

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

% Judgment reserved on: 31.10.2013
Date of Decision: 18.11.2013

+ WP(C) No.4540 of 2013
REENA BHATIA ...Petitioner

Through: Mr. Dushyant Arora and Ms. Mudrika
Bansal, Advs.

Versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA &
ANR.Respondents

Through: Mr. Saqib, Adv. For R-2 - UOI.
Mr. Ramji Srinivasan, Sr. Adv. With
Mr. Rakesh Agarwal and Mr. Pulkit
Agarwal, Advs. For R-1 – ICAI

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The petitioner before this Court is a differently abled person, being visually impaired. She is pursuing Chartered Accountancy Course under the aegis of respondent no.1 – The Institute of Chartered Accountants of India (hereinafter referred to as 'ICAI'). The respondent no.1- ICAI has formulated certain guidelines for grant of writers/ extra time to the differently abled candidates. The aforesaid guidelines were approved by the Examination Committee of respondent no.1- ICAI in September, 2012. The petitioner before this Court is challenging the aforesaid guidelines on the ground that the said guidelines do not

adequately meet the requirements of a visually impaired candidate appearing in the examination held by respondent no.1- ICAI.

2. Vide email dated 14.3.2013, the petitioner sought permission to use scribes in her forthcoming examinations. The said request was rejected vide communication dated 31.4.2013. The petitioner again requested respondent no.1 to either provide her with a scribe or permit her to change the scribe more than once as she was finding it difficult to arrange a competent and permanent scribe. The said request was rejected. According to her, she was able to persuade only a class XI student to write for her and, therefore, again requested the respondent to either provide her a competent scribe or allow her to use multiple scribes. That application was also rejected and when the petitioner sought to avail the services of a new scribe, who accompanied her to the examination centre, the centre authorities did not allow the new scribe and required the petitioner to call the previous scribe. Being upset with repeated rejections of her requests to allow multiple change of scribes and other difficulties being faced by her as well as by other differently abled persons, the petitioner is before this Court seeking the following reliefs:

- (i) directions to the respondent no.1 to abolish the guideline restricting the number of scribes that differently abled person is permitted to use and introduce a guidelines specifically stating that every candidate can change scribes multiple times;
- (ii) directions to the respondent no.1 to form a panel of competent scribes and provide a scribe to any candidate who has not been able to find one him/herself;

- (iii) directions to the respondent no.1 to provide suitable remuneration to scribes;
- (iv) directions to the respondent no.1 to abolish current restrictions / conditions imposed on scribes in terms of qualifications. It is prayed that the respondent no.1 simply form a guideline stipulating that the qualifications of a scribe must be lower than the candidate where the nature of post schooling education is same. There must be no such conditions/ restrictions where the nature of post schooling education is different;
- (v) directions to the respondent no.1 to abolish the guideline placing unbridled power to the 'Çentre Superintendent'to disallow any scribe. The 'Çentre Superintendent' must be permitted to disallow a scribe only after recording reasons in writing, and providing the candidate with a copy of his order/ decision disallowing such scribe;
- (vi) directions to the respondent no.1 to ensure that complaints made by differently abled candidates regarding discrimination/ harassment faced at the hands of authorities at examination centres remain confidential;
- (vii) directions to the respondent no.1 to adopt the guidelines framed by the Ministry of Social Justice and Empowerment (Disability) Affairs vide Memorandum no. F.No.16-110/2003-DD.III dated 26th February, 2013;
- (viii) directions to the respondent no.1 to furnish all differently abled candidates with a copy of such modified guidelines at the beginning of every academic term;

- (ix) directions to the respondent no.1 to furnish a copy of such modified guidelines to every examination centre before the commencement of every exam;
- (x) directions to the respondent no.1 to ensure that the staff at the examination centres is sensitized to the needs of differently abled candidates;
- (xi) directions to the respondent no.1 to file a report before this Hon'ble Court detailing the action taken by them pursuant to the complaint made by the petitioner against the centre authorities;
- (xii) directions to the respondent no.1 to re-conduct the exams of the petitioner before the next scheduled examinations;
- (xiii) directions to the respondent no.1 to pay as damages such amount as this Hon'ble Court deems fit to any non-governmental/ charity organization working for the differently abled; and
- (xiv) directions to respondent no.2 to ensure adoption of the guidelines framed by the Ministry of Social Justice & Empowerment (Disability Affairs) and compliance of the orders of this Hon; 'ble Court.

3. In its counter affidavit, the respondent no.1 – ICAI has stated that it conducts the examination in about 377 (three hundred seventy seven) centres spread over 96 (ninety six) cities throughout the country as well as in 4 (four) cities outside the country and it does not have a campus of its own. According to the Institute, it is not practically possible for it to provide writers to differently abled persons. It is further stated in the

counter affidavit that the candidates have been arranging their own scribes and the Institute has also been granting extra time and certain other facilities to them, in accordance with its guidelines. The respondent no.1 has justified permitting only one change of scribe during entire examination. It is also stated in the counter affidavit that permitting only one change of scribe is to check the possibility of using different scribes in different papers just to make gain from the knowledge of such scribes in a particular subject.

4. The following issues primarily arose for consideration of this writ petition:

- (i) whether the respondent no.1 should be directed to prepare its own panel of scribes, to be provided to differently abled persons;
- (ii) whether the respondent no.1 should pay the charges of the scribe provided to/engaged by differently abled persons;
- (iii) whether multiple change of scribe should be allowed to differently abled persons;
- (iv) whether the qualification of the scribe prescribed in the guidelines framed by respondent no.1 require any modification and if so to what extent.

5. Admittedly, the respondent no.1 does not maintain its own panel of scribes. The reason given by the respondent no.1 for not maintaining such a panel is that it does not have its own campus and has to conduct examination at as many as in 377 (three hundred seventy seven) centres spread over 96 (ninety six) cities throughout the country as well as in 4 (four) cities outside the country and, therefore, it is not possible for it to

find out suitable persons to be appointed as scribes for differently abled persons at such places.

6. A perusal of OM dated 26.2.2013 issued by the Government of India, Ministry of Social Justice & Empowerment, Department of Disability Affairs) would show that the government laid emphasis on need to have a uniform and comprehensive policy across the country for persons with disabilities, for written examinations. It was, however, emphasized that the policy should be flexible, so as to accommodate specific need on a case to case basis. The government found no need for fixing a separate criteria for regular and competitive examinations. Clause (iv) of the said OM provides that the candidates should have the discretion of opting for his/ her own scribe/ reader/ lab assistant or request the examination body for the same. Clause (v) of the said guidelines provides that criteria like educational qualification for the scribe/ reader should not be fixed and instead the invigilation system should be strengthened so as to have a check on any possible malpractice and cheating during examination. Clause (vi) of the OM provides that the candidates should also be allowed to take more than one scribe/ reader for writing different papers especially for languages.

It would thus be seen that the aforesaid OM also envisages a panel of scribes to be maintained by the examination body. In fact, several universities including Jawaharlal Nehru University and Delhi University have been maintaining such panels. A perusal of the notification dated 9.11.2011, issued by the University of Delhi would show that in case of a student with low vision (if the permanent disability of the student may be a hindrance in his/her ability to write the examination), students with orthopedic disability (if the candidate is

unable to write his/her examinations himself/ herself, students with cerebral palsy and other brain related ailments that demand support system (if the candidate is unable to write his/her examinations himself/ herself), scribe is allowed by the university to the candidates and is provided by the Superintendent of the Examination without obtaining prior approval of the university, if the candidate possesses valid and permanent disability certificate issued by the Medical Board of a government hospital, subject to the candidate fulfilling the other conditions laid down in the guidelines. The candidates, seeking such facilities have to apply to Examination Branch of the university, and thereafter is to be provided as per the norms of the university. The candidates are also permitted to arrange their own writers/ scribes and in case they are unable to do so, the Superintendent of the Examination Centre provides the same on receipt of written request from the candidate at least 24 (twenty four) hours prior to commencement of the examination. The colleges are required to maintain a writers' bank for ready availability, whenever required. The guidelines further provide that as far as possible the writers should be less qualified than the examinee. If, however, it is found that the writer is more qualified than the examinee, the Superintendent of the Examination Centre is to ensure that he/she has not studied the subject at the higher level in which the examinee is appearing. The Superintendent can ask for relevant certificate to establish that the writer has not passed any examination of higher level than that of the examinee in the subjects concerned. The writer is to be paid by the Superintendent of the concerned Centre whether he was arranged by the candidate or by the Superintendent. The centre can claim required remuneration in advance from the university.

Thus, the fee of the scribe or the writer is to be borne by the university. The guidelines also provide for assigning invigilator and a separate room wherever the facility of writer is provided to the candidates.

A perusal of the Academic Rules and Regulations of Jawaharlal Nehru University shows that it is the university who pays the charges of a writer providing assistance to the visually impaired students.

7. Considering the guidelines issued by the Government of India, and the guidelines issued by University of Delhi and a reasonable probability of the differently abled persons not being able to find appropriate persons to act as scribes/ writers for them during examination, it would only be appropriate for the respondent no.1 to prepare a panel of such scribes/ writers at least in the major cities where examinations are held by it. Wherever it is so possible, the ICAI, instead of engaging its own scribes/ writers, may engage scribes/ writers on the panel of other universities/ institutions at the places where such universities/ institutions and/or their affiliated colleges provide such scribes/ writers. If a panel of scribes/ writers is prepared by ICAI, there would be no need for the candidates to hunt for such scribes and the Superintendent/ In-charge of the examination centres also will not have to take the trouble of checking the qualifications and antecedents of the scribes/ writers arranged by the candidates themselves. I appreciate that it will not be possible for respondent no.1 to have such panel in every city in which examination is conducted by it, but, wherever it is possible, the respondent no.1 – ICAI must have such a panel, either by preparing its own panel or by adopting the panel of scribes/ writers prepared by other universities/ colleges/ institutions.

At the places where respondent no.1 – ICAI is not able to prepare a panel of scribes/ writers, the candidates will have no option but to arrange their own scribes/ writers, but in that case, there should be no restriction on the number of changes allowed to candidate, as far as engagement of scribes / writers is concerned. As regards the apprehension that a candidate may try to avail the services of persons having special knowledge in the subject in which the candidate has to appear and write paper with the help of a scribe/ writer, the apprehension has already taken care of by stipulating in the guidelines by respondent no.1 by prescribing qualification of the writer/ scribe which is 10th/ Matriculation for CPT Examination, for final/intermediate (IPCE) and graduate for post qualification course. The registered students of CA/CWA/CS course and those who have passed final examination or are member of ICAI, ICWAI and ICSI are not eligible to be a scribe / writer for the final and intermediate examinations. Similarly, the graduate in commerce or corporate laws and registered students of CA/CWA/CS course and those who have passed final examination or are members of the ICAI, ICWAI and ICSI are not eligible to act as writer/ scribe for the post qualification course. Any further apprehension in this regard can be taken care of by adopting strict vigilance during the course of examination. As noted earlier, the guidelines issued by the Delhi University provide for individual invigilator in case of each such candidate. Same procedure can be adopted by the respondent no.1 – ICAI in order to ensure that no unfair practice takes place during the course of examination. The courts cannot lose sight of the fact that it may not be easy for a differently abled candidate to have an appropriate writers/ scribes and in case he/she is

able to find a person willing to write for him/her and if for some reasons that person declines to assist the candidate in more than one paper or for reasons such as sickness or some other engagements is unable to assist him/her in more than one paper, the candidate must have the flexibility to engage another scribe / writer. Another aspect to be kept in mind in this regard is that if a scribe/ writer knows that the candidate is not permitted to replace him by another scribe/ writer, he may sometimes put undue pressure on the candidate by adopting means such as demanding hefty remuneration which may not be commensurate with the work done by him. As noted earlier, the guidelines issued by Government of India do permit the candidates to seek more than one scribe / writer for writing different papers. There is no reason why the respondent no.1 – ICAI should not provide similar facilities to the candidates appearing in its examinations. In fact, all the apprehensions and misgivings which the respondent no.1 may possibly have in the event of permitting more than one change of scribe / writer, can be taken care of in case a panel of appropriate scribes/ writers is prepared by it.

8. As regards, the payment of charges to the scribes / writers, as noted earlier, the guidelines issued by Delhi University as well as the guidelines issued by Jawaharlal Nehru University do provide for payment to them at the rate prescribed by the university. There is no reason why the respondent no.1 – ICAI as a part of its social obligation, should not pay to the scribes/ writers engaged by the candidates appearing in the examination conducted by it. The respondent no.1 – ICAI can fix its own schedule of charges payable to such scribes/ writers and in case the scribe/ writer is engaged by the candidate, he

should be reimbursed only to the extent permissible under the schedule of ICAI.

9. As regards qualification of scribes/ writers prescribed in the guidelines framed by respondent no.1 – ICAI, I find no reason to direct any modification in the said guidelines which are aimed at curbing any possible use of unfair means/ malpractice during the course of examination by engaging scribes/ writers who are either equally or more qualified than the candidates.

10. For the reasons stated hereinabove, the writ petition is disposed of with the following directions:

- (i) The respondent no.1 shall prepare, at least in major cities, its own panel of scribes/ writers, to be provided to the differently abled persons on receipt of a written request from them. For this purpose, respondent no.1 – ICAI may either itself empanel appropriate persons to function as scribes/ writers or it may adopt the panel of scribes/ writers, if any, prepared by other universities/ institutions. This exercise shall be completed by the respondent no.1 within a period of six (6) months from today.
- (ii) It shall be open to the respondent no.1 – ICAI to amend its own guidelines so as to deny the facility of engaging private scribes/ writers to the candidates at the places where a panel of scribes/ writers is prepared by it, provided one or more writers/ scribes from such panel are provided to the candidates.
- (iii) The respondent no.1 – ICAI shall prepare , within three (3) months, a Schedule of Charges to be paid to the scribes/

writers who assist differently abled persons in the examination conducted by it and it shall pay to the scribes/ writers from the panel or reimburse the candidates, wherever candidates are permitted to engage their own writers/ scribes, as per the rates approved by the respondent no.1 – ICAI in this regard.

- (iv) There shall be no restriction on change of scribes/ writers and it shall be open to the Superintendent/ In-charge of the examination centre to take an appropriate decision in this regard. This shall come into force forthwith.
- (v) The qualifications of the scribes/ writers shall continue to be governed by the existing guidelines.

The writ petition stands disposed of in terms of this order. There shall be no orders as to costs.

NOVEMBER 18, 2013/*rd*

V.K. JAIN, J.