

IN THE HIGH COURT JUDICATURE AT MADRAS

(Special original jurisdiction)

Writ Petition No. of 2012

SYNOPSIS

**SUMMARY OF MISTAKES IN THE CA FINAL NOVEMBER 2011
EXAMS CONDUCTED BY INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA (A BODY ESTABLISHED UNDER THE ACT
OF PARLIAMENT)**

(Mistakes /Errors committed by respondent 2 while setting and evaluating the papers which would have a direct impact on the marks obtained by the students)

Strategic Financial Management – Group I Paper 2

Question No.	Particulars	Marks Allotted
3 (a)	Business valuations	10
3 (b)	Convertible Debentures	6
Total		16

Advanced Management Accounting Group II Paper 5

Question No.	Particulars	Marks Allotted
1 (b)	Incremental Cost *	5
1 (d)	Total Quality Management	1
3 (a)	Activity Based Costing*	8
3 (b)	Transfer Pricing	8
4 (b)	Step Fixed Cost – CVP Analysis*	6
6 (a)	Network Analysis	10
Total		38

MISTAKES CLASSIFIED AS FOLLOWS:

- o Mistakes admitted by the Respondent 2- Paper 5- Q. 3(b)= 8 marks
- o Mistakes apparent on the face of the record- Paper 5- Q.1. (b),1 (d), 3(a), 6(a)= 24 marks , Paper 2- Q.3(a), 3(b)= 16 marks
- o Mistakes confirmed by experts and subject to interpretation- Paper 5- Q.4 (b)= 6 marks

CITATIONS OF HON'BLE SUPREME COURT FOR GRANTING THE PRAYER

- Sahiti and Ors. Vs. Respondent: The Chancellor, Dr. N.T.R. University of Health Sciences and Ors 6202 of 2008/ Decided on 22.10.2008.

-“The above decision deals with the right of the student or candidate to claim re-examination/re evaluation of his answer sheet and the power of the High Court to order revaluation of answer sheets. It does not deal with

the power of the Board to order re-evaluation of answer books if factual scenario so demands. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statute at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts re-evaluation may be found necessary. There may be several instances wherein re-evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts are necessary then the Court would be slow to substitute its own views for that of those who are expert in academic matters”.

Brief Comments and Suggestion for revaluation necessitated because of the mistake of the respondent:

The Normal Practice in all the exams is to give Full Credit for the student who attempts the wrong question. But in this type of professional exams where students of high preparation when they see the question is wrong or confusing they may not like to take a risk and solve them. So the marks obtained by the student should be suitably adjusted, for example, if the actual marks awarded to the student is say 31% in Paper 5, His marks must be changed to $(31/62)*100 = 50$ Marks. This method should be the best in our opinion as the student must solve all the questions, as they are compulsory and if he is declared fail he must reappear all the four papers in the group again.

While considering the above we should first take into consideration the psychology of the student who will have to write answer to the question asked. If there is confusion because of the errors, the student will not be in a position to handle it. If we take Question no. 3(a) in SFM, even a normal person will know that it is a glaring mistake but the institute solved it with the mistake and awarded marks for the students who did the mistake. So, if a student identifies the mistake (no one will take the risk), he would not have got marks.

Let us take a similar situation, Question No. 1(b) or 3 (b) in paper 5, in spite of being asked wrongly they were solved after taking into consideration the mistake. Thus a student who identifies the mistake and solves would have got marks (total confusion and lack of clarity arising out of the wrong setting of the papers).

Question No. 3 (a), the answer given assumes that introduction of ABC will reduce the cost which is a total mistake, as ABC helps only in scientific ascertainment of cost of a product and it is not a tool of cost reduction. So, no student would have answered according the examiners expectation and would have got very low marks for the correct answer.

Question No. 4 (b), the workings given in the answer are not asked in the question. First of all the question should have been asked to calculate

the Break Even Point. Whereas the actual question is to calculate the number of students required to cross the Break Even Point. Crossing may be just crossing or anything more. No student would have done the working as it was not asked. So, he would have lost marks for the same on account of the fault of the respondent.

Question No. 1 (d), inspection of raw material is taken as a preventive cost in the suggested answer. The Same question was asked in May 2011 where the suggested answer says it is an appraisal cost. So, if one is correct the other should have been wrong even according to the respondent 2.

V. Venkata Siva Kumar

AFFIDAVIT OF THE PETITIONER

I, V. Venkata Siva Kumar, son of Late V S Gandhi, residing at 16/11, Anusuya Street, Rangarajapuram, Kodambakkam, Chennai – 600 024 do hereby solemnly affirm and sincerely state as follows;

1. I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of the case and as such competent to affirm this affidavit for the benign consideration of this Hon'ble Court.
2. I state that the present writ petition is filed as a Public Interest Litigation and that I have no personal interest in respect of the subject matter of the PIL. I state that the averments contained herein are based on my personal knowledge, information and belief and where statements made are based on records, sufficient particulars of such records are given under valid references. I state that I have filed the present PIL from and out of my own expenses and that I have not received any monies from any person for this purpose. I further state that no other PIL relating to the subject matter of this writ petition has been filed before this Hon'ble Court or any other Court to the best of my knowledge. I undertake to pay any cost imposed by this Hon'ble Court if the Hon'ble Court comes to a finding that the same has been filed for an oblique motive or personal interest.
3. I submit that I am a gold medalist in graduation, practicing as a Chartered Accountant and am a member of the Institute of Chartered Accountants of India. I state that I have been a Professor of costing, management accountancy and Strategic financial management for students pursuing professional courses like CA, MBA, ICWA for the past 25 years and in this capacity, I have been a member of the faculty of leading management and professional institutions like Institute of Chartered Accountants of India, Loyola Institute of Business Management and the Pearson group of institutions among others.
4. I state that I have authored several books on costing, management accountancy and Strategic financial management particularly for students pursuing Chartered Accountancy course. I have also written articles in professional journals on management and other topics relevant to the profession of chartered accountancy and student pursuing LL.B. Exams.

5. I state that having spent best part of my life as a teacher and having a long association with students of Chartered accountancy course, I am deeply conscious of the issues relating to educational administration and have got an authentic and genuine interest in the welfare of the students of the chartered accountancy course. I further state that I am conscious of the problems faced by the CA students and this petition is borne out of a genuine will to seek justice for the CA students' community in general whose rights are being violated with impunity due to the systemic arbitrary exercise of power, capriciousness and transgression of constitutional and statutory provisions and inefficiency in the administration of examinations of the 2nd and 3rd Respondents.

The facts leading up to the filing of the current writ petition are as follows:

6. I state that the 3rd Respondent is a body created under an Act of Parliament and is the Supreme Body for taking any decision touching the regulation of the profession. I state that Central Council of the 3rd Respondent comprises of 32 members elected by the members of the profession and 8 members are nominated by the government as government nominees. I state that the elections for the council are held once in 3 years. The 32 elected members again elect one of them as the Vice President who automatically becomes President the next year and holds the position for one year. I state that the Central Council is headed by the president, who exercises wide powers under the guidance of the council in connection with making of policies for regulating the profession of accountancy, its members and students, etc. I further state that the 3rd Respondent consists of 5 Regional Councils to co-ordinate the administration of the CA profession.

7. I state that the President, using his wide powers nominates and co-opts the council members and outsiders to various committees which are entrusted with carrying out and implementing the decisions taken by the council. The council operates through various standing and non standing committees. The secretary who is an officer, holding a statutory position heads the administration and is responsible for the implementation of the policies under the guidance of these committees.

8. I submit that the 3rd Respondent Institute conducts examination through its Examination Committee (which includes President and Vice President as ex-officio members) for students aspiring to become Chartered accountants at three levels, namely- Foundation level known as CPE (Common proficiency Examination), Intermediate level known as IPCE (Integrated professional competence examination) and the final stage known as the Final Examination.

9. I state that the current PIL focuses on the issues of CA final students. The students pursuing the final examination will have to qualify by appearing for 8 subjects split into 2 groups of 4 subjects each. I state that a student must get a minimum of 40 marks in each subject and an overall aggregate of 50% marks for qualifying a group. In case a student gets above 200 marks in all the four subjects of a group but fails to secure 40 percent in each subject, he will be declared as failed and he will have to appear for all the papers once again even if he had secured 59 marks in the other three papers. I state that if in case a student gets more than 40% in all the four subjects of a group and secures less than 200, again he will be declared as failed and will have to appear all the 4 papers once again. I state that thousands of students are declared failed because of getting 39 marks in a subject or 199 marks in the aggregate, such instances are numerous and a regular feature of every exam.

10. I state that as per the Regulation 39(4) of CA regulations, 1988, when a student who has failed in spite of performing well in his opinion, he can apply for re-totalling only and no revaluation or verification of answer sheets was allowed during the last 60 years to see their valued answer sheets to exactly know the reason for their failure.

11. I state that the number of students declared passed on re-totalling during this period of 60 years is very negligible. I further state that a huge number of students appear for the exams several times with great mental agony and distress without knowing when they will pass. I state that this has in fact lead to some people terming CA to mean "COME AGAIN".

12. I state that the CA exams are conducted twice a year, during May and November. The Respondent Institute publishes suggested answers as a book after the examination, which is the key given to the examiners for valuation and is also available for sale. I state that during the past few years, the suggested answers are also being published in the website of the 3rd Respondent which can be downloaded by the students freely, giving an opportunity, for the students to compare their performance with the suggested answers. However, there is no remedy or redressal mechanism in case of mistakes in the suggested answers. Therefore, a student will be failing in spite of performing well and not knowing when he will be successful.
13. I state that being genuinely interested in the welfare of the students, I had been bringing to the notice of the 3rd Respondent Institute regarding the numerous mistakes in the suggested answers published by the it. I further state that the several Presidents of the Respondent Institute who assumed office year after year, who in spite of admitting the mistakes brought before them, have done precious little to address the problems which are affecting the lives of lakhs of students and their families for no fault of theirs. I further state that the inefficiency is further aggravated by lack of transparency in the administration of examination system and Board of Studies of the 3rd Respondent.
14. I state that the present petition concentrates only on questions asked in the CA final exams, on the papers of Strategic Financial Management, Paper 2 (Group-I Final) and Management Accounting, Paper 5 (Group- II Final) which is the areas of the Petitioner's specialization. I state that many questions asked are invariably repeated and just a cut-paste copy of the question asked in the previous exams. I state that the solutions given however differ from one exam to another. I state that the presentations in the suggested answers are highly confusing and are of very poor quality and the same opinion is being expressed by professors specializing in other subjects.
15. I state during May 2010 CA Final Exams, in spite of the question papers on the above two subjects being very simple, very large number of students were declared failed in those subjects. Many of

them, getting single digit marks and the pass percentage was just 2% leading to a large-scale hue and cry among the students all over India. This was also recognized by the then President of the 3rd Respondent Institute, Mr. Amerjit Chopra and then Chairman of the Board of Studies, in the journals published by the 3rd Respondent called upon the students to prepare rigorously for the next exam.

16. I state that I had sent a mail bringing to light all the mistakes in the suggested answers. However, I was not informed about the same by the Institute inspite of my repeated requests about the discussions in the Council regarding the mistakes and the consequent remedy for the students who performed well but failed.
17. I state that the President of the 3rd Respondent during the year 2011, in a student's conference held at Chennai said that during his period he made sure that the percentage of pass is more than 25% compared to the period of previous President when the results were only 2%. I state that he also mentioned the pass percentage in the foreign institutions is around 60%. This gives an inference that passing is more concerned with the discretion of the President rather than the performance of the students which is nothing but violation of the constitutional and statutory rights with impunity by the Respondent Institute.
18. I state that even in the November-2011 exams, there were a lot of mistakes in the suggested answers published by the 3rd Respondent Institute. I state that 16 mark questions were solved wrongly in strategic financial management and about 38 marks in management accounting paper. The Respondent Institute published the comments of the examiner's on the performance of the students in the March 2012 student's monthly journal, which clearly gives an inference that examiners went by the suggested answers given to them in toto.
19. I state that the 3rd Respondent and the examiners in their comments also have admitted that a question carrying 8 marks was a mistake. I state that the comments of the examiners published in the CA student (March 2012) journal clearly shows that they have not understood the glaring mistakes committed by the 3rd Respondent Institute while setting the papers, thus resulting in evaluating the student's performance based on wrong answers and thereby

jeopardizing the hard preparation of thousands of students, inflicting mental agony and untold sufferings to them and their families.

20. I state that I prepared a detailed report on the mistakes published in the suggested answers and referred the matter to eminent professors, one Dr. Jagadeesh Jaipurya (FCA & Ph.D) and another well known professor, Mr. R. Sivakumar, Chartered and Cost Accountant with more than 35 years of experience in teaching CA students on the above two papers. I state that I had sent letters through e-mail and also through a hard copy to the 2nd and 3rd Respondents several times, requesting them to address the issue which is affecting thousands of students and their families for no fault of them.

21. I state that I had also spoken to the President, Chairman of the Board of Studies, Director, Board of Studies and some Council Members of the 3rd Respondent, who have all accepted that there were mistakes and assured the Petitioner of addressing them. However, there was no action from their side and all of them stopped responding to the calls of the Petitioner. I state that I met the 2nd Respondent on appointment on 15th February, 2012, when he visited Chennai and agreed to deal with the issues raised and promised to sort them in the best interest of the students but till date, no action has been taken.

22. I state that I had sent a letter through post dated 6th March, 16th March and through emails dated 22nd February, 26th February 2012 to the Respondent Institute for publishing my report against the comments of the examiners in the CA student journal March 2012 while also citing the judgment of the Hon'ble Supreme Court in **LIC of India V. Prof. Manubhai D. Shah (AIR 1993 SC 171=1993(3) SCC 637)**;

"The attitude on the part of LIC refusing to publish the rejoinder in their magazine financed from public funds can be described as both unfair and unreasonable; unfair because fairness demanded that both viewpoints were placed before the readers, however limited be their number, to enable them to draw their own conclusions and unreasonably because there was no logic or proper justification for refusing applications".

23. I state that during the past 10 years in particular, the enrollment of the students to Chartered Accountancy course have increased significantly and at present, there are about 10 lakhs students on rolls and conducting the examinations two times in a year has become a gigantic task and the responsibility has further increased because of the judgment of Hon'ble Supreme Court, allowing the students to take Photostat copy of the answer sheets.
24. I state that the elected positions to the Council are honorary in nature and the members are allowed to continue with their private practice and only contribute their expertise in deliberations of the Council, which is more of an intellectual work such as setting standards in accounting and auditing, carrying out the quasi judicial functions for regulating the members and profession for the betterment of the nation. I state that before 2002, the Council members used to take policy decisions and leave its implementation to the administration headed by the Secretary. However, during the past 10 years with mind boggling increase in the revenues (touching Rupees fifty thousand lakhs per annum) and with no independent audit, with no annual general meeting, with no supervision by Comptroller and Auditor General of India and the entire power being concentrated in the hands of few elected representatives, the involvement and the interference of the Council members in the affairs of the 3rd Respondent has increased to such an extent that even the day to day administration and decision making was taken over by the President and the Council members who claim that they are working 24x7 throughout the year for years.
25. I state that the Secretary of the 3rd Respondent who was a highly qualified person was made to resign in 2008 and as no replacement could be found in spite of several advertisements incurring lakhs of Rupees (18 Lakhs as per RTI reply). I state that the council therefore promoted an officer (without any professional qualification as called for in the advertisement) who joined the organization and grew from the ranks. This officer also resigned citing health grounds but he is yet to be relived as they couldn't find any replacement in spite of giving advertisements once again incurring lakhs of Rupees. Now the entire administration / decision making has gone in to the hands of

few council members who operate without any transparency and accountability.

26. I state that a certain Council member who was in the examination committee during 2010 & 2011, announced that he was intending to strengthen and reform the entire examination system but there were so many mistakes during his active association with the examination committee which necessitated this writ petition. But, in 2012 the same gentle man was nominated as vice chairman board of studies, now he gave his vision for the coaching board and students declaring through a message in the journal that his main goal is "*to make the educational material more readable*". Which implies that he admits the present study material is not or less readable. The time available for achieving this gigantic task is just few months as the elections to the central council are slated during this year.
27. I state that the Council members in addition to their lucrative private practice, are nominated to many committees in the ICAI by the President. I further state that they hold directorships in various listed companies and are involved very actively in conducting several national and International conferences during the year as they get an opportunity to meet Union Ministers and Government dignitaries. They also frequently travel to foreign countries on behalf of ICAI leaving very little time for concentrating on the work of the Committees such as Examination Committee, Board of Studies, which involve dealing with the life of several lacks of students and their families.
28. I state that with the increasing involvement in the day to day administration and affairs of the Committees in spite of their busy schedule and lack of expertise on many technical matters, they come out with different visions from that of the predecessors results in discontinuity in the policies. I state that the officers are in the constant fear of being transferred if they disobey the Council members. So the officers are more concerned about pleasing the council members who change every year, the result is nobody is made accountable for the failures. I state for instance that the virtual coaching classes after spending millions of rupees became a total failure and scrapped within few months.

29. I state that the presidents of the respondent, in spite of several deficiencies in the system always make statements in the press almost on a weekly basis on various issues giving an impression to the public they are doing the job in the most efficient way which is contrary to the reality. Respondent 2 entered into a tie-up with Everonn education limited for live virtual coaching classes to the students pursuing the CA Course throughout India. The said company's managing director was caught by CBI along with the commissioner of the Income Tax at Chennai, in a tax fraud/Bribing case. The then president of the respondent 2 in August 2011 made an announcement in the media that he ordered for a thorough investigation into the Everonn tax fraud/bribe episode by ICAI. The news was published prominently in the media. I state that when I made a query on the above issue through RTI in January 2012, the respondent 2 stated that no such enquiry committee was ever formed and no investigation took place till date. I state that in an answer to another query the respondent 2 stated that they have not paid any amount to Everonn for the classes conducted in 83 places across India and no accounts with regard to the expenses on the virtual coaching classes other than payment of fees to the faculty were maintained by the respondent 2
30. I state that because of the growing interference of the council members without any accountability, the frequent changes in the policies on account of the changing chairmen of the committees year after year, the officers who are responsible for the execution are not able to perform independently thus resulting in administrative paralysis creeping in to the system. The petitioner states that elections to the council during the past few years are being fought bitterly and during the last election in 2010 a member, who is now in the central council actively participating in all the committees and voting in the Vice- presidents election was charged with booth capturing and an FIR was lodged by the Respondent Institute against him shows the keen interest of the members for somehow getting elected to the council of 3rd Respondent Institute.
31. I state that there is a trend of long time teachers of SIRC of ICAI contesting in election for council posts. However, contrary to expectations, this trend resulted in the continuing negative interference with the coaching activities undertaken by the ICAI

rather than leading to its growth, so much so, the Petitioner submits that the specially constituted Student Committee entrusted with the task of regulating and administering coaching classes has been completely sidelined and this role has been all but usurped by the Regional Councils. I state that this trend also lead to some alarming development and damaging suggestions about the vested interests within the Central Council and Regional Councils that have tampered with the CA examinations so as to give an upper hand to students enrolled in the private coaching centres in which members of the Councils held a stake.

32. I state that the respondent, before the Honorable Supreme Court bench comprising of Justice RV Raveendran and Justice AK Patnaik ICAI in a related case, had contended that the disclosure of Answer Sheets would burden the examination body with extra work. However, the Supreme Court announced that "Additional workload is not a defense. If there are practical insurmountable difficulties, it is open to the examining bodies to bring them to the notice of the government for consideration so that any changes to the Act can be deliberated upon. Examining Bodies like ICAI should change their old mindsets and tune them to the new regime of disclosure of maximum information."

33. I state that with many fold increase in the number of students running into several lakhs, with already proven administrative and policy deficiencies, the present administrative structure for the reasons explained below, the respondent will not be able to discharge the gigantic burden which is likely to affect lakhs of students and their families.

34. I state that the above instances clearly show the indifferent attitude of the 3rd Respondent in addressing the pressing grievances of the poor CA students in particular, who are facing untold mental agony and humiliation because of the inefficiency, admitted incapacity arbitrary exercise of power, capriciousness and transgression of fundamental rights with impunity by the 3rd Respondent.

35. I submit that I had brought all these issues in the form of resolutions for deliberation in the 60th Annual General Meeting of the Regional council of the respondent 2 as per regulation 150 of the CA

Regulations, 1988 Act. The respondent 2 however did not circulate the resolutions for the 40,000 plus members of the region through its monthly journals along with the notice of 60th AGM because of which only less than hundred out of 40000 members attended the meeting which concluded without any fruitful deliberations. The respondent 2 did not even circulate the deliberations held in the 60th Annual General Meeting of SIRC to the members and even refused to give the adopted minutes even for an RTI query.

36. I submit that being left with no other alternative remedy and with the CA exams fast approaching (in May 2012), with no response from the 3rd Respondent, I am constrained to approach this Hon'ble Court under Article 226 of the Constitution of India. I submit that the Petitioner has an excellent case on merits and the prima facie case and balance of convenience lie entirely in favour of his petition for the grant of interim relief as prayed for. On the other hand no prejudice or hardship would be caused to the Respondents by granting an interim order as sought as the next CA Final exams are yet to be held (will be held only in May-2012). The petitioner submits that the grant of interim relief would only be to the benefit of thousands of students, who took up CA Final exams in November-2011 throughout India.

In the circumstances the petitioner most humbly prays that this honorable court may be pleased to,

- a) Issue an order of ad interim injunction restraining the 3rd Respondent Institute from holding the CA Final Exams in May 2012 or any other subsequent time without revaluation of the November 2011 answer scripts pending disposal of the writ petition;
- b) Issue WRIT in the nature of a DIRECTION, directing the 3rd Respondent to re-valuate the answer scripts of the students who appeared in the November 2011 exams in line with the judgment of the Hon'ble Supreme Court in **(2009) 1 SCC 599**;
- c) Issue a WRIT in the nature of a DIRECTION, directing the 3rd Respondent to constitute an Independent Expert Committee study the existing examination system and consider the necessity and possibility of re-vamping the same in the interest of the students

and to look into student activities such as setting question papers, answer keys/suggested answers etc.;

- d) Pass any or such other orders as this honourable court may deem fit and proper in the facts and circumstances of the case and thus render justice.

Dated at Chennai on this the 25th day of April, 2012.

PETITIONER IN PERSON

IN THE HIGH COURT
JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P. No. of 2012

V. Venkata Siva Kumar

... Petitioner

Versus

Union of India
& Others.

... Respondents

AFFIDAVIT OF V.
VENKATASIVAKUMAR

V. VENKATASIVAKUMAR
PARTY-IN-PERSON