

CASE NO.:
Appeal (civil) 6835 of 2000

PETITIONER:
Institute of Chartered Financial Analysts of India & Ors

RESPONDENT:
Council of the Institute of Chartered Accountants of India & Ors

DATE OF JUDGMENT: 16/05/2007

BENCH:
Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

1. I have perused the judgment of my learned brother Hon'ble S.B. Sinha, J. and am in respectful agreement with the same. However, I wish to add some of my own reasons.
2. In recent years, the country has witnessed phenomenal growth in the field of financial markets. The funds raised by the corporate sector from the capital market have increased exponentially, the number of stock exchanges have increased, the investor community has multiplied. The structural developments in the markets are the inclusion of institutional and corporate members, of stock exchanges, and formation of the regulatory authority 'SEBI' to oversee the functioning of the capital market.
3. In recent decades the financial services industry has matured in our country. A large number of mutual funds have been set up by the banks, insurance companies and the corporate sectors, leasing and hire purchasing companies have grown in size, content and operations. Credit rating services have been launched. Venture Capital Funds have been set up to meet the requirements of diversified industrial, research and entrepreneurial enterprises. Reliance on international capital markets has become an important source for financing many other developments as well in the country. This makes it all the more important for India to have effective management, controls and practices in line with those in the international financial markets.
4. In view of these developments corporate financial management and controls have become very sophisticated and, therefore, demand highly specialized skills for planning, decision making and controls, consistent with the practices of the world's leading financial markets.
5. Obviously, to meet the growing professional requirements of the financial industry, it became essential to set up an institute for education and training of professionals in accordance with the norms, content, practices and standards of the leading international markets. It is in this context that at the request of the Indian financial industry, some eminent professionals with extensive background in Finance/RBI/UTI/Stock Exchanges etc. promoted and helped establishing the Institute of Chartered Financial Analysts of India (in short 'ICFAI') in active collaboration with the Institute of Chartered Financial Analysts of USA.
6. This collaboration helped ICFAI in establishing educational standards in the field of financial analysis, training people, conducting examinations and awarding the qualification of 'Chartered Financial Analyst' (hereinafter

referred to as 'CFA') - an internationally acclaimed qualification in the field of financial management.

7. Similar institutions have been established by many other countries, including Europe, Japan, Australia, Singapore etc. The profession of CFA is now internationally highly regarded and recognized as vital for modern and orderly development of financial markets. The response to the CFA programme in India has been enormous. This is confirmed by the large number of students who have been enrolled with the Institute. The students also include Chartered Accountants and professionals from other fields. The CFA programme does not give training to become Auditors or Accountants or Cost Accountants or Income Tax law or Direct or Indirect Laws advisers etc. These functions are performed and remain in the exclusive domain of Chartered Accountants (hereinafter referred to as "C.A.") Cost Accountants, and lawyers (though it is true that the C.F.A. course includes some study of accountancy).

8. The submission of learned counsel for respondent no.1, Mr. Ganesh, is that the object of the impugned notification dated 3.8.1989 is to avoid conflict of interest. In our opinion this submission suffers from a total misunderstanding of the functions of a C.F.A. vis-à-vis a C.A. The main function of the former is to study and analyze the financial markets and advise his clients accordingly, whereas the main function of a C.A. is to do auditing of a firm's (or company's) balance sheet and profit and loss account. These are two altogether different functions. Of course, if a person audits a firm's balance sheet and P&L Accounts, there may be a conflict of interest if he also advises the same firm about its investments. An auditor is a watchdog on behalf of the shareholders, whereas a financial adviser advises the management. Such a possible conflict of interest can no doubt be prohibited by law, and such prohibition would be reasonable and in the public interest.

9. However, the notification dated 3.8.1989 goes far beyond such a reasonable restriction. It prohibits all C.As. from joining a C.F.A. course. A C.A. can do auditing work for one firm and can be a financial adviser for another, in which case there is no conflict of interest. It is only for the same firm (or company) that he should not do both work. Moreover, a C.A. can switch over and become exclusively a C.F.A.

10. Thus the notification dated 3.8.1989 amounts to excessive restriction, and it is well settled that excessive restriction which is not required in the public interest is not reasonable and hence not saved by Article 19(1)(g) vide *Maneklal Chotelal vs. M.E. Makwana*, AIR 1967 SC 1373 (para 46), *Express Newspapers Ltd. vs. Union of India*, AIR 1958 SC 578 (para 168), etc.

11. In our opinion the contentions of the learned counsel for respondent no.1 are not tenable. By the notification dated 3.8.1989 it was directed that Chartered Accountants shall be deemed to be guilty of 'professional misconduct' if they become members of the ICAI. The C.As. had been directed to surrender their membership of ICAI before 1st January, 1990.

12. We find it strange that the ICAI, renowned in its own field and with various statutory responsibilities, should go out of its way to stop its members i.e. Chartered Accountants from enhancing their knowledge, training and ability by acquiring a 'CFA' qualification. Instead of appreciating such aspirations of Chartered Accountants who seek to widen their know-how and horizons they are sought to be harassed and termed as being guilty of 'professional misconduct'. Surely this cannot be regarded as reasonable.

13. We find it difficult to understand how does the term 'professional misconduct' apply to a Chartered Accountant seeking additional training and qualification of CFA? In our opinion the impugned notification clearly and flagrantly violates the fundamental rights of the writ petitioners under

Articles 14 and 19(1)(g) of the Constitution of India.

14. With respect to the court below it has obviously misunderstood the difference between the nature of functions of the Chartered Financial Analysts and the Chartered Accountants. Thousands of Chartered Accountants who have become students and/or have qualified as CFAs from the Institute of Chartered Financial Analysts of India could not have done so if the CFA programme did not offer training and education that was not available in the CA programme. Their involvement in such large numbers is in itself the testament to the CFA qualification.

15. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside and the notification dated 3.8.1989 issued by the respondent No.1 is quashed.