

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 02.06.2023

+ **W.P.(C) 2815/2014 and CM Nos. 5836/2014 & 15032/2014**

**INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA**

..... Petitioner

Versus

**THE COMPETITION COMMISSION
OF INDIA AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr A.N. Haksar, Senior Advocate with Ms Pooja M. Saigal, Mr Simrat Singh and Mr Chaitanya Pandey, Mr Neil Hildreth, Mr Abeer Kumar, Ms Hitakshi Mittal, Ms Sitwat Nabi, Mr Sahil Sharma, Advocates.

For the Respondents : Mr Vaibhav Gaggar, Ms Kokila Kumar, Mr Prerak Khurana, Mr Dhruv Mehta, Advocates for R-1, 3 & 4.
Mr Zoheb Hossain, Advocate for R-2.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The Institute of Chartered Accountants of India (hereafter 'ICAI') has filed the present petition, *inter alia*, impugning an order dated 28.02.2014 (hereafter '**the impugned order**') passed by the Competition Commission of India (hereafter '**the CCI**') under Section



26(1) of the Competition Act, 2002 (hereafter '**the Competition Act**'), whereby the CCI has directed the Director General (hereafter '**DG**') to conduct an investigation into the matter relating to the Continuing Professional Education (CPE) program being conducted by ICAI. ICAI, as a part of its functions, has framed the CPE program, which requires its members to continue to keep themselves abreast of professional developments and skills by participating in educational activities related to the profession on a continuous basis.

2. ICAI has, with a view to maintain the standards of the professional services rendered by its members, identified CPE as an area of focus. In the year 2003, ICAI issued a Statement on Continuing Professional Education, which prescribes the norms for undergoing CPE activities. The CPE program of ICAI requires its members to devote specified hours for CPE learning activities. The learning activities are classified into structured and unstructured activities. ICAI has also prescribed the minimum number of CPE credit hours including structured CPE credit hours that are required to be earned by its members, classified on the basis of their age (whether below or above 60 years) and on the basis of whether they hold a Certificate of Practice (**CoP**). At the material time, a member of ICAI below the age of 60 years holding a CoP was required to earn ninety CPE credit hours in a rolling three year period. Out of said ninety CPE credit hours, atleast sixty CPE credit hours are required to be on account of structured learning (structured CPE credit hours) including the mandatory twenty Structured CPE credit hours in a calendar year. The balance thirty CPE



credit hours can be completed by unstructured learning. Those members of ICAI who do not hold a CoP require to complete at least an aggregate of forty-five CPE credit hours of either structured or unstructured learning, as per their choice, in a rolling three year period. However, they are required to complete ten CPE credit hours during each calendar year.

3. The structured learning activities are specified activities, which are conducted by ICAI or its organs.

4. On 11.11.2013, respondent no.2 (hereafter '**the Informant**') – who is a qualified chartered accountant and an accomplished journalist in the field of Finance and Fiscal Laws – filed information with the CCI under Section 19(1) of the Competition Act.

5. The principal grievance of the Informant stems from the fact that only ICAI and its organs are conducting the structured learning activities and ICAI has not affiliated or recognized any other body to conduct such learning activities. According to the Informant, this falls foul of Section 4 of the Competition Act. The CCI has, *prima facie*, agreed with the aforesaid view and therefore, issued the impugned order.

6. ICAI contends that it is a non-profit organization and therefore, the CCI does not have any jurisdiction over its activities. ICAI also claims that its CPE program has been structured in exercise of its powers granted to it under the Chartered Accountants Act, 1949 (hereafter '**the CA Act**') and therefore, the CCI would have no



jurisdiction to review its decisions, policies or the manner in which it discharges its functions.

7. ICAI also contends that the impugned order is arbitrary, unreasonable and without application of mind. It contends that the education program being conducted by it is pursuant to its statutory function and cannot be interfered with by the CCI. ICAI contends it has a statutory function of regulating the profession of accountancy and its CPE program is a part of its functions to maintain the standards of the profession; there is no open market, which requires any regulation by the CCI and it cannot review ICAI's decisions taken in exercise of its statutory powers.

Information under Section 19(1)(a) of the Competition Act

8. Before proceeding further, it would be relevant to examine the information as provided by the Informant. He had submitted that ICAI is a member of the International Federation of Accountants (IFAC) and is obliged to follow the IFAC best practices as per its constitution. Members of the IFAC are required to ensure that their members update their knowledge on a continuing basis by conducting a continuing professional development program. The objective being that all professional accountants continue to develop and maintain their competence in the field of their profession. It is stated that the IFAC member bodies are required to ensure that each professional accountant completes at least one hundred and twenty hours (or equivalent learning units) of relevant professional development activities in a rolling three



year period. Out of the same, at least sixty hours should be verifiable. In addition, a professional accountant is also required to complete at least twenty hours of relevant professional development activities in each year. The Informant stated that in conformity with the IFAC norms, ICAI has made it mandatory for its members to acquire the stipulated minimum number of CPE credits. ICAI has also established a committee called the Continuing Professional Education (**CPE Committee**), which is responsible for formulating a policy for organizing CPE seminars as well as granting recognition to units that can hold such seminars. According to the Informant, in terms of its CPE program, members of ICAI who are in practice are required to annually acquire atleast thirty hours of CPE credits out of which atleast twenty hours are structured CPE credit hours.

9. The structured CPE credit hours can be acquired by attending any seminar/conference/workshop, which is organized by ICAI or any of ICAI organs; or by being a faculty at any seminar organized by ICAI or any of its organs; or by contributing to the professional journal of ICAI. The unstructured CPE credits can be obtained by reading professional journals, business literature, attending internal training programs of Chartered Accountancy (CA) firms (constituted by seven or more partners) or participating in group discussions, acting as visiting faculty at Universities/Management Institutions etc. The unstructured CPE credits are availed by filling in a self declaration form in the format as prescribed by ICAI.



10. The Informant voiced a grievance with regard to the policy of ICAI and its decision to conduct the structured CPE program either directly itself or through its organs. According to the Informant, this violates Section 4 of the Competition Act as ICAI has restricted the relevant market of conducting the CPE program to its own organs and has rejected the applications of several reputed non-profit organization for holding and organizing such CPE seminars.

11. The Informant alleged that *“the ICAI that is abusing its dominant position as a “Regulator” to create a monopoly in the service of providing CPE seminars, clearly violating Sec. 4(1) of the Competition Act”*

12. The Informant also points out that ICAI earns revenue from holding structured Learning Activities; and, in the year 2012-13, ICAI had earned a profit of ₹2 Crores. Having stated the above, it is material to note that the Informant is not aggrieved by the fees charged by ICAI from participating members. There is no allegation that the fees charged is excessive or not commensurate with the activities organized by ICAI or its organs. It is not alleged that charging fees amounts to abuse of ICIA’s dominant position.

13. The Informant alleges that one of the reasons ICAI Council has steadfastly refused accreditation to any independent organization for conducting seminars is to further the self interest of its elected members (including the Council, Regional Councils and Branches). He claims that the elected members of ICAI act as Conference Directors and Co-



ordinators and “*this allows them to hog the limelight and is a vehicle for their self-promotion and a ladder for electoral success, since elections to ICAI Council/Regional Councils/Branches are held every 3 years.*”

14. The Informant alleges as follows:

“1. ICAI is in violation of Section 4(2)(a)(i), i.e. by directly imposing ‘unfair’ and ‘discriminatory’ condition in sale of CPE Service by insisting that its over 2 lakh CA members attend only seminars organised by ICAI to attain structured CPE Credits.

2. ICAI is in violation of Section 4(2)(b)(i), i.e. by limiting and confining the provision of service of CPE Seminars to itself, as also restricting CPE seminars access by not allowing any other organization to conduct CPE seminars.

3. ICAI is in violation of Section 4(2) (c) since its CPE policy of not recognizing any other organization for organizing CPE seminars, is denying market access to anyone except ICAI and its organs.”

15. Thus, essentially, the Informant impugns the policy decision of ICAI to conduct the CPE program in-house, either directly or through any of its organs. The Informant has made compelling arguments in support of his case that ICAI should also recognize other organizations and other professional bodies or associations for conducting seminars and conferences that could be included in the structured learning program for the purpose of the participating members of ICAI acquiring structured CPE credit hours. The Informant argues that a chartered accountant has got limited hours to devote to seminars, conferences, and other such activities for developing his skills and keeping abreast with



developments and best practices in the professional field. Thus, ICAI's insistence that its members attend the seminars and conferences organized by it or any of its organs, effectively, deprives its members from participating in other conferences and seminars, which may be organized by various other associations and professional bodies.

Impugned order

16. The CCI considered the aforesaid information and concluded that although ICAI carries out the regulatory functions under the CA Act, it also carries out other *“commercial/economic activities like conducting professional courses including the CPE programs and publication of book relating to profession of CAs apart from conducting examination for CAs”*. According to the CCI, *“these economic activities could be differentiated from the regulatory activities of regulating the profession of CA in terms of prescribing educational qualifications, maintenance of status and standards of professional qualifications of members of the Institute”*. It concluded that in view of the non-regulatory activities being carried out by ICAI, it falls within the definition of an *“enterprise”* under the Competition Act.

17. The CCI further proceeded to hold that ICAI was dominant in the relevant market – *“the market for organizing recognized CPE seminars/workshops/conferences”*. The CCI further observed that there appeared to be *“force in the allegations of the informant that the restrictions put in by ICAI in not allowing any other organization to conduct the CPE seminars for CPE credits created an entry barrier for*



other players in the relevant market.” It observed that there were hundreds of seminars and conferences organized every month across India by reputed organizations like the CCI, FICCI, ASSOCHAM, NASSCOM etc. However, these conferences were not recognized by ICAI for the purpose of granting CPE credits to its participants. According to CCI, this, *prima facie*, amounted to imposing an unreasonable restraint, as the members of ICAI are left with no option but to compulsorily attend seminars organized by ICAI and its organs. CCI further observed that the action of ICAI, restricting the function of organizing CPE seminars conferences to itself and its organs, is an *“arbitrary exercise of its powers”* and thus contravened Section 4 of the Act. In view of the above, CCI has directed the DG to conduct an investigation into the matter and complete the same within a period of sixty days from the receipt of the orders. CCI also directed the DG to investigate the role, if any, of persons who were in-charge of and were responsible *“to the companies for the conduct of the businesses of such companies”* after giving due opportunity of hearing to such persons.

Submissions

18. Mr Haksar, learned senior counsel appearing for ICAI, submitted that ICAI is a statutory body and charged with carrying out regulatory functions under the CA Act. He submitted that conducting the program for continuing professional education, in furtherance of its statutory functions, lacks the ingredients of any commercial activity and therefore, is outside the sweep of the Competition Act. He submitted that the Competition Act was enacted keeping in view the economic



development of the country; to prevent practices having adverse effect on competition and to sustain competition in markets. He submitted that there was no commercial market for conducting CPE program, which was being done by ICAI through its Program Organizing Units (POUs). He submitted that the CCI would have no jurisdiction to review the decisions made by ICAI in discharge of its statutory functions.

19. Next, he submitted that ICAI does not carry on any business, trade or commercial activity. He submitted that ICAI is carrying on its activities in furtherance of its objectives, which are not for profit. He also relied on the decision of this Court in the *Director of Income Tax (Exemptions) v. Institute of Chartered Accountants of India: (2012) 347 ITR 86*, whereby this Court had held that the activities of ICAI fall within the scope of charitable purposes as defined under Section 2(15) of the Income Tax Act, 1961. He submitted that since the primary object of ICAI was to regulate the profession of accountancy, the activities of education training and conducting educational programs could not be considered as commercial or business activities in the eyes of law. He also referred to the decision of the House of Lords in *Institute of Chartered Accountants in England & Wales v. Customs and Excise Commissioners: [1999] 1 WLR 701*, in support of his contention.

20. Next, he submitted that ICAI was not an “enterprise” within the meaning of Section 2(h) of the Competition Act, since it is not carrying on any economic activity. He submitted that the definition of the term “enterprise” must be read to include only such enterprises that are carrying on economic activities and not regulatory activities. He



submitted that any activity carried out by ICAI, in exercise of its regulatory function, could not result in ICAI being considered as an enterprise.

21. Lastly, he contended that the CA Act is a complete code and it was enacted to constitute an autonomous association of accountants to maintain the standards of professional competence and to regulate the profession of chartered accountants. He submitted that since ICAI was performing its functions under the four corners of the CA Act, the same could not be interfered with by the CCI in exercise of its functions.

22. Mr Haksar, learned counsel appearing for ICAI, referred to the decision of CCI in *Thupili Raveendra Babu v Bar Council of India (BCI) & Ors.: 2021 SCC Online CCI 1* in support of his contention that ICAI was conducting the CPE program in exercise of its statutory function and was not an “enterprise” in respect of that activity.

23. Mr Gaggar, learned counsel appearing on behalf of the CCI and Mr Hossain, learned counsel appearing on behalf of the Informant, countered the aforesaid submissions made by Mr Haksar. They submitted that the present petition was not maintainable because an order under Section 26(1) of the Competition Act was merely an administrative / interdepartmental direction. They relied on the decision of the Supreme Court in *Competition Commission of India v. Steel Authority of India & Anr.: (2010) 10 SCC 744* in support of their contention. They further submitted that the CCI had merely directed that investigations be conducted and the same ought not to be interfered



with. Mr Gaggar referred to the decision of the Supreme Court in *Sanapareddy Maheedhar Seshagiri & Anr. v. State of Andhra & Pradesh & Anr.: (2007) 13 SCC 165* and the decision of the Bombay High Court in *Kingfisher Airlines & Anr. v. Competition Commission of India: (2010) 4 Comp LJ 557 (Bom)* in support of this contention.

24. Next, Mr Gaggar submitted that the present petition was premature and ICAI had not exhausted its remedies. He submitted that the CCI had the power to decide on its own jurisdiction and therefore, it was necessary for ICAI to have raised the issue regarding its jurisdiction before the CCI. He further submitted that ICAI had also sought time to make submissions before the CCI and therefore, had submitted to its jurisdiction.

25. He also submitted that ICAI was an enterprise within the meaning of Section 2(h) of the Competition Act as the said definition was couched in wide terms. He submitted that a plain reading of the definition indicates that an enterprise could be a person or a government enterprise engaged in any activity as specified therein. It was not necessary that the specified activity be carried for commercial gain or profit for a person or a department of the government to be considered as an “enterprise”. Thus, a person carrying on charitable activities would also fall within the definition of the term “enterprise”. He submitted that the only exception was carrying out of sovereign functions as defined in Section 54 of the Competition Act and the functions performed by ICAI could not be termed as sovereign functions. He also referred to the decision of a Coordinate Bench of this



Court in *Hemant Sharma & Ors. v. Union of India & Ors.: 2012 Comp LR 1 Del.*, whereby this Court held that the Chess Federation, which was a non-profit organization, would also fall within the definition of “enterprise” under the Competition Act. He also referred to the decision of the Supreme Court in *Agricultural Produce Market Committee v. Ashok Harikuni & Anr.: (2000) 8 SCC 61* and contended that the functions performed by ICAI were not sovereign functions.

26. Lastly, Mr Gaggar and Mr Hossain relied on the decision of the Court of Justice of the European Union (Second Chamber) in *Ordem Dos Tecnicos Oficiais De Contas v. Autoridade Da Concorrenca* in Case C-1/12, whereby the Court held that a regulation, which puts into place a system of compulsory training for chartered accountants, in order to guarantee the quality of services offered by them such as training credit regulation adopted by professional association such as Ordem Dos Tecnicos Oficiais De Contas (Order of Chartered Accountants) constitutes a restriction on competition, which is prohibited by Article 101 of the Treaty on Functioning of European Union (TFEU).

Reasons and conclusion

27. At the outset, it is necessary to examine the constitution and the functions of ICAI.

28. ICAI is a statutory body established under the CA Act, which was enacted in 1949. Prior to its enactment, the Government of India had



framed Auditors Certificates Rules in the year 1932. This was in exercise of its powers conferred under Section 144 of the Indian Companies Act, 1913 and the profession of accountancy in India was regulated by those rules. The Indian Accountancy Board, as constituted, advised the Government in all matters relating to the profession of accountancy and assisted it in maintaining the standards of professional qualification and conduct, required of accountancy professionals. The CA Act was enacted to constitute an autonomous association of accountants to maintain the standards of professional competence and for regulating the profession of chartered accountants. The Statement of Objects and Reasons for enacting the CA Act are set out below:

“STATEMENT OF OBJECTS AND REASONS

The accountancy profession in India is at present regulated by the Auditors Certificates Rules framed in 1932 in exercise of the powers conferred on the Government of India by section 144 of the Indian Companies Act, 1913, and the Indian Accountancy Board advises Government in all matters relating to the profession and assists it in maintaining the standards of the professional qualifications and conduct required of the members of the profession. The majority of the Board's members are elected by Registered Accountants members of the profession from all parts of India. These arrangements have, however, all long been intended to be only transitional, to lead up to a system in which such accountants will, in autonomous association of themselves, largely assume the responsibilities involved in the discharge of their public duties by securing maintenance of the requisite standard of professional qualifications, discipline and conduct, the control of the



Central Government being confined to a very few specified matters.

The Bill seeks to authorize the incorporation by statute of such an autonomous professional body and embodies a scheme which is largely the result of a detailed examination of the whole position by an ad hoc expert body constituted for the purpose, after taking into account the views expressed by the various Provincial Governments and public bodies concerned.”

29. The Preamble also makes it clear that the CA Act was enacted as it was considered expedient to make provisions for regulation of the profession of chartered accountants and for that purpose establish the Institute of Chartered Accountants. By virtue of Section 3 of the CA Act, ICAI has been constituted as a Body Corporate. It is constituted by all members whose names are entered in the “Register”, which is defined under Section 2(1)(g) of the CA Act to mean a Register of Members maintained under the CA Act. No member of ICAI is entitled to practice the profession of accountancy unless he/she has obtained a Certificate of Practice (CoP) from ICAI. Also, no person can use the designation of Chartered Accountant unless he is entitled to practice the profession of accountancy.

30. Section 9 of the CA Act provides for constitution of the Council. The Council includes members who are elected and also persons who are nominated by the Government of India. ICAI functions under the overarching control and supervision of the Council. Section 15 of the CA Act sets out the functions of the Council and is reproduced below:



“15.- Functions of Council. - (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include:

- (a) to approve academic courses and their contents ;
- (b) the examination of candidates for enrolment and the prescribing of fees therefore.
- (c) the regulation of the engagement and training of the articled and audit assistants;
- (d) the prescribing of qualifications for entry in the Register;
- (e) the recognition of foreign qualifications and training for the purposes of enrolment ;
- (f) the granting or refusal of certificates of practice under this Act.
- (g) the maintenance and publication of a Register of persons qualified to practice as chartered accountant ;
- (h) the levy and collection of fees from members, examinees and other persons ;
- (i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;
- (j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute ;



- (k) the carrying out by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;
- (l) the maintenance of a library and publication of books and periodicals relating to accountancy ;
- (m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;
- (n) to enable functioning of the Quality Review Board;
- (o) consideration of the recommendations of the Quality Review Board made under Clause (a) of Section 28B and the details of action taken thereon in its annual report ;and
- (p) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.”

31. In discharge of its functions, ICAI conducts academic courses, which confer on the successful participants, the right to carry on the profession of accountancy. All eligible students who complete the course are entitled to be inducted as members of ICAI. ICAI has specified a strict code of conduct and ethics, which is required to be followed by its members. In addition to conducting the course of accountancy, ICAI also acts as an expert body, which prescribes accounting principles, practices and sets accounting standards, which are required to be followed by various entities.



32. ICAI is the sole body that can grant the qualification of a Chartered Accountant. No other person or body can confer any degree, diploma or bestow any designation, which indicates attainment of any qualification or competence as a Chartered Accountant. Section 24A of the CA Act provides for imposing penalty on any other person or entity using the name of the Council or awarding degrees of Chartered Accountancy. It expressly provides that except as otherwise provided under the CA Act, no person shall award any degree, diploma or certificate or bestow any designation, which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute. Section 24A(1)(ii) of the CA Act is set out below:

“24A. Penalty for using name of the Council, awarding degrees of chartered accountancy, etc.- (1) Save as otherwise provided in this Act, no person shall-

(i) xxxx xxxx xxxx xxxx

(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute: or

(iii) xxxx xxxx xxxx xxxx”

33. Section 30 of the CA Act empowers the Council to make regulations for the purposes of carrying out the objects of the CA Act. Section 30 of the CA Act is set out below:-



“30. **Power to make regulations.** – (1) The Council may, by notification in the “Gazette of India”, make regulations for the purpose of carrying out the objects of this Act.

(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 :–

(a) the standard and conduct of examinations under this Act;

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(c) the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute;

(d) the conditions under which any foreign qualification may be recognised;

(e) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(f) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;

(g) the manner in which elections to the Regional Councils may be held;

(h) the particulars to be entered in the Register;

(i) the functions of Regional Councils;

(j) the training of articled and audit assistants, the fixation of limits within which premia may be charged from articled assistants the cancellation of articles and termination of audit service for misconduct or for any other sufficient cause;



- (k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (l) the carrying out of research in accountancy;
- (m) the maintenance of a library and publication of books and periodicals on accountancy;
- (n) the management of the property of the Council and the maintenance and audit of its accounts;
- (o) the summoning and holding of meetings of the Council, the times and places of such meetings, the conduct of business there at and the number of members necessary to form a quorum;
- (p) the powers, duties and functions of the President and the Vice-President of the Council;
- (q) the functions of the Standing and other Committees and the conditions subject to which such functions shall be discharged;
- (r) the terms of office, and the powers, duties and functions of the Secretary and other officers and servants of the Council; and
- (s) xxxx xxxx xxxx xxxx
- (t) any other matter which is required to be or may be prescribed under this Act.”

34. The CPE program of ICAI is at the heart of the controversy involved in the present petition. As stated herein before, in the year 2003, ICAI issued a statement on CPE (hereafter ‘the Statement’), which was amended from time to time. The opening paragraphs of the Statement indicated that the CPE has been identified by ICAI as a major area of focus for its members. This has been done with the view to



enable its members to maintain the requisite professional competence and to ensure high quality and standards of the professional services that they render.

35. It is at once clear that the Statement was issued by ICAI (Council) in discharge of its functions under Section 15(2)(j) of the CA Act – “*the regulation and maintenance of the status and standard of professional qualifications of members of the Institute*”

36. Paragraph 2.5 of the Statement defines CPE POU, which are responsible for organizing CPE programs. The said paragraph is set out below:

“2.5 CPE Programme Organising Unit (POU): POU are responsible for organising CPE programmes or CPE learning activities and include the Council; Committee(s) of the Council; Regional Councils; Branches; ICAI Accounting Research Foundation and XBRL India as constituted under and in terms of the relevant notifications of the Council; and shall also include entities such as CPE Study Chapters, CPE Study Circles, CPE Study Groups or any other unit which may be recognized by Council from time to time for conduct of CPE learning activities and grant of CPE hours credit to members.”

37. Paragraph 2.6 of the Statement defines CPE learning activities as an educational endeavor that maintains and adds value to the professional competence of members and develops the professional knowledge, skills, ethics and attitudes of the members, relevant to their professional responsibilities. Such learning activities, which are eligible for CPE credit hours are divided into structured and unstructured



learning activities. ICAI had also issued advisories as to what constitutes structured learning activities and unstructured learning activities.

38. The Statement expressly indicates that it is issued by ICAI in terms of the authority granted to the Council under Section 15 of the CA Act. It also provides that the compliance of the provisions of the Statement are mandatory for members of ICAI. All members of ICAI are required to meet the CPE credit hours requirement as specified by the Council from time to time. The CPE credit hours are the credit hours granted to a member for participating in any CPE learning activity, by way of structured or unstructured learning.

39. ICAI has set up the CPE Director (CPED) for overseeing the academic, technical and administrative functioning of the CPE program. It has also constituted a committee known as the CPE Committee as a non-standing committee of the Council of ICAI, which is entrusted with the task of setting strategic directions and overseeing CPE activities of CPE POU's.

40. Article 10 of the Statement sets out the powers and functions of the CPED and the same is reproduced below:

“10.0 Powers and Functions of the CPED

The powers and functions of CPED include the following:



10.1 To design and promulgate annually 'The CPE Calendar' prescribing the topics for the CPE learning activities to all POUs for that particular calendar year.

10.2 To prescribe the eligibility of structured and unstructured learning activities for CPE credit hours and to make appropriate modifications in the indicative list of eligible structured and unstructured learning activities as given in the CPE Advisory on Structured CPE Learning Activities and Unstructured CPE Learning Activities respectively.

10.3 To approve the grant of CPE credit hours to eligible programmes and such other learning activities as may be decided upon by the Directorate.

10.4 To approve the formation of CPE Chapters/ CPE Study Groups

10.5 To provide guidance to the CPE Study Circles in the formation of Study Circles or any other administrative problem.

10.6 To review and monitor the programmes conducted by various POUs [refer para 13 of this statement]

10.7 To allocate and assign responsibilities to various persons and/ or organisations, as the case may be, for the development of CPE background material.

10.8 To refer to the Council, the cases of non-compliance with the Statement.

10.9 To undertake such activities as in its opinion, are conducive to the development of learning programmes, enhancement of quality and frequency of learning activities, increasing the opportunities for members to avail of CPE learning programmes, and such other actions which may be considered relevant or supportive to any or all of these.



10.10 To frame guidelines to enable the smooth execution of the CPE objectives and to modify such guidelines from time to time

10.11 To frame the guidelines to relax the requirements of applicability of the Statement, generally or with reference to specific cases to avoid hardships.

10.12 To grant exemptions to members in terms of the Statement.

10.13 To take such other steps to carry out the mission and objective of the CPE Directorate and such other tasks as may be delegated to the Directorate. (Refer Appendix A)

10.14 To take action against CPE Study Circles / CPE Chapters/ CPE Study Groups who in the opinion of the CPED do not facilitate in achieving the objectives of this Statement. Such action may include suspension of the status of POU.

10.15 To recommend to the Council to take action against POUs, other than those as mentioned in paragraph 10.14 above, who in the opinion of the CPED do not facilitate in achieving the objectives of this Statement. Such action may include derecognition of POU.

10.16 To recommend to the Council any modification in the Statement

10.17 To issue Directions, Advisories and other guidelines from time to time to enable programme designers and organisers as well as all other persons connected with CPE activities at various POU levels, to discharge their responsibilities and, thus, achieve the objectives of this Statement.



10.18 To issue new Advisories and also amend the existing advisories. The list of existing advisories is as follows:

- i. Structured CPE Learning Activities
- ii. Unstructured CPE Learning Activities
- iii. Programme Development
- iv. Use of Learning Technologies
- v. Supervisors and Monitors
- vi. CPE Documentation”

41. Paragraph 12 of the Statement sets out the functions of the POU's. The same is reproduced below:

“12.0 Functions of the POU's

12.1 To organise CPE Structured Learning Activities on the topics as prescribed in the CPE Calendar.

12.2 To seek prior approval from CPED for holding the programmes on topics which are not covered under the CPE Calendar

12.3 To upload the details of the programme to be organised by them on the CPE Portal in advance at least 3 days prior to holding the programme for grant of approval of CPE hours.

12.4 To maintain records of the programmes organised by them, in the manner as stipulated by CPED from time to time.

12.5 POU's shall upload the attendance on the CPE Portal within 72 hours of organising the programme.



12.6 To follow the directions, guidelines and Advisories issued by the Council and by the CPED from time to time.”

42. Annexure B to the Statement sets out the CPE credit hour requirements, which are required to be achieved by the members of ICAI. As per the said requirements (which are applicable with effect from 01.01.2020) all members of ICAI, holding a CoP (Certificate of practice), are required to complete at least one hundred and twenty CPE credit hours in a rolling period of three years, which includes twenty CPE credits hours of structured learning in each calendar year. The remaining sixty CPE credit hours (one hundred and twenty CPE credit hours less the minimum twenty CPE credit hours in each calendar year) can be completed either through structured or unstructured learning as per the member’s choice. All members who are aged less than sixty years and are not holding the CoP are required to complete at least sixty CPE credits hours of either structured or unstructured learning, as per their choice, in a rolling period of three years. This includes at least fifteen CPE credit hours in each calendar year. All members of ICAI who are aged sixty years and above and are holding a CoP are required to complete an aggregate of ninety CPE credits hours of either structured or unstructured learning as per their choice in a rolling period of three years. However, they have to complete a minimum of twenty CPE credit hours in each calendar year.

43. The first and foremost question to be addressed is whether ICAI is an “enterprise” within the meaning of Clause (h) of Section 2 of the



Competition Act. Clause (h) of Section 2 of the Competition Act, which defines the term “enterprise”, is set out below:-

“2(h) “enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.-For the purposes of this clause,—

- (a) “activity” includes profession or occupation;
- (b) “article” includes a new article and “service” includes a new service;
- (c) “unit” or “division”, in relation to an enterprise, includes
 - (i) a plant or factory established for the production,
storage, supply, distribution,
acquisition or control of any article or goods;
 - (ii) any branch or office established for the provision of any service;”



44. A plain reading of the above Clause indicates that the word “enterprise” is defined in wide terms. It includes a person and a department of the Government, which is engaged in any activity specified in the Clause. Apart from activities that are relatable to the sovereign function of the Government – which are specifically excluded – all other activities are included within the aforesaid definition. Thus, even a department of the Government, which is engaged in any of the activities that are not relatable to sovereign functions, would fall within the definition of the term “enterprise”.

45. The term ‘person’ is defined under Clause (1) of Section 2 of the Competition Act. The said definition is an inclusive definition and it includes an association of persons or a body of individuals whether incorporated or not. It also includes a local authority, a cooperative society and a body incorporated by or under laws of a country outside India. In terms of Sub-clause (x) of Clause (1) of Section 2 of the Competition Act, every artificial juridical person not falling within any of the other Sub-clauses of Clause (1) would also be included in the definition of the term “person”. Thus, clearly ICAI is a person under Clause (1) of Section 2 of the Competition Act.

46. The term “service” is defined under Clause (u) of Section 2 of the Competition Act and it means service of any description, which is made available to potential users and it specifically includes services, which are in connection with “education”. Thus, the services, which are rendered in the field of education by ICAI would also clearly fall within the scope of Clause (u) of Section 2 of the Competition Act.



47. In view of the above, this Court is unable to accept that ICAI does not fall within the definition of an “enterprise” within the meaning of Clause (h) of Section 2 of the Competition Act. The functions being performed by ICAI in respect of providing education to chartered accountants or to students, cannot be termed as sovereign functions. However, even if it is accepted that the function of regulation of a profession is relatable to the sovereign functions of the Government, the same is also not excluded from the definition of the term “enterprise” as it excludes only activities of “*the Government*” which are relatable to the sovereign functions of the Government. ICAI cannot be considered the Government and, therefore, even if it carries on regulatory functions, it is not excluded from the wide definition of the term “enterprise” as defined under Clause (h) of Section 2 of the Competition Act.

48. The contention that ICAI does not carry on any business and, therefore, is excluded from the scope of the Competition Act is also unpersuasive. Whilst, it is correct that ICAI is not an organization for profit and its activities fall within the scope of “charitable purposes” as defined under Section 2(15) of the Income Tax Act, 1961. But, the same does not mean that ICAI does not carry out any economic activity. Undeniably, ICAI performs important functions, including to impart the necessary education and qualification in the field of accountancy and to regulate the said profession. The CPE program, undeniably, adds value to the professionals in the field of accountancy and, therefore, it cannot be stated that ICAI does not carry out any economic activity. It follows



that even though earning revenue is not ICAI's objective and it has been formed for a charitable purpose; it, nonetheless, does carry on economic activity and is, therefore, not excluded from the definition of an enterprise under Section 2(h) of the Competition Act. Undoubtedly, it provides a service related to the field of education and, therefore, some of the services provided by it clearly fall within the definition of the expression 'service' as defined in Clause (u) of Section 2 of the Competition Act.

49. Having stated the above, the principal question that requires to be answered is whether the grievances articulated by the Informant constitutes an abuse of dominant position as contemplated under Section 4 of the Competition Act. The Informant prays that the CCI declare ICAI's CPE program as an abuse of dominant position. He further prays that ICAI be directed to revise its program to allow members to obtain CPE credits by attending seminars of their choice and interests, which may be organized by other associations or bodies.

50. The CCI has proceeded on the basis that ICAI carries out both regulatory functions as well as other economic activities like conducting professional courses including the CPE program and publication of books relating to the profession of accountancy. The CCI had observed in the impugned order that these economic activities of ICAI could be differentiated from the regulatory activities of regulating the CA profession and in view of these non-regulatory activities, ICAI falls within the definition of an enterprise under the CCI Act. The CCI concluded that the relevant market for the purposes of the inquiry be the



“organizing recognised CPE Seminars/Workshops/Conferences in India”. Since ICAI through its study circles is a sole provider for organizing CPE seminars for CPE credits required by ICAI’s members; the CCI had concluded that, *prima facie*, ICAI is a dominant player in the relevant market. It also accepted, *prima facie*, the allegations that the restrictions put by ICAI in not allowing other organizations to conduct CPE seminars for CPE credits created an entry barrier for other players in the relevant market. It further observed that since members of ICAI are left with no option but to compulsorily attend seminars organized by ICAI and its organs, the same is an unreasonable restraint on the members.

51. The CCI held “*that while OP [ICAI], as a regulator of the accounting profession, has all the powers to prescribe a policy for continuous up gradation of its members through the CPE Policy and recognition of POUs, however, on its non-regulatory function of organizing CPE Seminars, restricting the same only to itself and its organs, prima facie, appears to be an arbitrary exercise of powers and thus in contravention of Section 4 of the Competition Act.*”

52. This Court is unable to appreciate the aforesaid reasoning, which indicates that the CCI has proceeded on the basis that the Informant’s grievance stems not from ICAI’s exercise of regulatory powers in discharge of its regulatory function but in performance of its non-regulatory activities. First of all, it is necessary to note that the Informant’s grievance is with regard to ICAI’s decision as a ‘regulator’ and not as a service provider that provides services regarding organizing



seminars and conferences. It is important to note that it is not the Informant's grievance that the seminars organized or the conferences organized by ICAI are an abuse of ICAI's dominant position on account of the seminars being deficient in their contents or being made available at exorbitant or unfair charges or terms. The Informant has no grievances – at least none that fall within the scope of the Competition Act – regarding the manner in which the seminars are organized or conducted by ICAI. Although, the Informant has mentioned that the seminars are used for elected members of the Council to secure face time with the members, there is no allegation that the conduct of the seminars itself amount to ICAI abusing its position as a service provider.

53. Therefore, the fundamental premise of the CCI that ICAI has abused its dominant position, with regard to a non-regulatory activity is flawed. As noticed above, the Informant has in unambiguous terms articulated his grievance in the information filed by him. He alleges that *“the ICAI is abusing its dominant position as a ‘Regulator’ to create a monopoly in the service of providing CPE seminars, clearly violating Section 4(1) of the Competition Act”*. The grievance of the Informant, thus, is with regard to the decision of ICAI in making it mandatory for its members to undertake a structured learning program by attending the CPE seminars organized by ICAI and POUs, which according to the Informant and the CCI, are an extended arm of ICAI. The Informant claims that ICAI is in violation of Section 4(2)(a)(i) of the Competition Act, by directly imposing an unfair and discriminatory condition in



provision of the CPE services by insisting that its members attend seminars organized by ICAI to attain the CPE credits. He also alleges that ICAI has violated Section 4(2)(b)(i) of the Competition Act, by limiting and confining the provision of services of the CPE seminars to itself and by not allowing any other organization to conduct the CPE seminars. In addition, he claims that ICAI is in violation of Section 4(2)(c) of the Competition Act, since it follows a policy of not recognizing other organizations for organizing the CPE seminars and, according to him, this amounts to denying market access to anyone except ICAI and its organs.

54. ICAI's decision that its members should attend the CPE program is its decision as a regulator and not a service provider. ICAI's decision that the CPE program be conducted by it as a continuing educational program is also its decision as a regulator. Thus, essentially, the Informant seeks a review of the decision taken by ICAI in exercise of its statutory powers to regulate the profession of accountancy. It seeks that ICAI should recognize other bodies/organizations to discharge its function of providing education for professional accountants for maintenance of the professional standards, instead of ICAI restricting the said function in house.

55. Thus, the principal question that needs to be addressed is whether the CCI as a market regulator for ensuring fair competition in the markets, exercises powers to review the decisions of other statutory regulators, which are taken by them in exercise of their regulatory functions and which have no interface with trade or commerce. If the



Informant's contention is accepted then the CCI would also have the power to review the decisions taken by all regulators in discharge of their regulatory functions and in exercise of their statutory powers. Clearly, the same would be impermissible. This is so, for an obvious reason that a regulator exercises statutory powers and discharges its statutory functions of regulating the specialized field for which it is so empowered. As an illustration, the Controller of Patents would exercise its power as a regulator to regulate the grants of patents and perform the functions as required under the Patents Act, 1970. Clearly, a decision of the Controller of Patents not to grant a compulsory patent license cannot be a subject of a review by the CCI on the grounds that such decision impacts competition in the long run. The statutory authority, which is vested with the regulatory powers can alone exercise such powers. The Competition Act does not contemplate the CCI to act as an appellate court or a grievance redressal forum against such decisions, which are taken by other regulators, in exercise of their statutory powers and are not interfaced with trade or commerce. A statutory body may in course of its functions, also make decisions which involve trade and commerce. As an illustration, the concerned body may purchase equipment and consumables or avail services of professionals. There is no cavil that any decision in this regard may, if it falls foul of the provisions of the Competition Act, be examined by the CCI.

56. At this stage, it is also relevant to refer to the definition of a statutory authority as defined in Clause (w) of Section 2 of the



Competition Act. Clause (w) of Section 2 of the Competition Act is set out below:

“2(w) “statutory authority” means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;”

57. ICAI clearly falls within the definition of a statutory authority within the meaning of Clause (w) of Section 2 of the Competition Act.

58. If one examines the provisions of Section 15 of the CA Act, it is clear that in terms of Clause (j) of Sub-section (2) of Section 15 of the CA Act, the Council / ICAI is charged with the function of regulation and maintenance of the status and standard of the professional qualifications of the members of the Institute. In discharge of this function, ICAI has prescribed that all of its members undertake the CPE organized by POUs. There is no separate learning activity, which is prescribed and is interchangeable with the CPE program conducted by it/POU. This decision is not amenable to review by the CCI.

59. The CPE program is an education program run by ICAI. This is not interchangeable with any of the services provided by any other agency. A seminar of ASSOCHAM or other Chambers of Commerce are not education programs run by ICAI or a part of the professional educational program prescribed by ICAI. It is, thus, difficult to



appreciate as to how any other service provider or any other persons holding the seminar can profess to impart a professional education, which is the sole preserve of ICAI.

60. As observed above, Article 10 of the Statement sets out the powers and functions of the CPED. This includes the function to approve formation of CPE chapters / CPE study groups; to review and monitor the programs conducted by various POU's; to allocate and assign responsibilities to various persons and or organizations as the case may be for development of CPE background material; and to take action against CPE study circles, CPE chapters / CPE study groups, who do not facilitate achieving of the object of the Statement.

61. The CPE structured learning activities are to be conducted by POU's and they are required to seek prior approval of the CPED. They are required to upload the details of the programs to be organized by them and to maintain records of the programs organized in the manner as stipulated by the CPED. They are also required to upload the attendance on the CPE portal and follow the directions as issued by ICAI and the CPED from time to time. A plain reading of the Statement clearly indicates that the CPE program is not an unsupervised program; ICAI determines the content and the manner in which the CPE programs are to be organized and conducted. Recognizing seminars organized by ASSOCHAM and other Chambers of Commerce as a part of the structured learning would, essentially, mean that ICAI would have to supervise the contents of those seminars and ensure that they are conducted in accordance with its guidelines. If the Informant's



contention is accepted, ICAI is obliged to do that, as not doing so is anti-competitive. This Court is unable to accept the aforesaid contention. ICAI being a statutory body and charged with taking the necessary powers to take decisions regarding the conduct of the CPE program for enrolling as a chartered accountant as well as for maintaining the standards of the profession; its decisions in this regard cannot be a subject matter of review by the CCI. Such decisions do not operate in any market of trade or commerce. Such decisions do not operate in any market of trade and commerce.

62. It is relevant to state that there are several statutory corporations and bodies, which are constituted under legislative enactments and are charged with specific functions. Some of them may also involve providing of services. If those economic activities are not a part of its regulatory functions, the same would obviously be subject to scrutiny by the CCI. However, a decision in exercise of regulatory powers, is required to be taken by the regulator and its discretion to do so can only be fettered by the provisions of the statute, which clothes the regulator with such powers. The regulatory powers are not subject to review by the CCI.

63. In terms of Clause (k) of Section 30 of the CA Act, subject to the prior publication and approval of the Central Government, ICAI also has the power to make regulation for “*the regulation and maintenance of the status and standard of professional qualifications of members of the Institute*”



64. It is important to note that apart from conducting CPE program, ICAI also conducts the educational program for qualifying as a chartered accountant. ICAI has evolved a detailed program for ensuring imparting of training to the students and further evaluating them for granting them the requisite qualification as an accountant. The said qualification then entitles the successful student to be enrolled as a member of ICAI and to practice as a chartered accountant. The logical *sequitor* of the Informant's arguments is that ICAI is also obliged to recognize other educational institutions and the programs run by them as educational programs to qualify as a chartered accountant. There are numerous universities that run degree courses in the subject of accountancy. Some universities have also designed specialized courses, which teach the same subjects that are part of the syllabus of the educational program run by ICAI. Accepting the Informant's arguments would mean that ICAI would now be obliged to also recognize such other universities and colleges as imparting the qualifying education for the purposes of enrolling members as chartered accountants. It is at once clear that the said argument is flawed. This is for the same reason that ICAI is charged with the function of prescribing the qualification for entry of a person's name in the Register. [See Section 15(2)(d) of the CA Act; to approve academic courses and their contents]. This function is required to be performed by ICAI and it has been granted the statutory powers to do so. Such exercise of statutory powers are not subject to a review by the CCI. In terms of Section 15(2)(e) of the CA Act, the Council / ICAI has the power and the function to recognize foreign qualification and training for the purposes of enrolment. The discretion



to recognize certain foreign qualifications is vested with ICAI. Plainly, this would not be subject to any review by the CCI. It is relevant to note that the CCI exercises powers conferred under the Competition Act, which in terms of Section 62 of the Competition Act, is in addition and not in derogation of other statutes.

65. In view of the above, the decision of ICAI to frame the CPE Program for maintenance of professional standards cannot be considered as abuse of its dominant position.

66. It is important to note that the CCI's power is for regulating of markets; it does not extend to addressing any grievance regarding arbitrary action by any statutory authority. In the present case, the CCI has proceeded on the basis that there is a relevant market "for organising recognised CP Seminars/Workshops/ Conferences". Clearly, the said view is erroneous. There is no market for organising CPE seminars, workshop or conferences. As noticed above, ICAI is charged with the function of maintaining professional standards and it conducts the educational program for structured CPE Credits, in-house or through its organs. Thus, in essence, the Informant seeks that the said function be outsourced. Such outsourcing would create a market as the other entities would be entitled to participate as market players in that market.

67. This Court is unable to accept that the jurisdiction of the CCI extends to compelling a statutory body to outsource functions that it performs in discharge of its statutory duties notwithstanding that the



same may fall within the sphere of economic activity. It would be erroneous to assume that if any activity falls within the broad definition of economic activity, it would be necessary to create an open market for the same. This Court is unable to accept that the CCI can compel an organisation or an enterprise to outsource its activities.

68. The learned counsel appearing for CCI has relied on the decision of this Court in *Uttarakhand Agriculture Produce Marketing Board and Ors. v. Competition Commission of India and Anr.: 2017 SCC OnLine Del 10906* and on the strength of the said case, contended that the Division Bench of this Court had not interfered with the decision of the CCI to investigate information that Uttarakhand Agriculture Produce Marketing Board had denied market access by restricting the procurement of Indian Made Foreign Liquor (IMFL). He had submitted that although the procurement of IMFL was pursuant to a policy framed by the Board and in discharge of its statutory functions, the jurisdiction of the CCI to examine the same was upheld.

69. The point in issue in *Uttarakhand Agriculture Produce Marketing Board and Ors. v. Competition Commission of India and Anr. (supra)* was somewhat different. The canalising of IMFL brands was an activity relating to distribution of IMFL. The said decision to directly related to the market for sale of IMFL and the Court found that canalising of IMFL could not be considered as a sovereign function. Procurement of goods from open market, by its very nature, is a matter which involves the commercial market.



70. As noted above, this Court has not accepted the contention that ICAI is not an “enterprise” within the meaning of Section 2(h) of the Competition Act. The controversy, as noticed earlier, is whether the grievance regarding ICAI not outsourcing the activity of conducting the CPE program in discharge of its functions, can be considered as abuse of dominance even at a *prima facie* stage.

71. In the impugned order, the CCI has expressed a *prima facie* view that the decision of ICAI to restrict organising CPE seminars to itself and its organisations is, *prima facie*, arbitrary. This is on the premise that there is a market for conducting structured CPE program, which is required to be regulated by the CCI as a market regulator. The said assumption lies at the centre of the controversy in this case. This Court is unable to accept that all decisions made by authorities, which have any relation to economic activities, are liable to be subject matter of investigation by the CCI on the ground that they are *prima facie* arbitrary notwithstanding that the same are not relevant to any market which involves entities engaged in trade or commerce. The CCI has wide powers under the Competition Act but this Court is unable to accept that the said powers extend to reviewing all decisions made by statutory bodies or a foreign government, which are not relatable to a sovereign function of the Government. The scope of examination must be confined to only those areas of economic activities, which have a bearing on the market that engages entities involved in trade and commerce.



72. The learned counsel for the CCI had relied heavily on the decision in the case of *Ordem dos Técnicos Oficiais de Contas v. Autoridade da Concorrência* of the Court of the Justice of the European Union. In that case, the Quality Control Regulation (Regulamento do Controlo de Qualidade, *Diário da República*, 2nd series, No 175, of 27 July 2004) were assailed as violating Article 101 and 102 of the TFEU. Article 101 of the TFEU prevents restriction or distortion of competition. Article 102 of the TFEU requires that abuse by one or more undertaking of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with internal market insofar as it may affect trade between Member States.

73. Article 3 of the Regulations impugned in the said case provided that Ordem Dos Tecnicos Oficiais De Contas (Order of Chartered Accountants – OTOC) promoted two types of training, namely, institutional training and professional training. In terms of Article 5 of the OTOC could offer all types of training relevant to the exercise of the profession. However, institutional training could only be provided by OTOC. The professional training could be provided by higher education establishments and bodies authorised by law to provide training and bodies registered with OTOC. Two training bodies had approached the Court alleging that the impugned regulations unduly restricted their freedom to provide training for chartered accountants. The Court, at the first instance, found that the impugned regulations offended Article 101 and 102 of the TFEU. OTOC had challenged the said decision before the Lisbon Commercial Court (tribunal do



comércio de Lisboa). The said Court held that OTOC had distorted competition on the market of compulsory training for chartered accountants and the impugned regulations were likely to hinder trade between the Member States. However, the Court did not accept that OTOC had abused its dominant position in the relevant market. OTOC sought annulment of the decision of the Commercial Court by contending that its training activity fell outside the economic activity and therefore, outside the scope of Article 101 of the TFEU. However, the said contention was rejected by the Court of Second Chamber. The Court held that OTOC should be required to be regulated in its entirety as an association of undertakings.

74. In that case, the Court found that on one hand OTOC itself provides training for chartered accountants, and on the other, access to other providers wishing to offer such training is subject to standards as set out in the impugned Regulation. Consequently, the Regulations in question had deep impact on the economic activity on the market of compulsory training for chartered accountants.

75. The Court further held that the fact that OTOC was required to put in place a system of compulsory training for its members did not remove it from the source of Article 101 of the TFEU.

76. This court has reservations as to the said decision. However, it is material to note that the said decision was rendered in the context where both OTOC and professional institutions and other higher educational establishments were authorised to provide the training. And, OTOC as



well as those institutions were engaged in providing courses as a part of the professional training of chartered accountants. Further OTOC is not the only professional body in the wider European Market. In the present case, there is no other institute which is providing any verifiable training other than ICAI. The structured program is conducted only by ICAI and its organs. The credits for unstructured training are based on self-declaration, the same in effect requires the professional chartered accountants to certify that they have devoted certain time for professional development. Importantly, there is no other body or institution, which is engaged in the activity of providing professional training to acquire the classification of a chartered accountant or for the continuing education program.

77. In view of the above, the petition is allowed. The impugned order is set aside. All pending applications are also disposed of.

78. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JUNE 02, 2023
RK