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

+ W.P.(C) 2619/2012 & CM No.5629/2012 (for stay).

SUBHASH CHANDRA VASHISHTH Petitioner
Through: Mr. Pankaj Sinha, Adv.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA Respondent
Through: Mr. Pramod Dayal & Mr. Nikunj
Dayal, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.05.2012

1. This petition filed in public interest has been listed and is taken up for hearing on urgent mentioning. The petitioner, an Advocate, invites attention of this Court to the difficulties likely to be faced by the Differently Abled candidates in the examinations being held w.e.f. today by the respondent, The Institute of Chartered Accountants of India (ICAI).

2. It is pleaded that the Guidelines prescribing the procedure to be followed regarding granting of 'Writer' and extra time to the Differently Abled Candidates taking the examination, are arbitrary and impractical and interfere with the right of the said candidates to take the examination.

3. Some of the conditions imposed for allowing the Writer are as under:-

“(1). The Writer should have academic qualification lower than that of the candidate.

(2). Physically handicapped candidates who are entitled to engage

Writer will be required to engage Writer as per qualification specified below:

Examination	Qualification of Writer
CPT	10 th / Matriculation passed
Final/PCE/IIPE	Under Graduate
Post qualification courses (meant for Members of ICAI)	Under Graduate

- (3). The Writer so engaged should not be undergoing IPCE/PCE/Final COUNTER AFFIDAVIT course or the Intermediate/Final levels of ICWAI/ICSI course.
- (4). The Writer should not be a relative of the candidate for whom he/she is acting as a Writer. The definition of “relative” for this purpose is given below:-

‘The term “relative” for the purpose of examination shall include in relation to an individual, the wife, husband, son, daughter-in-law, daughter, son-in-law, grandson, granddaughter, brother, brother’s wife, brother’s son, brother’s daughter, sister, sister’s husband, sister’s son, sister’s daughter, wife’s brother, wife’s sister and husband’s brother and husband’s sister’.

- (5). The Writer should not be involved in the academic tutoring or preparation for the examination for which he is acting as Writer.
- (6). **The Writer should not be above 20 years of age as on the date of commencement of a particular examination for which the Writer’s assistance would be utilized by a candidate (for instance. 2nd May 2012 for May 2012 CA. Examinations).**
- (7). **The Writer should be the same person for all the papers of an examination and no request for Change of Writer shall**

be permitted. However, in exceptional circumstances if an examinee is appearing in both Groups together at one sitting, the Writer can be a different person, fulfilling the above criteria, for a Group and with the prior approval of the Institute well in advance.”

4. The petition takes objection to the following conditions:-
 - a. The Writer should not be above 20 years of age as on the date of commencement of a particular examination.
 - b. The Writer should be the same person for all the papers of an examination and no request for Change of Writer is permitted.
 - c. The Writer should not be a relative of the candidate for whom he/she is acting as a Writer.
5. The petitioner, immediately after issuance of Guidelines aforesaid, made a representation to the Chief Commissioner under the Disabilities Act for taking up the issue with the respondent ICAI and this petition is filed when the respondent ICAI in spite of directive of the said Chief Commissioner, has not changed the Guidelines.
6. The counsel for the respondent ICAI appearing on advance notice, on instructions states that the aforesaid grievances are taken cognizance of. He points out that there is an Examination Committee, which had formulated the aforesaid Guidelines as well and a meeting of the said Committee has been convened for 13th May, 2012 to find solution to the aforesaid difficulties expressed by the petitioner.
7. Since the examinations have started from today, it becomes imperative to pass necessary directions to take care of the examinations till the Examination Committee considers the matter.

8. We are of the view that once embargo on the qualifications of the Writer is put, as in condition No.(1) supra, we do not find any purpose in fixing the upper age limit of 20 years [as in condition No.(6)] or in excluding the relative of the examinee from being his/her Writer [as in condition No.(4)]. It is normally seen that it is easy for a relative to come forward and become the Writer for a differently abled. We find merit in the contention of the counsel for the petitioner that in this season of examinations, any under 20 years of age person is likely to be busy in his/her own examination and unlikely to agree to be a Writer for a differently abled examinee. The purpose of the respondent ICAI of preventing use of unfair means, can be taken care of by allowing only those person, even if related to the examinee and even if over 20 years of age, who are not familiar with the subject of examination viz. persons who is either a Chartered Accountant, Company Secretary, Cost Accounts or qualified in Corporate Laws or Commerce stream can be prohibited. Other persons irrespective of relationship and age should be allowed by the respondent ICAI to act as 'Writer'.

9. In so far as change of Writer is concerned, the counsel for respondent ICAI makes a statement at the bar that in case there is a need to change the Writer for the reasons beyond the control of the examinee or the Writer, and a request in this behalf is made, change would be allowed.

10. We direct accordingly.

11. We make it clear that our directions aforesaid are only for the current examinations and the said Examination Committee in its meeting to be held will be entitled to take its own decision after considering the difficulties

pointed out by the petitioner in this petition. This petition shall also be placed before the Examination Committee and treated as representation of the petitioner and the aforesaid arrangement made by us for the present examinations would not be reflective of any final opinion in this matter.

12. In view of aforesaid, we do not deem it expedient to keep this petition pending. We also make it clear that in case any amendments in the Guidelines are made by the respondent ICAI pursuant to the recommendations of the Examination Committee and the petitioner still feels aggrieved thereagainst, it would be open to the petitioner to approach the Courts again.

13. With these directions, the writ petition stands disposed of.

Copy of this order be given *dasti* under signature of court master to the counsel for the parties.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 02, 2012

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