 Y.B. 11 Hen. IV) which provides as under :

“ The defendant, a schoolmaster, set up a rival school next to that of the plaintiff, with the result that the boys from the plaintiff’s school flocked to the defendant’s. The plaintiff sued the defendant for the loss. It was held that no suit could lie, because bona fide competition can afford no ground of action, whatever damage it may cause.”

Considering the aforesaid aspect and considering the fact that this Court cannot sit in appeal over the decision of respondent no. 2, the petition is without substance. The same is accordingly dismissed summarily.

11. At this stage, the learned counsel for the petitioner prays for continuation of the interim order earlier granted. In our view, there is absolutely no substance in the petition in view of what is stated hereinabove. Hence this Court is not inclined to continue the interim order earlier granted as it may affect the interest of the students in the area in question.

(A.A.SAYED, J.)

(P.B.MAJMUDAR, J.)