

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-4529 of 2015

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioners : Institute of Chartered Accountants of Pakistan and others through Zeeshan Khan and Jawwad Raza, Advocates.

Respondent No.1 : Federation of Pakistan through Kazi Abdul Hameed Siddiqui, DAG.

Respondent No.2 : Securities & Exchange Commission of Pakistan, Nemo.

Respondent No.3 : Registrar of Joint Stock Companies, Nemo.

Respondent No.4 : Institute of Certified Public Accountants of Pakistan through Muhammad Shoaib and Afzal Hussain, Advocates.

Intervenor : UAE Chapter and others

Date of hearing : 14.09.2022.

ORDER

YOUSUF ALI SAYEED, J. - Professing to be the custodians and gatekeepers to the profession of accountancy within Pakistan, the Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution seeking to assail what they perceive to be an encroachment in their domain by the Respondent No.4.

2. The Petitioners Nos.1 and 2, namely the Institute of Chartered Accountants of Pakistan and Institute of Cost and Management Accountants of Pakistan (hereinafter referred to individually as “**ICAP**”, “**ICMAP**” or “**Institute**” and collectively as the “**Institutes**”), regulate the education training and certification of persons aspiring to those particular qualifications and accreditations under the Chartered Accountants Ordinance 1961 and the Cost and Management Accountants Act 1966 (hereinafter referred to individually as the “**Ordinance**” and the “**Act**” and collectively as the “**Subject Enactments**”), whereas the Petitioner No.3, the Pakistan Institute of Public Finance Accountants (“**PIPFA**”) was apparently established by the Petitioners Nos. 1 and 2 in concert with the Auditor General of Pakistan as a non-profit association for performing certain supporting functions, and is registered with the Securities and Exchange Commission of Pakistan (“**SECP**”) under Section 42 of the erstwhile Companies Ordinance, 1984.
3. For its part, the Respondent No.4, the Institute of Certified Public Accountants of Pakistan (“**ICPAP**”) is a society registered under the Societies Registration Act 1860 (the “**SRA**”) in the year 1992, with one of its stated objects being “*To advance the theory and practice of accountancy in its all aspects*”, and as per its own showing, imparts training in Accounting, Finance, Auditing, Management, Corporate and Tax Laws to students for securing the qualification of a certified public accountant (“**CPA**”), but with it being clarified that the same is different from the CPA Program offered by the American Institute of Certified Public Accountants (“**AICPA**”), and that ICPAP and AICPA are independent of each other, with no reciprocal arrangements.

4. The essence of the grievance espoused by the Petitioners gravitates around their assertion that they collectively regulate the profession of accountancy in Pakistan in terms of the Subject Enactments. Therefore no institution or person other than one registered with them can be allowed to operate as a parallel institute within the jurisdiction, however the Respondent No.4 is functioning so as to impart education and training in the field of accounting leading to the qualification of a CPA, without being accredited by any recognized institution or a professional body, whether in Pakistan or abroad, and without being regulated by any statute. On that premise it has essentially been prayed that the imparting of training and education in accountancy to students, executives, professionals or any other person by the Respondent No.4, leading to a CPA or any other foreign or local qualification in the field of accountancy, be declared to be unlawful and the Respondent No.4 be restrained from functioning in that manner, whilst the Respondents Nos.1 to 3, being the Federation of Pakistan, the SECP and the Registrar of Joint Stock Companies respectively, also be directed to stop the Respondent No.4 from so functioning as well cancel its registration under the SRA.

5. Comments were filed on behalf of the Respondents, with certain third parties also formally seeking to intervene while claiming that they were the Respondent No.4's UAE Chapter and some of its office bearers, hence their interests were liable to be affected by the outcome of the Petition.

6. Advancing his submissions, learned counsel for the Petitioners argued that the Respondent No.4 was acting in violation of Section 22(ii) of the Ordinance by granting certificates which indicated or purported to indicate the possession or attainment of an accountancy qualification in Pakistan, which was not recognized by the Petitioners and/or any foreign or local accountancy body duly recognized by the Petitioners. Furthermore, it was submitted that the Respondent No.4 was also acting in contravention of Section 22(iii) of the Ordinance by seeking to regulate the profession of chartered accountants by training and imparting education to students, working executives and professionals in the field of accountancy. It was contended that the Respondent No.4 was thus interfering with the mandate of the Petitioners and the Respondents No.1 to 3's failure to act so as to prevent the deprivation of that mandate amounted to a contravention of Articles 4 and 9 of the Constitution. In that vein, learned counsel invited attention to an advertisement published on behalf of the Respondent No.4 in the Daily Dawn Newspaper on 28.12.2008, informing the public about the CPA program and its benefits, while *inter alia* stating that "*Direct Membership to CA, CMA, ACCA Conditions apply*". It was contended that the Respondent No.4 was thus seeking to portray that its program and qualification was that of or at least akin to the program/certification of the Petitioners Nos. 1 and 2. Drawing a parallel with the profession of Law and medicine, it was argued that just as only those persons licensed as advocates and doctors by a Bar Council or the Pakistan Medical Commission could practice those professions, in the same way, only a person registered as a CA or CMA could practice accountancy.

7. Furthermore, it was averred that as the Respondent No.4 had no accreditation with the AICPA, it was not entitled to administer the CPA examination, yet was awarding certificates to students in Pakistan while leading them to believe that the certification was recognized internationally, thus seriously prejudicing students who could not enter into the audit profession on that basis. It was also argued that the Respondent No.4's operation as an unregulated body in the profession of accountancy was a contravention of Article 18 of the Constitution, and the Respondent No.4 being allowed to operate in an unregulated manner while the Petitioners remained bound by the Subject Enactments offended Article 25 and was also contrary to the public interest.

8. Charting the course followed by the Petitioners prior to knocking the door of the Court, learned counsel pointed out that the Petitioner No.1 had approached the Registrar of Societies, Government of Sindh requesting it to strike off the name of the Respondent No.4 from the roll of members on the ground that it was providing training in accountancy in an unauthorized manner as an unrecognized and unregulated institution, but no response was forthcoming. Additionally, it was submitted that the Petitioner No.1 had served a Notice dated 15.11.2011 to the Respondent No.2 through counsel, highlighting that the Respondent No.4 was unrecognized and raising a concern that if it were allowed to provide training in accountancy, the profession would be adversely affected as required standards would not be maintained. As such, it was requested that legal action be taken. Thereafter the Petitioner No.1 also addressed

letters dated 07.03.2007 and 10.04.2007 to the Respondent No.2, stating that the formation of the Respondent No.4 would be in violation of the 1961 Ordinance as the latter's stated objectives conflicted with that of the Petitioner No.1 and the existence of a parallel body would prove detrimental to the profession of accountancy, with it being said that the Respondent No.2 had therefore turned down the request of the Respondent No.4 for the grant of a license by stating that there was neither any need nor scope for setting up of another professional accountancy body.

9. It was pointed out that the Petitioner No.1 subsequently wrote a letter dated 18.02.2014 to the Respondent No.1, expressing the need for the profession of accountancy to be effectively regulated in Pakistan for its growth and protection, and identified the presence of the Respondent No.4 as a threat to the profession as it was dispensing the CPA course without any approval or regulation, as such was conveying a wrong impression that its qualification was similar or identical to the internationally recognized CPA. It is said that in response, the Respondent No.1 informed the Petitioner No.1 vide a letter dated 19.05.2014 that the matter had been referred to the Law and Justice Division, which in turn suggested in terms of its letter dated 28.04.2014 that the matter may be referred to the Higher Education Commission ("**HEC**"), with the Petitioner No.1 then advising the Respondent No.1 that the subject did not fall within the definition of an "Institution" as per Section 2(h) of the Higher Education Commissioner Ordinance, 2002, hence was beyond the ambit and purview of the HEC.

10. In the meantime, as the members of the Respondent No.4 had been granted audit and assurance rights in the United Arab Emirates (the “**UAE**”), the Petitioner No.1 also wrote a letter dated 21.02.2014 to the Minister for Economy, UAE with regard to the Respondent No.4 being an unregulated body, and when no response was forthcoming, also wrote a letter dated 30.04.2014 to the Chairman, Chamber of Commerce and Industry Building, UAE informing it that granting of such rights to members of the Respondent No.4 was a threat to the interests of the public.

11. It was said that in terms of a letter dated 21.11.2013 the Petitioner No.1 once again requested the Respondent No.2 to explore options for taking legal action against the Respondent No.4 as the operation of the Respondent No.4 was prejudicial to the field of accountancy and was jeopardizing the careers of innocent students by providing them with certificates with no or very limited acceptance in the practical terms, with it being sought that the shortcomings in the regulatory framework which allowed the operation of such bodies without any monitoring be removed. It was submitted that the matter was of public importance as the general public was liable to be deceived and prejudiced by the continued operations of the Respondent No.4.

12. Lastly, it was submitted that the Petitioners had *locus standi* to file and maintain the Petition in a regulatory capacity.

13. Conversely, learned counsel for the Respondent No.4 argued that said Respondent was not encroaching upon the domain of the Petitioners Nos. 1 and 2 in any manner whatsoever as it was not offering any certification that purported to be that of a CA or CMA under the Subject Enactments, and its members admittedly did not possess or purporting to hold either of those qualifications. Instead, the Respondent No.4 imparted education and training in accounts, finance, banking, computer sciences, managerial skills, management, audit, corporate and tax laws leading to qualification of a Certified Public Accountant whilst clarifying that it was not an international CPA and was not deceiving any students or its members or any segment of the society by providing them education and training as part of that program. It was argued that the domain, curriculum, and functioning of Respondent No.4 was entirely different from that of the Petitioners and the persons educated/trained by it constituted a class/category of accounting professional that fell outside the ambit of the Petitioners under their respective statutes. It was submitted that the advertisement that had been published in the Daily dawn newspaper on 29.03.2013 had unfortunately been misinterpreted by the Petitioners as it had merely stated that exemptions were available for those applicants who possessed qualifications from international and national accounting institutions, B.Com, M.Com, MBA, ICMA, ICAP, ACCA, CIMA, HDA, HND, PIPFA Conditions apply), which was completely different from claiming that the Respondent No.4 was offering those certifications.

14. As previously mentioned, an Application under Order 1, Rule 10 CPC also came to be filed in the matter on behalf of the UAE Chapter/Wing of Respondent No.4 and some of the council members of that chapter, submitting that 537 accounting professionals who had obtained membership of the Respondent No.4 were currently working and providing accounting services in the UAE, as Ministerial Decree No.148 of 2012 issued by the Ministry of Economy, UAE allowed the members of the Respondent No.4 to establish and run audit firms in UAE region. It was contended that as the Petitioner had questioned the continued existence of the Respondent No.4, the interests of the chapter was liable to be affected, hence it ought to be joined as a party to the proceedings.

15. We have considered the arguments advanced at the bar in light of the Subject Enactments and the material placed on record.

16. Looking firstly to the Application under Order 1, Rule 10 CPC, it is apparent that the interveners do not enjoy any status independent of the Respondent No.1 and their fate is accordingly intertwined with that of said Respondent. Hence, no independent right of audience is warranted.

17. A profession is essentially an occupation carried on by a person on the strength and by virtue of his personal qualifications, with Scrutton L. J. having observed as a member of the Court of Appeal in the case of *Currie v. Inland Revenue Commissioners*, 1921-2 KB 332 that:

"In my view it is impossible to lay down any strict legal definition of what is a profession, because persons carry on such infinite varieties of trades and businesses that it is a question of degree in nearly every case whether the form of business that a particular person carries on it, or is not, a profession. Accountancy is of every degree of skill or simplicity. I should certainly not assent to the proposition that as a matter of law every accountant carries on a profession or that every accountant does not. The fact that a person may have some knowledge of law does not, in my view, determine whether or not the particular business carried on by him is a profession. Take the case that I put during the argument, of a forwarding agent. From the nature of his business he has to know something about railway Acts, about the classes of risk that are ran in sending goods in a particular way, and under particular forms of contract. That may or may not be sufficient to make his business a profession. Other persons may require rather more knowledge of law, and it must be a question of degree in each case. Take the case before Rowlatt J. of a photographer: Cecil v. Inland Revenue Commissioners, (1) Art is a matter of degree, and to determine whether an artist is a professional man again depends, in my view, on the degree of artistic work that he is doing."

He then went on to observe thus:

"But I do desire to say this, as the Master of the Rolls has mentioned it, that I myself am disposed to attach some importance in findings as to whether a profession is exercised or not to the fact that the particular man is a member of an organised professional body with a recognised standard of ability enforced before he can enter it and a recognised standard of conduct enforced while he is practising it. I do not for a moment say it settles the matter, but if I were deciding a question of profession I should attach some importance to that particular feature."

18. However, all professions need not be statutorily regulated, for it is not the requirement of Article 18 of the Constitution or any other law that every professional activity be policed or that all professions for that matter be controlled in equal measure, with it being up to the legislature to decide if regulation is required in the public interest in a particular instance, and if so, to what extent.

Where regulation is statutorily brought to bear, its essence is inevitably that specific requirements need to be met in order for a person to practise the particular profession, but the degree of regulation may vary, based on whether the relevant legislation imposes a system of certification or licensure.

19. Certification is a less intrusive and exhaustive form of regulation, and is essentially a stamp of approval given to an individual for meeting pre-determined requirements, which may entail their entry to a sanctioned register. It is often associated with the monopoly to use a specific title or professional designation and undertake the occupational functions restricted to holders of that title or designation, but does not prevent other persons engaging in other aspects of the particular occupation without using such title or enjoying the privileges that it may confer. This protects members of the public seeking particular professional services by signifying the qualifications and competence of the title/designation holders so that an informed decision may be made as to whether they are qualified to render the same.

20. By contrast, licensure is a more restrictive form of professional regulation, where the profession is restricted, and it is legally forbidden to practise the profession unless specific requirements are met. That system provides an occupational group with monopoly control over who can practice a profession, and restricts the profession to only those individuals who have met specific requirements and have been issued a “license” to practice.

21. That being said, the scope of the Subject Enactments falls to be considered and it merits consideration that Section 2(b) of the CAs Ordinance defines a “chartered accountant” as meaning a person who is a member of the “Institute”, which term is in turn defined as per Section 2(d) to mean the ICAP, as constituted under that very statute. The CMAs Act provides similarly in terms of Sections 2(aa) and (f) thereof, with both statutes then going on to provide for the registration of eligible and qualified persons as associate or fellow members of the ICAP or ICMAP, as the case may be, conferring upon them the right to use the title of CA or CMA and practice as such within Pakistan subject to obtaining a certificate of practice from the Council, being the body created under both the Subject Enactments for managing the respective affairs of the Institutes. The functions of the respective Councils, as prescribed in terms of the Subject Enactments, are more or less analogous, encompassing the examination of candidates for enrolment, regulating the engagement and training of students, prescribing the qualifications for entry in the Register; recognition of foreign qualifications and training for purposes of enrolment; maintaining and publishing the register of persons qualified to practice as a CA or CMA, as the case may be, and granting or refusing certificates of practice under the Act or Ordinance, as applicable, as well as the removal or restoration of names from the Register; the regulation and maintenance of the status and standard of professional qualifications of the members of the Institute; as well as the exercise of such disciplinary powers over the members and servants of the Institute as may be prescribed.

22. Thus, as it stands, the Subject Enactments constitute a self-contained code for regulating the profession of accountancy to the extent of setting the professional standard and qualification for acquiring and holding the title of either a CA or CMA, with the persons registered in either capacity then being able to engage in the professional activities reserved for holders of those certifications under various other statutes.
23. Section 29 of the Ordinance stipulates that “Any reference to a Chartered Accountant or a registered accountant or a certified or qualified auditor in any other law or in any document whatsoever shall be construed as a reference to a Chartered Accountant in practice within the meaning of this Ordinance”, and in the same vein Sections 2(13) and 2(22) of the Companies Act 2017 defines a CA and CMA with reference to the meanings ascribed to those terms under the Act and Ordinance, with the various substantive provisions of that statute, such as Sections 17(3) , 70(1)(b), 237(1) & 249 , 245(5), 247 and 250 for example, going on to assign and confer various roles and responsibilities to persons holding those certifications, whether it be that of audit or otherwise. A similar scheme exists under the Banking Companies Ordinance, 1962 (Section 35), as well as the various fiscal statutes, such as the Income Tax Ordinance 2001 (Sections 108A, 130(4), 134A(2), 176(1)(c), 177(8) and 223(11), the Sales Tax Act, 1990 (Sections 32A and 47A), the Federal Excise Act 2005 (Sections 38 and 46(4), or the Sindh Sales Tax on Services Act, 2011 (Section 29). Even the Anti Money Laundering Act 2010 confers the status of a self-regulatory body on the ICAP and ICMAP as part of the regulatory framework under that statute.

24. When the Subject Enactments are juxtaposed with the statutes regulating other professions, such as the professions of engineering, medicine or law for example, it is manifest that the measure and degree of regulation applicable, at least as envisaged on paper in terms of the relevant statutes in respect of those other professions, is considerably greater than that under the Subject Enactments.
25. For example, the relevant provisions of the Pakistan Engineering Council Act 1975, the Legal Practitioners and Bar Councils Act 1973, and the Pakistan Medical Commission Act 2020 state as follows:

Pakistan Engineering Council Act, 1975

27. Penalties and procedure.— (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by

making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

Legal Practitioners and Bar Councils Act, 1973

9. Functions of a Provincial Bar Council [and Islamabad Bar Council].--(1) Subject to the provisions of this Act and the rules made thereunder, the functions of a Provincial Bar Council [and Islamabad Bar Council] shall be—

(a) to admit persons as advocates on its roll; to hold examinations for purposes of admission; to prepare and maintain a roll of such advocates [of the province [or Islamabad Capital Territory] as well as of each [district]; and to remove advocates from such roll;

22. Right of advocates to practice.--(1) Save as otherwise provided in this Act, no person shall be entitled to practice the profession of law unless he is an advocate.

Pakistan Medical Commission Act, 2020

29. Licensing.- (1) The Authority shall grant a full licence to practice basic medicine or dentistry as a general practitioner to a person who subsequent to qualifying the NLE has completed his mandatory one year house job or foundation year or internship satisfactorily or has successfully completed a house job, internship or foundation year equivalent to a house job at a foreign teaching hospital or institution recognized under sub-section (3) of section 28.

(2) A general practitioner may treat all ordinarily recognized common medical or dental ailments and shall not practice in fields or specialties, as recognized by the Commission for which formal training is required subject to any restrictions prescribed by the Council. In life saving emergencies treatment may be provided until ordinarily recognized specialist services can be obtained or a safe referral can be ensured. No practitioner shall represent himself as a specialist or practice as a specialist, without having appropriate qualifications, recognized and duly registered by the Commission.

(3) The Authority shall cause for the registration of a recognized post graduate, alternative or additional qualification on the licence of a medical or dental practitioner where such qualification permits the medical or dental practitioner to represent and practice such speciality in consonance to such qualification.

(4) The Authority shall grant to a person licensed in a foreign country and in training in a foreign institution, a temporary licence for a fixed period of time to enable the person to take an elective training in a recognized institution in Pakistan which has accepted the person for training.

(5) The Authority shall grant to a person duly licensed in a foreign country a speciality recognized in the foreign country a temporary licence for a fixed period of time to enable the person to provide training or perform surgical or other procedures or teach in a recognized institution in Pakistan.

(6) The Authority shall cause for the registration and issuance of a licence under sub-sections (1), (3) and (4) to be completed within fourteen days of the applicant having submitted his application or reject the same for reasons to be stated.

(7) Every licensed practitioner shall be responsible to maintain his licence as valid and in good order. A practitioner shall not be permitted to practice in the absence of a valid licence issued by the Authority.

(8) No medical or dental practitioner shall be permitted to represent in Pakistan as having acquired or seek to practice a speciality unless the same is duly registered on his licence by the Authority.

(9) Every licensed medical or dental practitioner shall be required to revalidate his licence every five years in the manner and on terms determined by regulations prescribed by the Council.

(10) Every licensed practitioner shall be bound by the code of ethics promulgated by the Authority.

(11) Notwithstanding anything to the contrary contained in any other law for the time being in force, no medical certificate or prescription or medical or dental advice shall be considered valid unless obtained from a medical or dental practitioner having a valid provisional or full licence.

(12) No person shall be entitled to recover any charge in any court of law for any medical, dental or surgical advice or attendance or for the performance of any operation or intervention or for any medicine prescribed or supplied unless he is a registered medical or dental practitioner having valid registration with the Authority:

Provided that a person licensed under any other law to practice some other form of medicine may prescribe medicine permissible under such law commensurate with the scope of his qualifications and training.

(13) No registered licensee shall use or publish in any manner whatsoever any title, description or symbol indicating or intended to lead persons to infer that he possesses any additional or other professional qualification unless the same has been duly recognized and registered on his licence by the Commission.

34. Penalties.-(1) Whoever in contravention of provisions of this Act operates or runs or establishes or endorses any institution or advertises admissions in an institution for imparting training and education in medicine or dentistry shall be guilty of an offence punishable with rigorous imprisonment for a term which may extend to five years but shall not be less than one year or with fine which may extend to fifty million Rupees but shall not be less than five million Rupees or with both and shall also be liable to closure of such institution.

(2) Whoever in contravention of provisions of this Act admits students for imparting education in medicine or dentistry or admits students over and above the allowed number, shall be guilty of an offence punishable with fine which shall not be less than the sum total of the tuition fee for the whole duration of study for each admitted or over admitted student and may also be liable to closure of such institution.

(3) Whoever falsely gets registered with the Authority as a registered medical or dental practitioner without possessing recognized medical or dental qualifications or attempts to get registered with the Authority as a registered medical or dental practitioner without possessing recognized medical or dental qualifications, shall be guilty of an offence of fraudulent registration, punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten million Rupees but shall not be less than five million Rupees or with both.

(4) Whoever falsely pretends to be registered under this Act as a medical practitioner or dentist and uses with his name any title or words or letters representing that he is so registered with the Authority or uses the word “doctor” or any other nomenclature or designation without legal basis, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be guilty of an offence punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten million Rupees but shall not be less than one million Rupees or with both.

(5) Whoever aids or abets any person to falsely register with the Council as a registered medical practitioner without having recognized medical or dental qualifications shall be guilty of an offence punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten million Rupees but shall not be less than five million Rupees or with both.

(6) Whoever contravenes any other provision of this Act shall be guilty of an offence punishable with fine which may extend to ten million Rupees.

(7) ...”

26. As is discernible, the Pakistan Engineering Council Act, 1975, addresses the concept of “any professional engineering work” and Section 22 of the Legal Practitioners and Bar Councils Act, 1973, for example, extends to the entitlement to engage in the “profession of law” as a whole, whereas the orbit of the Subject Enactments remains confined to the sphere of a CA or CMA and not accountancy per se.
27. Whilst the persons who qualify as CAs and CMAs and are certified and registered as such under the Subject Enactments are thus extended recognition and privileges under various laws that are not available to others who may have knowledge of accountancy and seek to render services in that regard, that is not to say that the Petitioners have an absolute monopoly over the field of accountancy, whether from the standpoint of imparting education on the subject or its practice.
28. Indeed, courses on the subject are widely taught at various levels across school and universities with examinations being conducted so as to result in the conferment of certificates to successful candidates. The Ordinary and Advanced Level courses and examinations of the overseas University Boards or university diploma courses are a case in point. While it may be argued that those courses and certificates are offered by institutions possessed of a charter or other recognition, that does not mean that a person who may have acquired knowledge of accountancy through independent study or experience cannot share/impart such knowledge or render such services to an individual or small business that may seek

or require the same without being under a legal/statutory obligation to avail the same from a CA or CMA. As such, the parallel sought to be drawn by learned counsel for the Petitioner with other professions is fallacious.

29. Whilst the consistent and central theme of the Petitioners case is that the Respondent No.4 is a rogue operator in the sphere of accountancy as it is uncertified and it's functioning and activities are unregulated by law, on query posed, learned counsel for the Respondent no. 4 submitted that the persons trained and certified by said respondent did not perform any of the functions or claim any of the privileges of a CA or CMA, as envisaged under those statutes, and for his part, learned counsel for the Petitioner acknowledged that it was so.

30. Although the Petitioners sought to advance a case based on their perceived violation of Articles 9, 18 and 35 of the Constitution, no cogent argument was preferred as to how this was so. Needless to say, where the government/state has not seen fit to regulate a particular activity, such inaction does not constitute a violation of Article 18. Furthermore, the persons who qualify as CAs and CMAs and are certified and registered as such under the Subject Enactments are extended recognition and privileges under various laws that are not available to students of the Respondent No.4, hence they constitute separate classes, enjoying different statuses with different rights and obligations, therefore Article 25 cannot be said to have been violated.

31. Learned counsel for the Petitioner nonetheless argued that the actions and activities of the Respondent No.4 violated Sections 21 and 22 of the Ordinance and Sections 21 and 22 of the Act, which read as follows:

The Ordinance

21. Penalty for falsely claiming to be a member, etc.- Any person who-

- (i) not being a member of the Institute,-
 - (a) represents that he is a member of the Institute;
or
 - (b) uses the designation Chartered Accountant;
*[.....] or
- (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a chartered accountant,

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.

22. Penalty for using name of the Council, awarding degree of Chartered Accountancy, etc.-

- (1) No person shall-
 - (i) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;
 - (ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the possession or attainment of any qualification or competence possessed by a person by virtue of his being a member of the Institute; or
 - (iii) seek to regulate in any manner whatsoever the profession of chartered accountants.

(2) Any person contravening the provisions of subsection (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

The Act

21. Penalty for falsely claiming to be a member, etc.-

A person shall, without prejudice to his liability to any disciplinary measure prescribed under section 34, be punishable, on first conviction, with fine which may extend to one thousand rupees, and, on any subsequent conviction, with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both, if he-

(1) not being a member of the Institute, represents that he is a member of the Institute, or uses the designation of Cost or [Management] Accountant or the letters [A.C.M.A., F.C.M.A.]; or

(2) being a member of the Institute but not having a certificate of practice, represents that he is in practice, or practices as [a cost and management accountant], cost accountant or works accountant or in some similar profession in the field of Cost and [Management Accounting].

22. Penalty for using the name of the Council, etc.-

(1) Save as otherwise provided in this Act, no person shall-

(a) use any name or common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as be likely to deceive the public; or

(b) grant or confer any degree, diploma, certificate or designation which indicates or purports to indicate the possession or attainment of any qualification or competence in Cost and [Management] Accounting similar to that of a member of the Institute.

(2) Any person contravening the provisions of subsection (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable, on first conviction, with fine which may extend to one thousand rupees, and, on any subsequent conviction, with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(3) Nothing contained in this section shall apply to any University established by the law or to any institution affiliated thereto.

(4) If the Federal Government is satisfied that any diploma, certificate or designation granted or conferred by any person other than the Institute, which purports to be a qualification in Cost or [Management] accounting but which, in the opinion of the [Federal Government] fall short of the standard of qualifications prescribed for Cost or [Management] Accountants and does not in fact indicate or purport to indicate the possession or attainment of any qualifications or competence in Cost or [Management] accounting similar to that that of a Member of the Institute, it may, by notification in official Gazette and subject to such conditions as it may think fit to impose, declare that this section shall not apply to such diploma, certificate or designation.

32. For the sake of argument, even if the actions of the Respondent No.4 are accepted as offending Sections 21 and 22 of the Subject Enactments, the statutes themselves provide the relevant mechanism for appropriate proceedings to be initiated in that regard, and if the Petitioners are so inclined, they may proceed accordingly in the manner envisaged. However, under the given circumstances, we are of the view that Article 199 does not afford any room for the Petitioners to give vent to the grievance that has been espoused.

33. That being so, the Petition stands dismissed along with the pending miscellaneous applications, but with no order as to costs.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: 11.11.2022