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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13205 OF 2022

Divvela Ramaiah and Anr.

.. Petitioners

Versus

Union of India and Anr.

.. Respondents

Mr. Atharva A. Date a/w Mr. S. S. Bedekar, Advocate for the
Petitioner.

Mr. Rajeev N. Kumar [Through VC] a/w Mr. Neeraj Shekhar a/w Mr.
Amey Kanse, Advocate for Respondent No.2.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON: JULY 23, 2024
PRONOUNCED ON: AUGUST 06, 2024

ORAL JUDGEMENT: (FIRDOSH P. POONIWALLA, J.)

1. The present Writ Petition challenges the refusal of Respondent No.2 [the Institute of Actuaries of India] to issue a Certificate of Practice (“*CoP*”) to its Associate Members, and in this context, challenges the constitutional validity of Regulation 10 of *The Institute of Actuaries of India (Admission as Member and Issuance of Certificate of Practice) Regulations*

2017 (“the 2017 Regulations”). The Petition also challenges the constitutional validity of Section 12 of *The Actuaries Act, 2006* (“the Act”) which permits only Fellow Members of Respondent No.2, and not Associate Members, to be members of the Council of the Institute of Actuaries of India. However, during the course of arguments, the Petitioners have not pressed the challenge to the constitutional validity of Section 12 of the Act.

2. Petitioner No.1 is an Associate Member of the Institute of Actuaries of India, i.e. Respondent No.2, since 1998. Petitioner No.2 is an Associate of the Actuarial Society of India having qualified as such in 1991 and continues as an Associate Member of Respondent No.2 since its formation.

3. Petitioner No.1, vide his Application dated 1st July 2021, applied to Respondent No.2 for grant of a *CoP*. On 2nd July 2021, Petitioner No.1 received an email from one Mr. Yogesh Pandit, Compliance Officer of Respondent No.2, stating that the eligibility criteria for being entitled to issuance of a *CoP* is mentioned in Regulation 10 of the 2017 Regulations and that only Fellow Members were entitled to get a *CoP*. Petitioner No.1 was thus intimated that his Application could not be considered. The Application of Petitioner No.1 and the relevant email communication is annexed as

Exhibit 'A' collectively to the Petition. Similarly, Petitioner No.2 also made an Application dated 13th July 2021 for issuance of a *CoP* and received a similar communication from the office of Respondent No.2 on 14th July 2021. The Application of Petitioner No.2 and the relevant communications are annexed as Exhibit 'B' collectively to the Petition. Aggrieved by the same, the Petitioners have filed the present Petition.

4. Mr. Atharva Date, the learned counsel appearing on behalf of the Petitioners, firstly submitted that Regulation 10 of the *2017 Regulations* was contrary to the provisions of the Act in so far as it allowed only the Fellow Members of Respondent No.2 to apply for the grant of a *CoP*. In this context, Mr. Date referred to Section 2(i) of the Act which defines a "member", Section 2(l) which defines "register" and Sections 6 and 7 of the Act which provide for "Entry of names in register" and "Associates and fellows" respectively. He submitted that a conjoint reading of these provisions would show that for the purposes of the Act, a "member" would mean an Associate Member or a Fellow Member whose name is entered in the Register maintained by Respondent No.2.

5. Mr. Date, further referred to Section 9 of the Act which deals with the *CoP* and submitted that this provision entitled "members" to

practice once such member fulfills the qualifications as may be specified and obtains a *CoP*. He submitted that once the legislature, in its wisdom, had rendered both the categories of members, i.e. the Associate Members and the Fellow Members entitled for a *CoP*, albeit subject to fulfilling the prescribed qualifications, a category of membership itself cannot be prescribed as a “qualification” under the Regulations, as is done by Regulation 10 of the *2017 Regulations*. Mr. Date submitted that if this course is permitted, then it would amount to narrowing the scope of Section 9 of the Act and defeating the conscious use of the term “member” in Section 9 by practically substituting the term “member” with “fellow member”.

6. Mr. Date further submitted that had it been the intention of the legislature to disqualify the entire category of Associate Members, the legislature would have rendered such a disqualification under Section 9 itself by simply substituting the word “member” with the words “fellow members”. In this context, he pointed out that the legislature had, in Section 12 of the Act, specified that only “Fellow Members” would be eligible to contest elections to the Governing Council. Therefore, wherever the Parliament deemed it fit, it had rendered certain disqualifications by prescribing them in the statute itself. Therefore, if the legislature had chosen not to create any disability qua the Associate Members in relation to obtaining a *CoP*, it is a

settled principle that the same could not be done under a subordinate legislation. Mr. Date therefore submitted that Regulation 10 of the *2017 Regulations* is contrary to the provisions of the Act, in so far as it allows only Fellow Members of Respondent No.2 to apply for grant of a *CoP*.

7. Mr. Date thereafter submitted that Regulation 10 of the *2017 Regulations* is also *ultra vires* Article 14 of the Constitution of India. In this regard, Mr. Date submitted that it is well settled in law that any Regulation which is being tested on the anvil of Article 14 of the Constitution of India would have to satisfy two tests i.e. the test of intelligible differentia and the rational nexus test. He submitted that Regulation 10 of the *2017 Regulations* failed to satisfy the test of rational nexus. In this context, he submitted that even though, admittedly, there is a difference in qualifications of an Associate Member and a Fellow Member, rendering Associate Members ineligible on the basis of the same is absolutely arbitrary. He submitted that a perusal of the qualifications prescribed for Associate and Fellow Membership of Respondent No.2 would show that even Associate Members are highly educated and qualified professionals, who have further passed the examinations prescribed for admission as Associate Members. In this context, Mr. Date referred to the judgment of the Hon'ble Supreme Court in *Roop Chand Adalakha vs. DDA*¹. Further, Mr. Date submitted that even

1 (1989) Supp (1) SCC 116.

though there is some difference in the qualifications of Associate and Fellow Members, denying a *CoP* to the entire category of Associate Members, despite they being qualified as Actuaries, and despite them being members of Respondent No.2, is arbitrary and in violation of Article 14 of the Constitution of India.

8. Mr. Date then submitted that Regulation 10 of the *2017 Regulations* is ultra vires Article 19(1)(g) of the Constitution of India as it imposed unreasonable restrictions on the fundamental right of the Petitioners to carry on business under Article 19(1)(g). In this context, Mr. Date submitted that restrictions can be imposed on fundamental rights guaranteed under Article 19(1)(g), on the grounds stated under Article 19(6) and more particularly Article 19(6)(i). However, the said restrictions have to be reasonable restrictions and should satisfy the tests that have been laid down by the Hon'ble Supreme Court in a catena of cases. Mr. Date submitted that one such test is the test of proportionality, which prohibits the imposition of disproportionate or excessive restrictions on the fundamental rights guaranteed under Article 19. He submitted that the imposition of restrictions by Regulation 10 of the *2017 Regulations* is disproportionate and excessive in nature as it prohibits Associate Members from obtaining a *CoP*, despite being members of Respondent No.2 and despite being recognized as

Actuaries. Mr. Date further submitted that if the validity of Regulation 10 of the *2017 Regulations* is upheld, then the only right that would be available to the Associate Members, whose names are entered in the Register, would be the right to vote in the elections to the Governing Council. Mr. Date submitted that Associate Members would not be eligible to practice as Actuaries despite being qualified as Actuaries.

9. Mr. Date also submitted that Regulation 10 of the *2017 Regulations* is in contravention of Article 21 of the Constitution of India as it deprives the Associate Members of the fundamental right to livelihood, which is recognized as a facet of Article 21 of the Constitution of India by the Hon'ble Supreme Court. He submitted that Associate Members of Respondent No.2, despite being duly qualified as Actuaries, have been deprived of their right to be entitled to practice as Actuaries.

10. Finally, Mr. Date submitted that Regulation 10 is inconsistent with similar provisions relating to the professions of C.A., C.S. and C.M.A. Mr. Date submitted that these Acts, relating to all these professions, have identical provisions relating to the designation of associates and fellows, grant of *CoP* etc. He submitted that the Regulations framed under all these Acts permit all the members to be entitled to the grant of a *CoP*, irrespective

of their designation as either an Associate or as a Fellow Member of the respective institutes. For all these reasons, Mr. Date submitted that Regulation 10 of the *2017 Regulations* be struck down as being unconstitutional.

11. Respondent No.2, i.e. the Institute of Actuaries of India, has filed an Affidavit dated 29th June 2024 of its Executive Director, Mr. Tushar Giri, opposing the Petition. On the basis of this Affidavit, Mr. Rajeev Kumar, the learned counsel for Respondent No.2, submitted that Associate Members and Fellow Members belong to two different classes. Even according to the Petitioners, Fellow Members stand on a higher footing than the Associate Members. Thus, it is clear that Fellow Members and Associate Members constitute two different classes. Mr. Rajeev Kumar further submitted that the concept of equality and equal protection under Article 14 of the Constitution of India is that persons, who are in fact not equals, cannot be treated equally. In other words, the principle is that there should be no discrimination between one person and another if, as regards the subject matter of the legislation, their position is the same. Mr. Rajeev Kumar submitted that having regard to the admitted fact that Fellow Members belong to a different class, and, even according to the Petitioners, Fellow Members are more experienced and knowledgeable, Regulation 10 of the

2017 Regulations, in making only the Fellow Members eligible to obtain a *CoP*, is not discriminatory or violative of Article 14 of the Constitution of India. Mr. Kumar further submitted that on a plain reading of Section 9 of the Act, alongwith Regulation 10 of the *2017 Regulations*, does not in any way lead to the conclusion that Regulation 10 is contrary to Section 9 or any other provision of the Act. Consequently, Mr. Kumar submitted that there was no merit in the Petitioners' challenge to Regulation 10 of the *2017 Regulations* and the Petition be dismissed with costs.

ANALYSIS AND FINDINGS

12. We have heard the learned counsel for the parties and perused the documents on record. Before we consider the various challenges to Regulation 10 of the *2017 Regulations* raised by the Petitioners, it would be appropriate to consider the relevant provisions of the Act and the *2017 Regulations*.

13. Sections 2(a), 2(g), 2(i), 2(l), 6, 7, 9 and 56(1) and 56(2)(g) of the Act read as under:-

"2. (a) "Actuary" means a person skilled in determining the present effects of future contingent events or in finance modeling and risk analysis in different areas of insurance, or

*calculating the value of life interests and insurance risks, or designing and pricing of policies, working out the benefits, recommending rates relating to insurance business, annuities, insurance and pension rates on the basis of empirically based tables and includes a statistician engaged in such technology, taxation, employees' benefits and such other risk management and investments **and who is a Fellow Member of the Institute**; and the expression "actuarial science" shall be construed accordingly;*

(b)

(c)

(d)

(e)

(f)

(g) "fellow" means a Fellow Member of the Institute;

(h)

(i) "member" means an individual whose name appears in the register of members maintained by the Institute;

(j)

(k)

(l) "register" means the register of members maintained by the Institute under this Act;

(m)

(n)

(o)

(p)

6. Entry of names in register.—

(1) Any of the following persons shall be entitled to have his name entered in the register, namely:—

(a) any person who immediately before the appointed day was an associate or a fellow (including an honorary fellow) of the Actuarial Society;

(b) any person who has passed the examination conducted by the Actuarial Society and has completed training either as specified by the said Society or as specified by the Council, except any such person who is not a permanent resident of India;

(c) any person who has passed such examination and completed such training, as may be specified for membership of the Institute;

(d) any person who has passed such other examination and completed such other training outside India as is specified as

being equivalent to the examination and training specified under this Act for membership of the Institute:

Provided that in the case of any person belonging to any of the classes mentioned in this sub-section who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem necessary or expedient in the public interest.

(2) Every person mentioned in clause (a) of sub-section (1) may have his name entered in the register without the payment of any entrance fee.

(3) Every person belonging to any of the classes mentioned in clauses (b), (c) and (d) of sub-section (1) shall have his name entered in the register on an application being made and granted in the specified manner and on payment of such fees, as may be specified.

(4) The Council shall take such steps as may be necessary for the purpose of having the names of all persons belonging to the class mentioned in clause (a) of sub-section (1) entered in the register before the appointed day.

(5) Notwithstanding anything contained in this section, the Council may confer on any person honorary Fellow Membership, if the Council is of the opinion that such person has made a significant contribution to the profession of Actuary and thereupon the Council shall enter the name of such person in the register but such person shall not have any voting rights in any election or meetings of the Institute and shall not also be required to pay any fee to the Institute.

7. Associates and fellows.—

(1) The members of the Institute shall be divided into two classes designated respectively as associates and fellows.

(2) Any person other than a person to whom the provisions of sub-section (3) apply, shall, on his name being entered in the register, be deemed to have become an associate and as long as his name remains so entered, shall be entitled to use the letters "AIAI" after his name to indicate that he is an associate.

(3) Any person who was a fellow of the Actuarial Society and who is entitled to have his name entered in the register under clause (a) of sub-section (1) of section 6 shall be entered in the register as a fellow.

(4) Any person whose name is entered in the register as fellow

shall, so long as his name remains so entered, be entitled to use the letters "FIAI" after his name to indicate that he is a fellow.

9. Certificate of practice.—

*(1) **No member** of the Institute shall be entitled to practice **unless he fulfils the qualifications as may be specified** and obtains from the Council a certificate of practice.*

(2) A member who desires to be entitled to practice shall make an application in such form and pay such annual fee for certificate of practice as may be specified and such fee shall be payable on or before the first day of April in each year.

(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be specified.

56. Power to make regulations.—*(1) The Council may, with the previous approval of the Central Government and subject to the previous publication, by notification in the Official Gazette, make regulations to carry out the provisions 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, namely:—

(a)

(b)

(c)

(d)

(e)

(f)

*(g) **qualifications required for a certificate of practice under sub-section (1) and the form in which an application may be made under sub-section (2) of section 9;***

(h)

(i)

(j)

(k)....

(l)

(m)

(n)

(o)

(p)

14. Regulation 4 of the 2017 Regulations provides for the qualification for registration as a Fellow Member and reads as under:-

“4. Qualification for registration as a Fellow Member.—

(1) A person may be registered as a Fellow Member if he -

(a) has passed the examination for Fellow Membership under regulation 3;

(b) has completed such professional or other course or training as stipulated by the Council from time to time; and

(c) has relevant work experience as stipulated by the Council from time to time.

(2) The examination referred to in regulation 3 shall stand waived for a person seeking admission as a Fellow Member under the Mutual Recognition Agreement (MRA) entered into by the Institute with other actuarial bodies located outside India if --

(a) on the date of application for Fellow Membership of the Institute, the person continues to be a member of the actuarial body which has the MRA with the Institute;

(b) on the date of application for Fellow Membership of the Institute, the person satisfies the relevant requirements of MRA with the concerned actuarial body :

Provided that the Council shall provide the information of all concerned actuarial bodies with whom the Institute has entered in MRA on the website of the Institute.

*(3) A person who desires to be admitted as a Fellow Member shall make an application to the Institute in **Form D of Schedule C** together with documentary evidence as to his eligibility for admission as a fellow and the fee specified in sub-regulation (1) of regulation 6:*

Provided that the applicant shall provide such other information as the Council may require.

*(4) A certificate of Fellow Membership shall be issued in **Form I of Schedule G.**”*

15. Regulation 4(3) refers to Form D of Schedule C, which provides the criteria for being registered as a Fellow Member as under:-

***“Schedule C
Form D
[See regulation 4(3)]
Application form for admission as a Fellow Member***

CRITERIA

Fellowship (IAI Examination Route) for Students / Associate

- *Should be current student member of IAI*
- *A Student member should have passed all the prescribed examination of IAI or should have been exempted from one or more subjects as per rules [Core Technical (CT1 to CT9– Nine Papers) Core Application (CA1 to CA3 – three papers) Specialist Technical (ST1, ST2, ST4 to ST9 -Any two out of eight) and Specialist Application (SA1 to SA6 -any one out of six)]*
- *Minimum Three years of work based actuarial experience*
- *Attended India Fellowship Seminar (Validity - to be admitted as FIAI within 24 Months of successful attending IFS Seminar)*

Fellowship (Affiliate to Fellow Route)

- *Confirmation from parent body that*
 - o *He has attained fellowship by examination route. (Where IAI has Mutual Recognition Agreement)*
 - o *His subscription is up to date*
 - o *There is no Public Disciplinary sanction imposed against him*
- *One year India-Resident Actuarial Work experience*
- *Attended India Fellowship Seminar (Validity - to be admitted as FIAI within 24 Months of successful attending IFS Seminar)*

Fellowship (MRA Route)

- *Should be Fellow Member of Other Actuarial Body (where IAI has Mutual Recognition Agreement)*
- *Confirmation from parent body that*
 - o *He has attained fellowship by examination route*
 - o *His subscription is up to date*
 - o *There is no Public Disciplinary sanction imposed against him*
- *One year India-Resident Actuarial Work experience*
- *Attended India Fellowship Seminar (Validity - to be admitted as FIAI within 24 Months of successful attending IFS Seminar)”*

16. Regulation 5 of the 2017 Regulations provides for the qualification for registration as an Associate Member and reads as under:

“5. Qualification for registration as an Associate Member.—

(1) A person shall be admitted as an Associate Member if he -

(a) has passed the examination for Associate Membership under regulation 3; and

(b) has completed such professional or other course or training as stipulated by the Council from time to time; and

(c) has relevant work experience as stipulated by Council from time to time.

(2) The examination referred to in regulation 3 may be dispensed with in the case of a person who has passed such examination as stipulated by the Council from time to time from another actuarial body or an academic institution deemed to be equivalent to the corresponding examination of the Institute.

*(3) A person who desires to be admitted as an Associate Member shall make an application to the Institute in **Form B of Schedule B**, together with documentary evidence as to his eligibility for membership and the fee specified in sub-regulation (1) of regulation 6;*

Provided that the applicant shall furnish such other information as the council may require.

(4) A Certificate of an Associate Membership shall be issued in Form H of Schedule F.”

17. Regulation 5(3) refers to Form B of Schedule B, which provides the criteria for being registered as an Associate Member as under:

**“Schedule B
Form B
[See regulation 5 (3)]
Application form for admission as an Associate**

Criteria:

1. Student member who has passed/been exempted all [Core Technical series (CT1 to CT9) and all Core Application series (CA1 to CA3) subjects is eligible (on application) to become Associate Member of the Institute.”

18. Regulation 10 of the 2017 Regulations reads as under:

“10. Qualification, form and fee for certificate of practice.—

(1) A Fellow Member of the Institute whose name is entered in the register maintained by the Institute under section 6 of the Act and who possesses the experience and the norms laid down by the Council from time to time, shall be entitled to apply for a certificate of practice under this regulation.

(2) An Application for certificate of practice shall be made in Form F of Schedule J accompanied by such fee as may be determined by the Council from time to time but which shall not exceed one lakh rupees in any case.

(3) Notwithstanding anything contained in this regulation, a certificate of practice held by a member under section 9 of the Act shall be deemed to have been issued under this regulation and shall continue to be valid until it is cancelled.

(4) A certificate of practice shall be issued in Form J of Schedule K.”

19. As far as entitlement to practice is concerned, Section 9 of the Act is couched in a negative language and provides that no member of the Institute shall be entitled to practice unless he fulfills the qualifications as may be specified and obtains from the Council a *CoP*. Thus, Section 9 clearly requires the fulfillment of certain qualifications [as may be specified] and obtaining of a *CoP*, for a member to be entitled to practice.

20. The qualifications for obtaining the *CoP* are specified in Regulation 10 of the *2017 Regulations*, which provides that a Fellow Member of the Institute whose name is entered in the register maintained by the Institute under Section 6 of the Act and who possesses the experience and the norms laid down by the Council from time to time, shall be entitled to apply for a *CoP* under the *2017 Regulations*.

21. These qualifications have been stipulated by the Council in exercise of the powers vested in it by Section 56(2)(g) of the Act which provides that the Council may make Regulations providing for qualifications required for a *CoP* under sub-section (1) and the form in which an application may be made under sub-section (2) of Section 9. Thus, a specific power has been given to the Council to frame Regulation 10 of the *2017 Regulations* which prescribes the qualifications for being entitled to a *CoP*. Regulation 10

of the *2017 Regulations* permits only a Fellow Member of the Institute to apply for a *CoP*. The reason for this is not far to see. The criteria for becoming a Fellow Member requires that the member should have passed the following examinations of the Institute: (i) Core Technical (CT1 to CT9–Nine Papers); (ii) Core Application (CA1 to CA3 – three papers); (iii) Specialist Technical (ST1, ST2, ST4 to ST9 -Any two out of eight); and (iv) Specialist Application (SA1 to SA6 -any one out of six). In other words, amongst other things, for a person to be qualified as a Fellow Member, he has to pass a total of 15 papers. On the other hand, the criteria for becoming an Associate Member, a person has to pass the following examinations: (i) Core Technical series (CT1 to CT9); and (ii) all Core Application series (CA1 to CA3). In other words, to be qualified to be an Associate Member, he has to pass a total of 12 papers.

22. As mentioned earlier, an Associate Member has to pass only 12 papers i.e. 9 papers of the Core Technical series and 3 papers of the Core Application series. In contrast, a Fellow Member, in addition to passing these 12 papers, also has to pass 2 papers from the Specialist Technical category and 1 paper from the Specialist Application category. It is for this reason that Regulation 10 of the *2017 Regulations* provides that only a Fellow Member is entitled to apply for a *CoP*, because he has obtained a higher qualification

than an Associate Member. The Council of Institute of Actuaries of India, in its wisdom, thought it fit that only a Fellow Member, who possesses a higher qualification, shall be entitled to apply for a *CoP*.

23. Thus, from the Act and the *2017 Regulations*, it can be seen that Section 9 provides that no member of the Institute shall be entitled to practice unless he fulfills the qualifications as may be specified and obtains from the Council a *CoP*. Section 56(2)(g) of the Act specifically gives the Council the power to make Regulations providing for the qualifications required for a *CoP* under Section 9(1) of the Act. In exercise of this power, the Council, which is an expert body, thought it fit to provide in Regulation 10 of the *2017 Regulations* that only Fellow Members, who possess higher qualifications, shall be entitled to apply for a *CoP*. This exercise of power, in our view, does not violate any of the provisions of the Act nor is it arbitrary.

24. We will now deal with the arguments of the Petitioners. Relying upon Sections 7 and 9 of the Act, the Petitioners submit that Section 9 of the Act entitles ‘members’ to practice once such member fulfills the qualifications as may be specified and obtains the *CoP*. It is the submission of the Petitioners that, once the legislature, in its wisdom, has rendered both the categories of members, i.e. the Associate Members and Fellow Members,

entitled for a *CoP*, albeit subject to fulfilling the prescribed qualifications, a category of membership itself cannot be prescribed as a ‘qualification’ under the *2017 Regulations*. The Petitioners submit that, if this course is permitted, then that would amount to narrowing the scope of Section 9, and defeating the conscious use of the term ‘member’ in Section 9 by substituting the term ‘member’ with ‘Fellow Member’. The Petitioners further submit that had it been the intention of the legislature to allow such disqualification of the entire category of Associate Members, the legislature would have rendered such disqualification under Section 9 of the Act simply by substituting ‘member’ by the words ‘Fellow Members’. The Petitioners submit that the legislature has, in fact, in Section 12 of the Act, specified that only ‘Fellow Members’ shall be eligible to contest elections to the Governing Council. Therefore, wherever the Parliament deemed it fit, it had rendered certain disqualifications by prescribing them in the statute. Therefore, if the legislature had chosen not to create any disability qua the Associate Members, the same could not have been done under the subordinate legislation.

25. In our view, this submission of the Petitioners is based on a misreading of Section 9 of the Act. Section 9 of the Act does not entitle ‘members’ to practice, as submitted by the Petitioners. On the contrary,

Section 9 is couched in negative language and provides that no member of the Institute shall be entitled to practice unless he fulfills the qualifications as may be specified and obtains from the Council a *CoP*. Therefore, far from entitling both, the Associate and Fellow Members to practice, Section 9 prohibits any member from practicing unless he fulfills the qualifications as may be specified and obtains from the Council a *CoP*. Section 56(2)(g) gives the Council the power to provide for these qualifications. In exercise of this power, the Council, as an expert body, thought it fit to provide in Regulation 10 of the *2017 Regulations* that only Fellow Members, who possess higher qualifications, shall be entitled to apply for a *CoP*.

26. Regulation 10 of the *2017 Regulations* does not narrow down the scope of Section 9 of the Act, as submitted by the Petitioners. Section 9 provides that no member of the Institute shall be entitled to practice unless he fulfills the qualifications as may be specified and obtains from the Council a *CoP*. Thus, Section 9 leaves it to the Council to provide for the qualifications, and, in Regulation 10 of the *2017 Regulations*, the Council has done exactly that, namely, that only a Fellow Member, who possesses higher qualifications, would be entitled to apply for a *CoP*.

27. The Petitioners' submission, that if the legislature intended that only Fellow Members shall be entitled to practice, then the legislature would have provided in Section 9 itself that only that only Fellow Members would be entitled to practice, as has been done by it in Section 12 of the Act in the context of contesting elections to the governing Council, cannot be accepted. Section 9 of the Act has provided that no member of the Institute shall be entitled to practice unless he fulfills the qualifications as may be specified and obtains from the Council a *CoP*, thereby leaving it to the Council to provide the said qualifications. By virtue of the provisions of Section 56(2)(g) of the Act, the legislature has expressly conferred upon the Council the power to make Regulations for prescribing such qualifications. In these circumstances, the absence of the word 'Fellow Members' in Section 9 of the Act makes no difference whatsoever.

28. The next submission of the Petitioners is that Regulation 10 of the *2017 Regulations* is contrary to Article 14 of the Constitution of India. It is the submission of the Petitioners that a Regulation which is being tested on the anvil of Article 14 of the Constitution of India would have to satisfy two tests, namely, the test of intelligible differentia and the rational nexus test. It is the submission of the Petitioners that Regulation 10 of the *2017 Regulations* fails to satisfy the test of rational nexus. In this context, the

Petitioners submit that even though there is a difference in qualifications of an Associate Member and a Fellow Member, rendering Associate Members ineligible on the basis of the same is absolutely arbitrary. The Petitioners further submit that a perusal of the qualifications prescribed for Associate and Fellow Members would show that even Associate Members are highly educated and qualified professionals. In this context, the Petitioners referred to a paragraph in the judgement of the Hon'ble Supreme Court in ***Roop Chand Adalakha vs. DDA*** (Supra), which reads as under :

"To overdo classification is to undo equality". The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves be rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification."

29. In this context, it is the further submission of the Petitioners that, even though there is some difference in the qualifications of Associate and Fellow Members, denying the *CoP* to the entire category of Associate

Members, despite they being qualified as Actuaries and being members of the Institute, is arbitrary and violative of Article 14 of the Constitution of India.

30. In our view, the said submissions of the Petitioners cannot be accepted. Regulation 10 of the *2017 Regulations*, whilst making a difference between Fellow Members and Associate Members and permitting only Fellow Members to apply for a *CoP*, has a rational nexus to the object sought to be achieved by the classification between Fellow Members and Associate Members. It is obvious that Regulation 10 of the *2017 Regulations* permits only Fellow Members to be entitled to apply for a *CoP* because Fellow Members possess higher qualifications than Associate Members by passing additional examinations and, therefore, the Council thought it fit that only such members should be entitled to practice. Thus, there is not only an intelligible differentia between Associate Members and Fellow Members but there is a rational nexus to the object sought to be achieved by the said classification. There is yet another reason why the aforesaid submission cannot be accepted. As can be seen from the definition of the word “Actuary” (reproduced above), it means a person skilled in determining the present effects of future contingent events or in finance modelling and risk analysis in different areas of insurance, or calculating the value of life interests and insurance risks, or designing and pricing of policies, working out the benefits,

recommending rates relating to insurance business, annuities, insurance and pension rates on the basis of empirically based tables and includes a statistician engaged in such technology, taxation, employees' benefits and such other risk management and investments and who is a Fellow Member of the Institute. What is important to note is that, in the definition of the word "Actuary", an Associate Member has not been included. Thus, an Associate Member is not an Actuary under the Act. When we read this definition with the definition of the words "Certificate of Practice" as defined in Regulation 2(b) of the *2017 Regulations*, it is clear that only a Fellow Member is entitled to obtain a *CoP*. We say this because in Regulation 2(b), the words "Certificate of Practice" means a Certificate of Practice issued to a person who is entitled to practice as an Actuary under the Act. Thus, when one reads the definition of the word "Actuary" under the Act, and the definition of the words "Certificate of Practice" in Regulation 2 (b) of the *2017 Regulations*, it is abundantly clear that only a Fellow Member is entitled to a *CoP* and not an Associate Member. For these reasons, Regulation 10 of the *2017 Regulations* is not violative of Article 14 of the Constitution of India.

31. The Petitioners next submit that Regulation 10 of the *2017 Regulations* is in contravention of Article 19(1)(g) of the Constitution of India as it imposes unreasonable restrictions on the fundamental rights of the

Petitioners under Article 19(1)(g). It is the submission of the Petitioners that, although reasonable restrictions can be imposed on the fundamental rights guaranteed under Article 19(1)(g), the same have to be proportionate and the Constitution prohibits the imposition of disproportionate or excessive restrictions on the fundamental rights guaranteed under Article 19. It is the submission of the Petitioners that the imposition of restrictions by Regulation 10 of the *2017 Regulations* is disproportionate and excessive in nature as it prohibits Associate Members from obtaining a *CoP* despite being members of the Institute and being recognized as Actuaries.

32. This submission of the Petitioners also cannot be accepted. Firstly, Associate Members are not Actuaries as defined in the Act. Secondly, Regulation 10 of the *2017 Regulations* does not prohibit any member of the Institute from obtaining a *CoP*. It only prescribes that such a member should be a Fellow Member. Any member, including an Associate Member, can, by giving the requisite examinations and by obtaining the requisite qualifications, be a Fellow Member and can apply for a *CoP*. In fact, Article 19(6)(i) of the Constitution of India clearly provides that nothing in Article 19(1)(g) shall affect the operation of any law in so far as it imposes reasonable restrictions on the exercise of the right conferred by Article 19 (1)(g), and in particular, any law relating to the professional or technical qualifications

necessary for practicing any profession or carrying on any occupation, trade or business. Thus, Article 19(6) (i) of the Constitution clearly permits the stipulation of professional or technical qualifications necessary for practicing any profession. It is in furtherance of this that Regulation 10 of the *2017 Regulations* has provided that only a Fellow Member, who possesses higher qualifications by giving additional examinations, would be entitled to apply for a *CoP*. In our view, there is nothing unreasonable or disproportionate in Regulation 10 of the *2017 Regulations* making only Fellow Members, who possess a higher qualification, eligible for a *CoP*. It only ensures that persons who possess higher qualifications will be entitled to practice. For these reasons, we are unable to accept that Regulation 10 violates Article 19(1)(g) of the Constitution of India.

33. For the very same reasons, Regulation 10 of the *2017 Regulations* is not *ultra vires* Article 21 of the Constitution of India, as submitted by the Petitioners. Regulation 10 of the *2017 Regulations* does not deprive any member of the Institute of his livelihood but only prescribes certain qualifications to be entitled to apply for a *CoP* for the purpose of practicing, which is expressly permissible under Article 19(6)(i) of the Constitution of India, and which, for the reasons stated hereinabove, is neither unreasonable nor disproportionate.

34. The last submission of the Petitioners is that Regulation 10 is inconsistent with parallel provisions under the Acts and Regulations governing the professions of C.A., C.S., C.M.A. The Petitioners submit that the Acts relating to all these professions have identical provisions relating to the designation of Associates and Fellows and for grant of *CoP*. It is further submitted that the Regulations framed under all these Acts permit all members to be entitled to grant of a *CoP*, irrespective of their designation as either an Associate or a Fellow Member of the respective Institute. We are afraid that we are unable to accept this submission of the Petitioners also. Just because certain other enactments may have provisions which permit Associate Members to practice, does not mean that the Act and the *2017 Regulations* cannot prescribe that only Fellow Members, who have higher qualifications, shall be entitled to practice as Actuaries. Each legislation has to be examined on its own merits. It would not be correct to compare legislations in this manner.

35. In the light of the aforesaid discussions, and for all the aforesaid reasons, there is no merit in the challenge of the Petitioners to Regulation 10 of the *2017 Regulations*. Therefore, the Writ Petition is without merit and is

hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

36. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]