

PETITIONER:

H. A. K. RAO, CHARTERED ACCOUNTANT

Vs.

RESPONDENT:

COUNCIL OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, NEW

DATE OF JUDGMENT:

13/12/1966

BENCH:

RAO, K. SUBBA (CJ)

BENCH:

RAO, K. SUBBA (CJ)

SHAH, J.C.

SIKRI, S.M.

RAMASWAMI, V.

VAIDYIALINGAM, C.A.

CITATION:

1967 AIR 1257

1967 SCR (2) 256

ACT:

Chartered Accountants Act 1949--Clause (ii), Part II, Second Schedule--Council's power to specify any act or omission other than those covered by Act or Regulations as 'professional misconduct'--scope of.

HEADNOTE:

The Council of the Institute of Chartered Accountants, by a notification issued on February 22, 1964, in exercise of powers conferred by cl. (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, notified, inter alia, that a member of the Institute shall be deemed to be guilty of misconduct if, in connection with elections to the Councils of the Institute, he took part directly or indirectly in (1) issuing manifestoes or circulars; (2) canvassing votes by visiting places of business or residence of the voters or in any other manner.

The appellant, who was a prospective candidate for election to the Central Council of the Institute, filed a writ petition to quash the notification. It was contended on his behalf that the power of the Council to issue a notification is limited by the express provisions of cl. (ii) of Part II of the Second Schedule to the Act. Under cl. (i) any contravention of the provisions of the Act or of the Regulations made thereunder was professional misconduct; therefore the expression "other act or omission" in cl. (ii) must be an act or omission other than those covered by the Act or the Regulations. Under cl. (2) of Regulation 54-A, undue influence by interfering with the free exercise of any electoral rights was misconduct, but the proviso to cl. (2) which permitted a declaration of policy or a promise of a particular action saved the issuing of manifestoes and circulars from the operation of the substantive part of the clause. The appellant therefore claimed that he had a legal right to issue circulars or manifestoes within the meaning of the proviso and that the impugned notification being in derogation of the Regulation, was illegal.

It was further contended that the notification was inconsistent with cl. (4B) of Regulation 54A, because that

clause only prohibited canvassing for votes within a distance of 200 meters from the polling booths, thereby implicitly permitting canvassing beyond that distance; cf. (4B) detracted only to a limited extent from the legal right to canvass and the impugned notification containing a prohibition against general canvassing beyond these limits contravened both cl. (2) and cl. (4B) of Regulation 54-A and was therefore bad.

The High Court held that the impugned notification in so far as it directed that the issuing of manifestoes or circulars was misconduct, was illegal; but that the rest of it was valid. On appeal to this Court by the appellant and upon a cross-appeal by the respondent.

HELD: The entire notification was valid.

Although the act of issuing a manifesto or a circular would not amount to undue influence by virtue of the proviso to Regulation 54-A(2) such

257

act was constituted by the notification a different head of professional misconduct which the Council was authorised to do under cl. (ii) of Part II of the Second Schedule to the Act. [263 H]

The Council had the power to issue the notification prohibiting canvassing of votes and the notification was not inconsistent with either the provisions of the Act or the Regulations. [263 F]

While the Regulations provide for disciplinary action for undue influence and for canvassing for votes within a distance of 200 meters from a polling booth, the notification placed other acts and omissions under different heads of misconduct. There is no inherent conflict between undue influence, canvassing of votes by visiting the places of business or the residence of the voters, and canvassing within a distance of 200 metres from a polling booth. All the three can stand together. [262 H]

The appellant did not have any unlimited right to canvass for vote either statutory or otherwise. His rights were defined by the statute and it could not be said that such an unlimited right to canvass is implicit in the right to stand for election. [263 B]

The electorate was an enlightened body and the elections were to a council designed to maintain high standards of the profession. Canvassing may be necessary for explaining to an illiterate voter the qualifications of a candidate and the principles for which he stands or in the case of a vast electorate with which the candidate may not be familiar, but no such necessity exists in the case of enlightened voters of a compact electorate. The impugned notification was not therefore unreasonable in the sense that expression is understood in law. [263 C]

[The question whether the notification was violative of Article 19 of the Constitution and whether that Article could be invoked notwithstanding the fact that a state of emergency was in force, was left open.] [259 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 447 and 501 of 1965.

Appeals by special leave from the judgment and order dated July 2, 1964 of the Mysore High Court in Writ Petition No. 473 of 1964.

K. Srinivasan and R. Gopalakrishnan, for the appellant (in C. A. No. 447 of 1965) and the respondent (in C. A. No. 501

of 1965).

M. C. Setalvad, K. K. Jain and H. K. Puri, for the respondent (in C. A. No. 447 of 1965) and the appellant (in C. A. No. 501 of 1965).

The Judgment of the Court was delivered by Subba Rao, C. J. These are cross-appeals-the appeal has been filed by H. A. K. Rao, a Chartered Accountant, and the cross-appeal has been filed by the respondent therein-against the judgment and order of the Mysore High Court passed in Writ Petition No. 473 of 1964 filed by the former challenging the validity of the notification issued by the latter regulating the conduct of elections to the Central Council and the Regional Councils of the Institute of Chartered Accountants of India.

M1Sup.CI/67-3

258

The facts are not in dispute and, they may be briefly stated, H. A. K. Rao, the appellant in Civil Appeal No. 447 of 1965, is a chartered accountant by profession and is a fellow member of the Institute of Chartered Accountants of India, hereinafter referred to as the "Institute". The election to the Central Council and the Regional Councils of the Institute was to take place in the month of August, 1964. On February 22, 1964, the President of the Institute issued a notification in exercise of the powers conferred by cl. (ii) of Part 11 of the Second Schedule to The Chartered Accountants Act, 1949 (38 of 1949), hereinafter called the Act, notifying that a member of the Institute shall be deemed to be guilty of misconduct, if, in connection with election to the Councils of the Institute, he was found to have taken part, directly or indirectly, either himself or through any other person, in any of the following activities:-(1) issuing manifestoes or circulars; (2) canvassing votes by visiting places of business or residence of the voters or in any other manner; and (3) organising parties to entertain voters. The appellant in Civil Appeal No. 447 of 1965 was a prospective candidate for the Central Council of the Institute. He filed the aforesaid writ petition to quash the said notification on various grounds, which we will consider in the course of the judgment. The High Court held that the impugned notification, in so far as it directed that issuing of manifestoes or circulars was misconduct was illegal and that that part of the notification in so far as it directed canvassing of votes was misconduct was valid. Both the parties are challenging the said order in so far as it is against each of them.

Mr. K. Srinivasan, learned counsel for the appellant in Civil Appeal No. 447 of 1965, attacked the validity of the notification on three grounds, namely, (1) it was beyond the competence of the Central Council, (2) it purported to amend the Regulations, (3) it was in conflict with the Regulations, and (4) it was in violation of cls. (1)(a) and (1)(g) of Art. 19 of the Constitution.

Mr. M. C. Setalvad, appearing for the Institute, canvassed the correctness of the order of the High Court in so far as it held that the issuing of manifestoes and circulars was illegal. He contended that the impugned notification was well within the competence of the Institute and was not in conflict with any of the Regulations, but it was really an additional head of disqualification introduced by the Institute in the interests of maintaining high standards in the profession.

At the outset it may be mentioned that the appellant in Civil Appeal No. 447 of 1965 did not seek to sustain his claim on the basis of his fundamental right presumably in

view of the fact that its operation was and is suspended under Art. 358 of the Constitution during the emergency, though he sought to draw an analogy on the provisions of Art. 19 and the decisions thereon in support

259

of his contentions. We do not propose to express any opinion either on the question whether Art. 19 of the Constitution can be invoked in the instant case notwithstanding the fact that the state of emergency is in force or on the question whether the Institute is a State within the meaning of Art. 12 of the Constitution. We put aside Art. 19 altogether, as the appellant did not rely upon it and proceed to consider his other arguments..

Before we consider the relevant provisions of the Act it is necessary to notice at the outset the nature and the objects of the Institute. The Institute is a statutory body having perpetual succession and a common seal. It is governed by the Act and the Chartered Accountants Regulations, 1949, hereinafter called the Regulations. The Central Council of the Institute shall be composed of not more than 24 members elected by the members of the Institute from among the fellows thereof and 6 persons nominated by the Central Government. There are Regional Councils which function in their respective regions subject to the control, supervision and direction of the Central Council or any of its committees. Elections to the Councils are held once in three years. Therefore, the Act, through its provisions, regulates the profession of chartered accountants. It establishes an Institute of Chartered Accountants and provides for the constitution of a Council for carrying out the objects of the Act. The Central Council, inter alia, has the power to admit members to the Institute, to take disciplinary action, and to regulate and maintain the status and standard of the professional qualifications of the members of the Institute. It is needless to say that the profession of chartered accountant is a respectable one and the duties of chartered accountants are onerous and responsible. They are all educated and qualified men and on their efficiency and integrity depends the stability of many of the institutions in the country. It cannot, therefore, be gainsaid that the candidates seeking to become members of the said Council which regulates the conduct of chartered accountants shall necessarily be persons of high integrity and above criticism.

With this background we shall now proceed to consider the arguments raised in the appeals.

To appreciate the contentions of the parties it will be convenient to collect at one place the relevant provisions of the Act and the Regulations.

The Act

.Section 22. For the purpose of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on

260

the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Section 30 (1). The Council may, by notification in the Gazette of India, make regulations for the purpose of carrying out

the objects of this Act, and a copy of such regulations shall be sent to each member of the Institute.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters

(b) the manner in which elections to the Council and the Regional Councils may be held.

THE SECOND SCHEDULE

Part I

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

Clauses (1) to (10)

Part II

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(i) contravenes any of the provisions of this Act or the regulations made thereunder.

(ii) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Gazette of India.

Regulation 54-A. Disciplinary action against member in connection with conduct of election :

A member of the Institute shall be liable for disciplinary action by the Council if he adopts one or more of the following practices with regard to the election to the Council, namely

(1)

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the

261

part of a candidate or of any other person with the connivance of the candidate, with the free exercise of any electoral right ;

Provided that-

A declaration of policy or a promise of a particular action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(4B). The canvassing for votes, or soliciting the vote of any elector, or persuading any elector not to vote, for any particular candidate, or persuading any elector not to vote at the election, or exhibiting any notice or sign board (other than an official notice) relating to the election, by a candidate or by any other person with the connivance of a candidate within a distance of 200 meters from a polling booth.

In exercise of the power conferred under cl. (ii) of Part 11 of the Second Schedule to the Act, on February 22, 1964, the Council issued the following notification :

..... a member of the Institute shall be deemed to be guilty of professional misconduct, if in connection with election to

the Central Council and/or Regional Councils of the Institute, he is found to have taken part, directly or indirectly, either himself or through any other person, in any of the following activities :-

- (i) issuing manifestoes or circulars.
- (ii) canvassing votes by visiting places of business or residence of voters in any other manner; and
- (iii) organising parties to entertain voters.

The gist of the said provisions may be stated thus : For the purpose of the Act the expression "professional misconduct" includes the act or omission specified in the Schedule to the Act. The Council also may by notification make regulations in connection with the conduct of elections. Under Regulation 54-A(2) and (4B) a member of the Institute shall be liable to disciplinary action by the Council if he was guilty of the practice, among others, of undue influence and canvassing as defined therein. On February 22, 1964, the Council issued a notification specifying that a member of the Institute shall be deemed to be guilty of misconduct, if, in connection with the election to the Councils of the Institute, he is found to have taken part, directly or indirectly, either himself or

262

through any other person, or to have issued manifestoes or circulars or to have canvassed votes by visiting places of business or residence of voters or in any other manner. Part I of the Second Schedule to the Act describes the acts of professional misconduct in relation to chartered accountants in practice requiring action by the High Court and Part II thereof states, generally that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of the Act or the Regulations or is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Gazette of India.

Now the question is whether the said notification is invalid for any of the reasons mentioned above. It is said that the power of the Council to issue a notification is limited by the express provisions of cl. (ii) of Part 11 of the Second Schedule to the Act. As under cl. (i) of Part 11 of the Second Schedule to the Act, the contravention of the provisions of the Act or of the Regulations made thereunder was professional misconduct, the argument proceeded, the expression "other act or omission" in cl. (ii) should be an act or omission other than those provided in the Regulations. Elaborating this argument it was said that under Regulation 54-A(2) the appellant in Civil Appeal No. 447 of 1965 had a legal right to canvass within the meaning of the said proviso, that the notification in effect depriving him of that right was in derogation of the said Regulation and, was, therefore, illegal. It was also argued that the said notification was inconsistent with cl. (4B) of Regulation 54A, as under that clause canvassing for votes or soliciting votes of electors was prohibited within a distance of 200 meters from the polling booths, thereby impliedly permitting canvassing beyond that distance, and that, therefore, the notification prohibiting canvassing generally was in direct conflict with the same. The further argument was that cl. (4B) of Regulation 54-A detracted only to a limited extent from the legal right to canvass and that any prohibition against general canvassing beyond the limits laid down by cl. (4B) of Regulation 54-A

contravened both cl. (2) and cl. (4B) of Regulation 54-A and was bad.

The argument at first sight appears to be attractive, but it involves a fallacy. The Regulations enumerated different heads for disciplinary action in connection with the conduct of an election; but they did not, either expressly or by necessary implication, prohibit the Council from adding additional heads of disciplinary action. While the Regulations provide for disciplinary action for undue influence and for canvassing for votes etc. within a distance of 200 metres from a polling booth, the notification placed other acts and omissions under different heads of misconduct. There is no inherent conflict between undue influence and canvassing of votes by visiting the places of business or the residence of the voters.

263

So too there is no conflict between canvassing of votes within a distance of 200 meters from a polling booth and canvassing of votes by visiting places of business or residence of voters or in any other manner. All the three can stand together.

Nor can we agree that apart from the fundamental rights, which the appellant does not claim in this appeal, he has an unlimited right to canvass for votes, either statutory or otherwise. Nothing has been placed before us to sustain any such right. His rights are defined by the statute and we cannot say that such an unlimited right to canvass is implicit in the right to stand for election.

We cannot also agree with the learned counsel for the appellant that the notification is unreasonable in the sense that expression is understood in law. As noticed earlier, the electorate is an enlightened body and the elections are to a council designed to maintain high standards of the profession. The voters are expected to know the qualifications of every candidate and they are certainly in a position to vote for the best candidate. Canvassing may be necessary for explaining to an illiterate voter the qualifications of a candidate and the principles for which he stands or in the case of vast electorate to which the candidate may not be familiar, but no such necessity exists in the case of enlightened voters of a compact electorate. If the Council thought that malpractices existed and undue and unwholesome pressures were brought to bear on the voters and for that reason, with a view to purify the conduct of elections, if it issued the said notification prohibiting canvassing, we cannot say that the Council acted unreasonably in issuing the said notification. It issued the notification in the best interests of the purity of the elections and ultimately in the interests of the profession itself. We, therefore, hold that the Council had not only power to issue the notification prohibiting canvassing of votes but also that the said notification was not inconsistent with either the provisions of the Act or the Regulations made thereunder.

Now coming to the cross-appeal, the High Court held that issuing illegible manifestoes or circulars directly came into conflict with the proviso to cl. (2) of Regulation 54-A which says that a declaration of policy or a promise of a particular action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of the said clause. Doubtless the proviso to Regulation 54-A(2) saves issuing of manifestoes and circulars from the operation of the substantive part of the clause. The act of issuing a manifesto or a circular, therefore, does not

amount to undue influence with in the meaning of that clause. If the notification says that such issuing of manifestoes or circulars is undue influence, it certainly comes into conflict with that clause. But the notification does not, and indeed it cannot, amend the definition of "undue influence". The

264

said Act, though it does not amount to an undue influence, is constituted a different head of professional misconduct which the Council is authorized to do under cl. (ii) of Part 11 of the Second Schedule to the Act. From this perspective no conflict between the two arises. We cannot, therefore, agree with the reasoning of the High Court that the notification in so far as it prohibited issuing of manifestoes and circulars was illegal.

In the result, we hold that the entire notification is valid. Civil Appeal No. 447 of 1965 is dismissed with costs and Civil Appeal No. 501 of 1965 is allowed, but, in the circumstances, without costs.

R.K.P.S.

C. A. 447 of 1965 dismissed.

C. A. 501 of 1965 allowed.

265