



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3822 of 2023
Reserved on: 14.06.2023
Decided on: 22.06.2023.

Yogesh Verma and othersPetitioners.
 Versus
 State of Himachal Pradesh and othersRespondents.

Coram:

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.
The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?

For the petitioners: Mr. Suneel Awasthi, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, with
 Mr. Rakesh Dhaulta, Mr. Navlesh
 Verma, Mr. Pranay Pratap Singh,
 Additional Advocates General, Mr.
 Gautam Sood and Mr. Arsh Rattan
 Deputy Advocates General, for
 respondents No. 1 to 3.

M.S. Ramachandra Rao, Chief Justice

This writ petition is filed by the petitioners who are Chartered Accountants and are registered with the Institute of Chartered Accountants of India. They have challenged Annexure P-4 letter dt. 16.1.2015 issued by the NABARD (respondent No.5).

2) In the said letter, 5th respondent wrote to the Registrar Cooperative Societies of all the States that they should provide a panel of Chartered Accountants to the State Cooperative Banks for conducting the statutory audit from the year 2013-2014 onwards. The said letter enclosed as Annexure-1 thereto certain guidelines, which are as under:

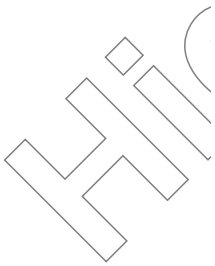
“i) The selection of auditors is to be made from the list provided by Institute of Chartered Accountants of India (ICAI).

ii) The selection is to be based on factors like number of FCA/ACA available with the firm, year of establishment, number of years of experience in bank audit, etc.,

iii) As far as possible, CA firms falling in Category I, II are to be chosen. However, Category III firms with good experience may also be considered.

iv) Only those audit firms whose names appear in the Diploma in Information System Audit (DISA) qualified list of CAs provided by ICAI are to be considered for appointment as Statutory Auditors.

v) Audit firm that has served as statutory auditor consecutively for 3 years is to be rested for the next 2



years. vi) Audit to be conducted as per the extant guidelines of NABARD/RBI issued from time to time and instructions issued by RCS under the provisions of the relevant Acts.”

Contentions of petitioners

3) According to the petitioners they had been conducting statutory audit of certain Cooperative banks branches till 2021-2022, but for the financial year 2022-23, their names were excluded from the panel that was authorized to conduct statutory audit of the State Cooperative Bank branches; and on making inquiry, they came to know that Registrar has relied upon the letter dt. 16.1.2015, issued by respondent No. 5.

4) The petitioners contentions are as follows:

(a) That conditions nos. (iii), (iv) and (v) are not even applicable in statutory branch audits of nationalized banks even for the year ending 31st March, 2023;

(b) Because of the said conditions, 85% of Chartered Accountants Firms empanelled with the Cooperative banks have become ineligible for empanelment/allotment and

failed to get any statutory bank branch audit for the financial year 2022-23;

(c) That the Diploma Information System Audit qualified list of Chartered Accountants mentioned in condition (iv) cannot be applied because it is a post qualification course in Information System Audit and is required when any Information System Audit is to be conducted; and such course is not a mandatory qualification for conducting the branch statutory audit of banks, whether nationalized or Cooperative banks, and such a condition is unreasonable, arbitrary and has no nexus with the object sought to be achieved;

(d) That these conditions imposed by the NABARD give an advantage to big firms and virtually oust the sole proprietorship concerns and smaller firms and have resulted in curtailing their right of freedom to carry on their profession.

(e) The requirement that an audit firm which has served as statutory auditor consecutively for 3 years is applicable to

Central Statutory Auditors and not on Statutory Branch Auditor as they conduct the audit of different branches of Cooperative banks every year resulting in automatic rotation of statutory branch auditors every year as per the policy of Registrar of Cooperative Societies; ◇

(f) The exclusion of the petitioners firm from conducting audit of the cooperative bank branches is arbitrary, discriminatory and unreasonable since the petitioners are qualified and efficient Chartered Accountants, and once a person is qualified, experienced and efficient he cannot be discriminated only for the reason that he has chosen to act alone in the profession/career and has not been able to form a partnership firm.

(g) The classification made by letter dt. 16.1.2015 has no nexus with the object sought to be achieved, i.e., preparing suitable panel for the Cooperative banks and conduct statutory audits.

Reliance is also placed on the decision of the Supreme Court in *Comptroller & Auditor General v. Kamlesh Vadilal Mehta*¹. ◇

5) We have noted the contentions of the learned counsel for the petitioners.

6) A reading of the impugned letter dt. 16.1.2015 indicates that the said letter is issued as per Clause 9.20 of the MoU under the Revival package for STCCS, signed by the State Government with Government of India and NABARD which requires audit of State Cooperative Banks and Central Cooperative Banks by professional Chartered Accountants from the panel approved by NABARD.

7) There is a reference in the said letter to the 97th Amendment to the Constitution of India (empowering the State Governments to ensure conduct of audit in Cooperative Societies and also provide a panel of auditors) and Article 243 AM (1) of the Constitution 97th Amendment Act, 2011(which envisages that the Legislature of a State

¹ (2003 2 SCC 349.

may make provisions with respect to the maintenance of accounts by Cooperative Societies and the auditing of such accounts, at least once in each year, provided that such auditors or auditing firms shall be appointed from a panel approved by the State Government or an authority authorized by the State Government in this behalf.)

8) Reference is also made to the fact that the business in Cooperative Banks, i.e., State Cooperative Banks and District Cooperative Central Banks is required to be conducted in a manner not detrimental to the interests of the depositors and as these entities, being banks, are subject to the regulatory provisions of the Banking Regulation Act, 1949.

9) Obviously, the purpose of issuing the said letter to the Registrars of Cooperative Societies of all the State Governments by NABARD is to ensure that frequent failure of Cooperative Banks do not happen and qualified auditors conduct the audit as per regulatory provisions to protect the interest of the depositors of such banks in view of several

instances of State Cooperative Banks and District Central Cooperative Banks failing due to lack of checks on their operations. ◇

10) Undoubtedly, Article 243 ZM (1) of the Constitution of India empowers the legislature of a State to make law with respect to maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year and also empowers that State shall, by law, lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing accounts of the co-operative societies.

11) Clause (2) of Art.243 ZM empowers the Legislature of a State to lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing accounts of the co-operative societies; and proviso to Clause (3) thereof provides that such auditors or auditing firms shall be appointed from a panel approved by a State Government or an authority authorized by the State Government in this behalf.

12) What sort of qualifications are required to be possessed by an Auditing Agency to conduct statutory audit of the State cooperative Bank, is thus left to the State Government. ◇

13) It appears that in order to assist the respective State Governments to choose the right persons to conduct statutory audits, the 5th respondent had issued the impugned letter prescribing broad guidelines mentioned in conditions nos. (iii) (iv) and (v).

14) Even according to the petitioners, as pleaded in para 4, the Institute of Chartered Accountants has categorized firms as Category I/II/III/IV and the petitioners belong to category III and IV firms; and such categorization list is sent to the Reserve Bank of India (respondent No.4) for preparing suitable panel for public sector banks and undertakings. Therefore, it cannot be contended *per se* that the categorization of Chartered Accountants firms into such categories is arbitrary and discriminatory.

15) More importantly, though the guidelines issued in the impugned order referred to choosing of Chartered Accountants firms falling in categories I and II, they provided that category III firms with good experience can also to be considered. So there is no total exclusion of such category of firms. ◇

16) As regards the requirement of being in list of qualified Diploma holders in Information System Audit of Chartered Accountants provided by the Institute of Chartered Accountants of India (for consideration for appointment as statutory auditors indicated in condition no. (iv) of the guidelines is concerned), it is not in dispute that the Diploma in Information System Audit is a post qualification course for Information System Audit and is required when any Information System Audit is conducted. When data of most of the banks are now being stored in Information Systems, we fail to see why prescription of such a qualification of inclusion in the qualified list of Chartered Accountants holding such Diploma has to be faulted with.

17) The Supreme Court has time and again held that it is not for the Courts to consider relevance of qualification prescribed for various posts and it is not the province of the Courts to assess the comparative merit of different qualifications and decide or direct what should be the qualifications to be prescribed for a particular post (**J. Ranga Swamy vs. Govt. of Andhra Pradesh**²)

18) In **Chief Manager, Punjab National Bank and another vs. Anit Kumar Das**³ it was reiterated that it is for the employer to determine and decide relevancy or suitability of qualification for any post and not for courts to consider and assess the same since the qualifications are prescribed keeping in view the need and interest of the institution/industry/establishment as the case may be.

19) In **Chandigarh Administration Director Public Instructions (Colleges) Chandigarh vs. Usha Kheterpal Waie and others**⁴ the Supreme Court declared

²(1990) 1 SCC 288

³(2021) 12 SCC 80

⁴(2011) 9 SCC 645

that Courts and Tribunals cannot prescribe qualifications nor entrench upon the power of State to prescribe qualifications so long as the qualifications prescribed are reasonably relevant and have rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. ◇

20) This Court has neither the expertise to decide whether the conditions mentioned in the guidelines issued by the NABARD are valid or not, nor does it have any ability to compare the nature or responsibility of statutory auditors, who do not have such qualifications, with those who possess the said qualifications. The conditions imposed appear to be reasonably relevant and have a rational nexus with the functions and duties attached to the post of auditors.

21) In the decision of ***Kamlesh Vadilal Mehta***, cited by the counsel for petitioners, an advertisement was issued by the Comptroller and Auditor General inviting applications from firms of Chartered Accountants for the purpose of empanelment for audit of Government companies, and only

partnership firms were made eligible for the said purpose excluding proprietary concerns from empanelment. ◇

The Supreme Court held that such restriction was not warranted and once a person is qualified, experienced and efficient, he cannot be discriminated against only for the reason that he has chosen to act alone in his professional career and has not been able to form a partnership firm.

The Supreme Court held that merely because some of the Chartered Accountants have formed partnership firms, it cannot be assumed that they become more efficient for carrying out audit work than the individual Chartered Accountants, who forms proprietary concern.

(22) This decision has no application in the instant case because the impugned letter is in the nature of advice to the Registrar of the Cooperative Societies of the State Governments to empanel Chartered Accountants for conducting statutory audit of State Cooperative Banks. Having regard to requirement of protecting interest of depositors, certain criteria has been prescribed with certain

qualifications such as possession of Diploma in Information System Audit and certain number of years of experience in doing bank audits, which cannot be considered to be wholly irrelevant criteria. Therefore, the decision cited by the petitioners is clearly distinguishable. ◇

23) For the aforesaid reasons we do not find any merit in the writ petition and it is accordingly dismissed. No costs.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

June 22, 2023.
(cm Thakur)

