

Chartered Accountants Act : Where petitioners students who had appeared in Chartered Accountants Final Examination conducted by ICAI in November 2017 were aggrieved by result declared and published on its website by Institute wherein all of them had failed in their respective Groups filed writ petition alleging that on 17-1-2018 through messages on whatsapp and facebook, they learned that notifications declaring result of examination had been circulated by respondent Institute to respective Regional Councils, Branches, Centres, its office bearers and members according to which they had all passed in Group I/II, it was held that result of Institute was published only once on website which result was final result and there had been no attempt on part of Institute to alter said result and, therefore, legal position did not in any manner support petitioners who were admittedly, found unsuccessful as per official results declared by ICAI

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[2018] 93 taxmann.com 216 (Delhi)

HIGH COURT OF DELHI

Milind Agarwal

v.

Institute of Chartered Accountants of India

MS. REKHA PALLI, J.

W.P. (C) NO. 1107 OF 2018

C.M. NOS. 4605-06 OF 2018

FEBRUARY 12, 2018

Amit Khemka, Rishi Sehgal and Ms. Nidhi Bhuwania, Advs. *for the Petitioner*. **A.S. Chandhiok**, Sr. Adv., **Rakesh Agarwal, Ms. Pooja Saigal and Pulkit Agarwal**, Advs. *for the Respondent*.

JUDGMENT

1. The petitioners are students who, having appeared in the Chartered Accountants Final Examination conducted by the respondent in November 2017, are aggrieved by the result declared and published on its website by the respondent-institute wherein all of them have failed in their respective Groups. Vide the present petition under Article 226 of the Constitution of India, the petitioners have prayed for summoning of the records of the respondent including tabulations in the codified and de-codified form based on which the result of the aforesaid examination was sent to their Regional Council and branches of the institute.

2. The brief facts as set out in the petition are that the petitioners had appeared in Group I/II of CA Final Examination held in November 2017. It emerges from the record that while petitioner Nos.1, 3, 4, 5, 6, 11, 20, 22 and 23 had appeared for both Group I and Group II Exams, the petitioner Nos.2, 8, 9, 12, 15 & 21 had appeared for only Group I of the Examination and Petitioner Nos.7, 10, 13, 14, 16, 17, 18 & 19 had appeared only for Group II of the Examination.

3. The Petitioners claim that on 17.01.2018 through messages on whatsapp and facebook, they learned that notifications declaring the result of the examination had been circulated by the respondent Institute to the respective Regional Councils, Branches, Centres, its office bearers and members according to

which that they had all passed in Group I/II and in the case of petitioner no.23 in both the groups. It is claimed that upon getting the information through messages on whatsapp and facebook, they had contacted the respective branches of the respondent Institute and were informed that the exam notification being circulated on whatsapp/facebook showing the petitioners as having passed in their respective groups was correct. According to the petitioners, a copy of the e-mail vide which the respondent-institute had forwarded the result notification to its branches, centres at 6.57 p.m. on 17.01.2018 was also being circulated on the facebook and other social media platform.

4. The petitioners have while annexing copy of the screenshots obtained from the facebook/website categorically admitted that they are not sure about the authenticity and correctness of the said e-mail and have got the same from the facebook.

5. The petitioners claim that upon learning that they had passed in Group I/II of the Exam, they logged on to the website of the respondent-institution in order to obtain their mark-sheets, but were shocked to see that they were all shown to have failed in their respective groups even though as per the notification being circulated on whatsapp/facebook, they had all passed.

6. It is further claimed in the petition that from subsequent messages being circulated on facebook, whatsapp and other social media, they have learnt that after the issuance of initial notification dated 17.01.2018, in which they were declared 'passed', the Respondent had sent another email at 12:05 A.M. on 18.01.2018 to all its centers and branches, enclosing therewith a revised result termed as 'correct result notification'. The Petitioners claim that as the Respondent uses the system of codification in the examination whereby answer-sheets are given unique codes, the results are first tabulated in the codified format and grace marks, if any, are added thereto for the purpose of moderation in accordance with provision of Regulation 39 (2) of the Chartered Accountants Regulation 1988 (hereinafter referred to as Regulations) and it is only thereafter that the decoding is done and the result connected to a particular student/examinee which is then published in the form of a circular/notification. The Petitioners thus claim that the result could not have been changed after the de-codification and issuance of notification dated 17.01.2018 which had been duly circulated to all its branches, centres, members and office bearers and that too with an endorsement that the same was for 'general information'.

7. The Petitioners also rely on a press release dated 19.01.2018 issued by the Respondent wherein, the respondent submits that some mismatch had occurred in the file containing the list of successful candidates attached to the internal communication sent to its branches and regional councils, which had inadvertently been shared outside resulting in some confusion as, the result declared vide the said internal communication was admittedly different from the actual and final result loaded on the ICAI websites (www.icaai.nic.in; www.caresults.icaai.org; www.icaaiexam.icaai.org). By placing reliance on this clarification dated 19.01.2018 issued by the Respondent, it is claimed that there was an admission on the part of Respondent that the results notified on 17.01.2018 were different from the results placed on the website of the Respondents/Institute, which according to the Petitioner was a case of changing the result without following the procedure prescribed under Regulation 39(7) of the Regulations.

8. The Petitioners further claim that though they made various representations to the Respondent, they have received no satisfactory reply and it is in these circumstances, they have approached this Court.

9. Arguing for the Petitioners, Mr.Amit Khemka, has raised three contentions. The first and foremost being that once a notification according to which all the Petitioners had been declared successful had been issued by the Respondent on 17.01.2018 and circulated to all its branches, centers, member and office bearers specifically stating that it was published for general information, it was not open to the Respondent to change the result in any manner without following the procedure prescribed in Regulation 39(7) of the CA Regulations. Mr.Khemka contends that Regulation 39 is a complete code dealing with the subject 'Examination of Results' and the action of changing the result after it had been notified

without giving any opportunity of hearing to the Petitioners and without following the procedure prescribed therein, was not only arbitrary, illegal and violative of principles of natural justice but also in breach of the regulations itself.

At this stage, it may be appropriate to reproduce the relevant paras of the Regulation 39 on which reliance has been made by Mr.Khemka, the learned counsel for the petitioners:-

"39. Examination results

(1)(a) A list of candidates declared successful at each examination shall be published.

(b) The names of candidates obtaining distinction in the examination shall be indicated in the list.

(c) Every candidate shall be individually informed of his result.

(2) The Council may, in its discretion, revise the marks obtained by all candidates or a section of candidates in any particular paper or papers or in the aggregate in such manner as may be considered necessary, for maintaining the standards of pass percentage provided in these Regulations.

Explanation – The term "section" used in this sub- regulation refers to the category of the candidates whose answer papers are valued by an examiner and such other category or candidates as may be specified by the Council.

(7) In any case where it is found that the result of an examination has been affected by error, malpractice, fraud, improper conduct or other matter, of whatever nature, the Council shall have the power to amend such result, in such manner as shall be in accordance with the true position and to make such declaration as the Council shall consider necessary in that behalf:

PROVIDED that no such amendment shall be made which adversely affects a candidate, without giving him an opportunity of being heard:

PROVIDED FURTHER that in the event of an error not arising out of any act or default of a candidate, proceedings for amendment adversely affecting the candidate shall not be initiated after the expiry of a period of one month from the date of the declaration of result."

10. Mr.Khemka contends that the issuance of the press release on 19.01.2018 by the Respondent was in itself sufficient to show that the result had been altered to the detriment of the Petitioners, though an impression is sought to be created by the Respondent that there was no error in the results declared on 17.01.2018. The relevant part of press release dated 19.01.2018 reads as under:

"As per procedure, the CA Final results including marks scored by the candidates in individual subjects were hosted on the ICAI websites (www.icai.nic.in; www.careresults.icai.org; www.icaiexam.icai.org) which is accessible to every student. The students are required to enter their roll number and student registration number/PIN to access their result. The Institute also clarified that the results hosted on the websites mentioned above are error free and correct. The Institute has also clarified that the student can access and print the mark sheets from these websites through formal mark sheets are sent separately.

ICAI Examination Department also sends a list of candidates who passed either group/both groups without marks of the individual candidates to its branches and the regional councils for their internal use. It is brought to notice that some mismatches had occurred in the file attached to the internal communication to the branches. The Department, realizing this mismatch, had immediately intimated the correct printing formats to branches and regional councils".

11. The second submission of Mr. Khemka is that the Petitioners have reliably learnt that after granting grace marks to the students in accordance with the Regulations, the results had been decodified and duly communicated to the branches, centers, members and office bearers of the Respondent. He submits that the power of tinkering with the result by way of moderation or otherwise, was not at all available with the Respondent, once the same had been decodified. Mr.Khemka, has placed heavy reliance on an e-mail dated 17.01.2018 sent at 2.37 p.m. by Mr.Vijay Jhalani, a Government nominated member of the Central Council of the Respondent addressed to the President of the Respondent/Institute wherein he has raised a specific query as to whether any result once decodified could be reviewed and sent for change again. He submits that this vital query raised by the Government nominated member has remained unanswered clearly showing that the Respondent had acted *de hors* the regulations and in blatant violation of principles of natural justice.

12. The last submission of Mr.Khemka, is that despite repeated requests made by the petitioners, the Respondent has not disclosed the criteria adopted for moderation of the results, which, according to him, leads to uncertainty for the students and the public at large. He submits that the respondent-institute ought to disclose the standard criteria, if any, relating to moderation, employed by it for the purpose of making revision under Regulation 39(2). He draws my attention to the prayer (b) in the petition wherein the petitioners have sought a direction to the respondent-institute to disclose the standard criteria used for moderation. He submits that unless the criteria for moderation is disclosed, the method of moderation will become arbitrary and will depend on the whims and fancies of the Respondent/Institute.

13. On the other hand, Mr.Chandhiok, learned senior counsel appearing on behalf of the Respondent-Institute on advance notice submits that the present petition is wholly misconceived and is liable to be dismissed. He submits that the entire premise on which the petition is based is fallacious as the result published on the respondents' website shows that there has been no change in the result by the institute at any time. He submits that the notification on which reliance is sought to be placed by learned counsel for the petitioner was not at all a notification and in fact while drawing my attention to the averments made in Para 10 and 11 of the petition by the petitioners themselves, he contends that once it is the own case of the petitioner that they are not sure about the authenticity and correctness of the mails or of the alleged notification which they claim to have obtained by way of whatsapp and posts on the facebook, they cannot even urge that the Respondent-Institute has changed the result after notifying the same. Mr.Chandhiok has placed reliance on the judgment of *Seth Auto Service Station and Anr. v.. DDA & Ors.*, [2009] 1 SCC 180, in support of his plea that an internal communication between the departments cannot be treated as an effective order. He submits that the internal communications on which the petitioners have sought to place reliance were, even according to the petitioners sent only to the branches/centres and were not at all communicated to any of the petitioners or placed on any of the three official websites of the institute.

14. While drawing my attention to Regulation 39, he submits that there is a set procedure prescribed in the regulations according to which, the list of such candidates declared successful at each examination has to be published and every candidate has to be individually informed of his result. He therefore, submits that as per procedure, the respondent-institute only publishes its results on its three websites namely, www.icai.nic.in; www.careresults.icai.org; www.icaixam.icai.org which websites are accessible to every student. He submits that in order to access their result, the students are required to enter their roll number and student registration number/pin. Mr.Chandhiok has handed over a copy of the e-mail exchanged between one Mr.Karthick Balakrishnan of Sify Technology Ltd. which is the service provider used for internet facilities by the Institute to contend that the CPT and the final results declared by the institute had been placed on their websites at 5.38 p.m. on 17.01.2018 itself. A copy of the said communication has been handed over to learned counsel for the petitioners and is also taken on record. Mr.Chandhiok, therefore, contends that the respondent-institute had correctly published the results on its

three websites and all the petitioners and other students were always well aware that only the result notified on the three websites was the official result and no reliance could be placed on any alleged screenshot circulated on whatsapp and facebook. He submits that there was never any error in the result declared by the respondent, and therefore, the plea of the petitioners that there was a change in the result without following the procedure prescribed under Regulation 39(7) is wholly misconceived. While responding to the submissions made by the learned counsel for the petitioner, that even Mr. Vijay Jhalani, Government nominated member of the institute had taken objection to the change in result, after the same had been decoded, Mr. Chandhok submits that the said e-mail of Mr. Vijay Jhalani is again an internal communication between the members of the council and the same cannot in any way alter the basic fact that the only result declared by the respondent-institute was the one which was placed on its website at 5.38 p.m. on 17.01.2018. He submits that once the regulation clearly specifies that the list of the candidates declared successful has to be published, no credence could be given to the alleged notification being circulated on the whatsapp/facebook.

15. Having considered the rival contentions of the parties, the foremost fact which emerges from the record is that there is no denial by any of the parties that the result declared on the websites of the respondent-institute has never been altered, which is not even the case of the petitioners. Thus, the only case set up by the petitioners is that a notification was purportedly issued by the institute and sent to all its councils, centres, members/office bearers as per which the petitioners had allegedly passed. It is however, interesting to note that even though the entire case of the petitioners is based on the said alleged notification, in which they claimed to have passed, the petitioners have very conveniently and for obvious reasons stated in the petition itself that they were not sure about the authenticity and correctness of the e-mails or of the messages being circulated on the whatsapp and facebook.

16. The averments of the petitioners in this regard made in Paras 10 and 11 of the petition reads as under:-

- (i) *" The notifications containing the results are being circulated by a number of persons through whatsapp and internet and the petitioners have got a copy of the same from there only. Petitioners had checked from their respective branches and were confirmed that the Exam Notification being circulated on the Internet showing the Petitioners as having passed the above mentioned groups is correct. Copy of the relevant portions of the notification dated 17.01.2018 circulated by the Respondent Institute in respect of Delhi Centre containing the result of Petitioner No. 2 is annexed herewith as **ANNEXURE P-1**. Copy of the relevant portions of the notification dated 17.01.2018 circulated by the Respondent Institute in respect of Meerut, Ghaziabad, Lucknow, Jaipur and Bhopal Centre is annexed herewith as **ANNEXURE P-2(COLLY.)**. Copy of the relevant portions of the notification dated 17.01.2018 circulated by the Respondent Institute in respect of Mumbai, Pune, Nagpur, Dhule and Vasai Centre is annexed herewith as **ANNEXURE P-3**."*
- (ii) *"That it would not be out of place to mention here that it is also being circulated on Facebook, whatsapp and other social media platforms that the 'Results' (annexed as Annexure P-1 & Annexure P-2 to the present petition) was emailed by the Respondent Institute to all Centres, Branches, etc., vide email dated 17.01.2018 at 6:57 PM. Printout of the screenshot of the said email dated 17.01.2018 at 6:57 PM sent by Respondent Institute is annexed herewith as **ANNEXURE P-4**. The Petitioners submit that they are not sure about the authenticity and correctness of the said email and have got the*

same from Facebook."

17. The question which thus needs to be considered in view of the admitted fact that there is a said procedure prescribed in the regulation, is whether the alleged notification was ever published on any of the websites of the respondent or in any manner communicated to the petitioners. The only plea raised by Mr.Khemka, learned counsel for the petitioners is that once the alleged notifications record that they are being 'published for **General Information**', the respondent-institute cannot deny that the said notifications were published.

18. In my considered opinion, merely because the alleged notification contains the term 'published for general information' cannot lead to the conclusion that the said notification was actually published especially in view of the categoric statement by the respondent-institute that the said alleged notification was never published in any manner. It may be pertinent to note that even the learned counsel for the petitioners is unable to demonstrate the manner in which the said alleged notification was published except for reiterating that the same circulated on whatsapp/facebook. I also find merit in the submission of Mr.Chandhiok, learned senior counsel for the respondent that once it is the own case of the petitioners that the said alleged notification was sent only to their branches, centres and members, it is evident that the same was merely an internal communication in which subsequently certain mismatches were noticed and, therefore, when the final result was declared. The mismatches, if any, were rectified and only the correct result was published on the websites of the Respondent-Institute at 5.37 pm. on 17.01.2018 i.e. much before the circulation of the whatsapp messages containing the alleged notification. The Respondent-Institute had only published the correct result and, therefore, no reliance can be placed on the alleged notification dated 17.01.2018 in which the petitioners claim to have been declared as successful. In view of the categoric stand of the Respondent-Institute that only one result was published and that too on the three websites of the Institute, it is evident that there has been no change of any kind in the result published by the institute and in these circumstances the provisions of Regulation 39(7) are not at all attracted as the said regulation would be applicable only where the result already published is subsequently sought to be amended in any manner. It is only in a case where the published result is sought to be altered or amended and the same adversely affects a candidate has to be given an opportunity of being heard. Once I am unable to find that there has been any amendment of the result and on the other hand it is crystal clear that the result was published only once on the website which result is the final result and there has been no attempt on the part of the respondent to alter the said result, there can be no question of the requirement to follow the procedure prescribed under Regulation 39(7).

19. I am fortified in my conclusion by the observations of the Supreme Court in ***Sethi Auto Service Station and another v. Delhi Development Authority and others*** [2009] 1 SCC in which the Supreme Court has made a distinction between internal communications and final communications made to the public by the decision making authority. Paragraph 14 of the aforesaid decision reads as under:-

"It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Nothings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

20. I also do not find merit in the plea raised by the learned counsel for the petitioners that the respondent ought to be directed to disclose the criteria, if any, employed by it, for carrying out moderation in the results. A perusal of the Regulation 39(2) in itself shows that the council has been

granted a discretion to revise the marks obtained by the candidates in any particular paper/papers or aggregate, as may be considered necessary for maintaining the standards of passed percentage. Thus, it is evident that a discretion has been given to the Institute and, rightly so, as the criteria of moderation to be applied by the institute would necessarily depend on the overall result of the each examination and the criteria/grace marks, if any, to be granted to the students by way of moderation would vary in each examination and the same would be directly depending on the result and the pass percentage provided in the regulations.

21. The prescription of a fixed criteria for carrying out moderation would in fact be counterproductive to the very purpose of carrying out moderation and therefore in my considered view, a certain amount of discretion has to be given to the Institute to apply suitable criteria for carrying out moderation in every exam. Before I conclude, I must express my anguish at the manner in which the whatsapp and facebook posts are being circulated without any sense of responsibility. No doubt, the hopes of some students have been shattered, but unfortunately for them while the Court can only express its concern over the manner in which communications are circulated on whatsapp/facebook without any authenticity of the source thereof, the legal position does not in any manner support the petitioners who were, admittedly, found unsuccessful as per the official results declared by the respondent. It may also be noted that there is no challenge by any of the petitioners to the manner of marking used in the examination and the only ground raised by the learned counsel for the petitioners during arguments is that perhaps the petitioners were initially granted more grade marks which were then subsequently reduced. This unfortunately cannot be a ground to interfere with the final results published by the respondent on its websites.

22. The writ petition is devoid of merits and is dismissed without any order as to costs.

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