

ITEM NO.43+44 Court 4 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s). 640/2021

ANUBHA SHRIVASTAVA SAHAI Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(FOR ADMISSION and IA No.67684/2021-EXEMPTION FROM FILING AFFIDAVIT
IA No. 69022/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 69026/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 67684/2021 - EXEMPTION FROM FILING AFFIDAVIT)

WITH

W.P. (C) No. 654/2021 (PIL-W)

(FOR ADMISSION and IA No.68411/2021-EXEMPTION FROM FILING
AFFIDAVIT)

W.P. (C) No. 650/2021

(FOR ADMISSION and IA No.68344/2021-EXEMPTION FROM FILING AFFIDAVIT
and IA No.68339/2021-PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 30-06-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
Mr. Divyansh Tiwari, Adv.
Mr. Hardik Gautam, Adv.
Mr. Nirnimesh Dube, AOR

Mr. Shashibhushan P. Adgaonkar, AOR
Mr. Ravibhushan P. Adgaonkar, Adv.
Mr. Gagandeep Sharma, Adv.
Mr. Rana Sandeep Bussa, Adv.
Ms. Ruchi Rathi, Adv.

Ms. Bansuri Swaraj, Adv.
Mr. Siddhesh Kotwal, Adv.
Ms. Ana Upadhyay, Adv.
Ms. Manya Hasiya, Adv.
Mr. Nirnimesh Dube, AOR

For Respondent(s) Mr. Ramji Srinivasan, Sr. Adv.
Mr. Pramod Dayal, AOR
Mr. Nikunj Dayal, Adv.
Mr. Shivkrit Rai, Adv.

Ms. Rajshree Chaudhary, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the parties.

Initially, multiple issues were agitated before us, but eventually, we have confined our consideration only to one aspect of making the comprehensive scheme for opt-out. The Institute in response to the deliberations in Court yesterday, has submitted a note in respect of the facilities, relaxations and arrangements for the candidates in the following terms: -

<u>S.No</u>	<u>Issue</u>	<u>Submissions of the Institute</u>
1.	Opt-out facility to the candidates.	<p>Currently Opt-out option is given in case the examinee or his family members residing in the same premises are infected with COVID-19 on or after 21.06.2021 till the completion of the Examinations on production of COVID-19 positive RT PCR Report.</p> <p>In addition to the above, the Opt-out option shall also be extended to those candidates (whether under the Old or New Syllabus) who have recently suffered from COVID-19 or yet to recover from the after effects of the COVID-19 and consequently unable to appear in the Examinations on production of Medical Certificate issued by Registered Medical Practitioner that the candidate has recently suffered from COVID-19 and is yet to recover. The Certificate should bear the registered number of the Practitioner.</p> <p>The Certificate may be issued by District Medical Officer, Primary Health Centres, Government General Hospitals, Private Hospitals and Registered Medical Practitioners.</p> <p>Such medical certificate will be in addition to the relevant RT PCR Report.</p>
2.	SOP re. Examination	ICAI submits that all the Examination Centres shall follow Government guidelines relating to Covid-19 strictly to ensure

- Centres.** health and safety of the examinees. Seating areas shall be adequately sanitized and disinfected. Adequate gap between the candidates shall be maintained. Hand sanitizer would be made available at the Examination venues.
- Only schools, colleges and other academic institutions have been chosen to be Examination Centres. Marriage Halls, Banquet Halls etc., have not been hired for the purpose of the Exam.
3. **Examination Functionaries** ICAI assures that all the Invigilators, Supervisors at the Examination Venue wear the masks and maintain social distancing. Further, all the Examination functionaries shall carry '**No Risk Status**' in **Aarogya Setu App installed in their Mobile.**
 4. **Last Minute change of Examination Centres.** In case there are any last minute changes in the Examination Centres due to operational or logistical reasons, the candidates would be given an option to opt-out of the Examination only in case of inter-city change. **No Opt-out option will be given where the change does not involve change of city.**
 5. **Examination in Groups of Papers.** The Scheme of the Examination envisages that a candidate has to appear and qualify in two sets of subject Groups both in Inter and Final.

If the Opt-out option is exercised while the Examinations are in progress, the candidate has to re-appear in all the papers that constitute a Group as per the requirements of the Chartered Accountants Regulations, 1988. However, if the candidate has appeared in all the Papers that constitute a Group, there is no need to appear in the said Group once again if he/she passes that Group.
 6. **Waiver of Articleship period.** Articleship is a way of on-the-job training to equip the students with the skills required in the practical aspects of the profession. It is a statutory requirement as per the Regulation. There is flexibility of completion of articleship as per the discretion of the Principal professional under whom the student is undergoing training. Therefore, it is not possible for complete waiver of the articleship.
 7. **Transportation facilities / Vaccination of Candidates** ICAI is not in a position to provide transportation facilities / vaccination of candidates, as prayed for by the Petitioner.

In our opinion, the arrangement provided in clause No. 1 above in particular, is inadequate. Instead, it

needs to be expanded in the following terms:

(i) A candidate shall be entitled to exercise the option of opting out if he/she personally, or any of his/her family member, has suffered COVID-19 in the recent past and the fact is so certified by a Registered Medical Practitioner, as a result of which he/she is unable to appear in the ensuing examination or, for that matter, is disabled in preparing for the examination. That will not be considered as an attempt in the examination as such. Such candidate will be permitted to appear in the follow up (back up) examination, to be conducted for the old as well new syllabus, subject to conducive situation prevailing at the relevant time. We make it clear that the candidate need not produce RT-PCR report if medical certificate issued by the registered Medical Practitioner for himself/herself or his/her family member is presented alongwith the request for opting-out.

(ii) As regards candidates affected due to lock-

down during the relevant period of examination, we are informed that the Scheme itself provides that such candidate will be entitled to opt-out and will not be treated as an attempt. That candidate would be permitted to appear in the back up examination, to be conducted by the Institute in due course.

(iii)As regards the logistical arrangements at the examination centre, both in respect of infrastructure and human resource, the Institute shall ensure that there is strict adherence to the standard operating procedure notified by the competent authority, including the Disaster Management Authority.

(iv) If any candidate is attempting examination and in the midst of that suffers from Covid-19 ailment, as a result of which, is unable to appear in the remaining subjects, would be entitled to opt-out and will not be treated as an attempt. He/she can appear in the back-up examination, to be conducted by the Institute, as per the rules as noted in aforementioned Note at Serial No. 5.

(v) In case of last-minute change of examination centre, we disapprove the suggestion of the Institute - that if the change is within the same city, it will not be open to the candidate to opt-out. Instead, we direct that the Institute shall permit such candidate to opt-out in case, of last-minute change of examination centre, which will not be treated as an attempt in the examination and such candidate shall be permitted to appear in the back-up examination, to be conducted by the Institute at appropriate time, when the situation is conducive in that regard.

This would assuage the apprehension of the candidates regarding conducive environment made available to them for appearing in the examination.

As no other issue is pending for consideration, these petitions and pending application(s) are disposed of accordingly.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)