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

+ **W.P.(C) 5137/2024**

HARISH CHANDAR T AND OTHERS Petitioners

Through: Mr. Alakh Alok Srivastava, Mr.
Rishabh Bafna and Ms. Anubha Shrivastava
Sahai, Advs.

versus

**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA** Respondent

Through: Mr. Ramji Srinivasan, Sr.
Advocate with Ms. Pooja M. Saigal, Mr.
Nipun Gupta, Mr. Nikhil Sabri and Ms.
Namrata Saraogi, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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08.04.2024

W.P.(C) 5137/2024

1. 4,36,246 candidates are scheduled to undertake the Chartered Accountancy (CA) Intermediate and Final Examinations, scheduled to be conducted on 2nd to 5th, 8th to 11th and 14th to 17th of May and 20th, 22nd, 24th and 26th of June 2024.

2. 27 of them have petitioned this Court, seeking rescheduling of the CA Intermediate and Final Examinations to the second week of June, 2024.

3. Alternatively, it is prayed that, if owing to circumstances,



beyond the control of any of the students, she, or he, is unable to appear in a particular paper, said student must not be called upon to undertake all the papers once again and should be permitted only to repeat the paper in which she, or he, was unable to appear. Admittedly, this prayer is in the teeth of the rules applicable to the CA Intermediate and Final Examinations, which require a student, who is unable to appear in any particular paper of the said examination to repeat the entire examination.

4. The prayers in the writ petition are essentially predicated on the forthcoming Lok Sabha General Elections, scheduled to be held on 19th and 26th April and on 7th, 13th, 20th and 25th of May and 1st June 2024.

Petitioners' submissions

5. Mr. Srivastava, learned Counsel for the petitioners, advanced the following submissions to justify his prayer for postponement of the examination:

(i) Several other institutions, which are conducting similar examinations, including the UPSC have, keeping in mind the forthcoming general elections, postponed the examinations.

(ii) There have been instances in the past in which such postponement has taken place. This clothes the petitioner with the legitimate expectation that, even this year, the examinations would be postponed.



(iii) Insistence on conducting the examinations on the dates presently scheduled, would impact the petitioners' right to vote guaranteed under Article 326 of the Constitution of India.

(iv) Though there are over 800 districts in India, only about 35% of the said districts have notified centres, where the examinations can be undertaken. The students, who are located in the said districts, have, therefore, to travel to the concerned centres from outside districts. Given the chaos that is bound to ensue during the elections, such students may find it difficult to reach the concerned examinations centres in time and undertake the examinations.

(v) Some of the candidates, who have to undertake the examinations, suffer from physical disabilities. There are also female candidates, who have to undertake the examinations. Given the chaotic situation that is bound to exist during election time, the violence which may legitimately be expected to erupt during the time of campaigning leading up to the elections as well as during the period when elections are scheduled to be conducted, such candidates would find it very difficult to undertake these examinations.

(vi) Hotels and lodging places, where such candidates could stay during the days when the examination has to be undertaken, would also not be available during the time of elections, as they are invariably sold out. Candidates, who come from outside, especially women, and candidates who may



be suffering from disabilities, would find it difficult to secure a place to stay during the time when the examinations have to be undertaken.

(vii) It is a well-known fact that, during the period leading up to the elections, loudspeakers are used for campaigning, resulting in disturbance and serious impediments in the candidates' ability to prepare thoroughly before undertaking the examinations. The candidates have a right to study in peace before attempting the examinations.

(viii) In similar circumstances which arose during the period of the COVID-19 pandemic, the Supreme Court was petitioned by way of a Public Interest Litigation (*Anubha Shrivastava Sahai v. ICAI*¹). Mr. Srivastava drew my attention to the order dated 13 July 2020, passed by the Supreme Court, which records the fact that the examination in that case, which was scheduled in July 2020, had been cancelled, thereby leaving nothing for consideration in the writ petition. He submits that if the ICAI could cancel the examinations in that case, there is no reason why, given the legitimate request of the petitioners, a few days deferment of the examinations cannot be permitted in this case.

(ix) Conducting of the examinations on the dates presently scheduled would also infract Article 14 of the Constitution of India. Mr. Srivastava has, to justify this argument, sought to hypothesize a situation in which there are two candidates who



are studying for the examinations in coaching centres located in Pune and whose examination centres are also located in Pune, one of whom may happen to hail from Guwahati and other from Pune itself. The candidate who hails from Guwahati, he submits, would have to travel back on the date of the election to Guwahati and return to Pune to undertake the examination, which would place her in a disadvantageous position *vis-à-vis* the candidate who is a resident of Pune. This, he submits, violates Article 14 of the Constitution of India.

(x) Mr. Srivastava also alleges violation of Article 14 of the Constitution of India between the candidates undertaking the examination this year *vis-à-vis* candidates who have undertaken the CA Intermediate and Final Examinations in earlier years when no such elections were held. They, therefore, did not suffer the disabilities, which the candidates this year would be suffering.

(xi) Article 21 of the Constitution of India, has already been pressed into service, to contend that the candidates would not venture outside at the time when the examinations are to be held for fear of violence. Requiring them to undertake the examinations, therefore, violates their fundamental right to life enshrined in Article 21 of the Constitution of India.

(xii) Scheduling of the examinations at a period during which some of the candidates may not be able to undertake the



examinations for the reasons already noted hereinabove, would also violate their right to practise a profession of their choice, guaranteed by Article 19(1)(g) of the Constitution of India.

6. Emphasizing these factors, Mr. Srivastava submits that the prayer in the present petition, which is innocuous and would benefit not only the petitioners but also all others who are undertaking the CA Intermediate and Final Examinations, may be granted and the respondent may be directed to postpone the examinations till sometime in the middle of June 2024. Alternatively, as already noted, he submits that if a particular candidate is unable to appear in one or more of the papers scheduled during the period of elections, the said candidate may be excused from having to undertake other papers, and the requirement of re-examination may be restricted only to those papers which the said candidate has not been able to undertake.

Respondent's submissions in reply

7. Responding to the submissions of Mr. Srivastava, Mr. Ramji Srinivasan, learned Senior Counsel for the respondent, submits that the prayer in the writ petition would throw the entire CA Intermediate and Final Examinations into disarray. He points out that the examination is being undertaken as already noted by 4,36,246 candidates, of whom only 27 have petitioned this Court.

8. Nonetheless, Mr. Srinivasan submits that the authorities undertaking the examinations are alive to the concerns of the petitioners. It is for this reason, he points out that care has been taken



to ensure that no examination is scheduled on a day when the elections are to take place, or even on a day prior thereto. He points out, comparing the dates when the elections are to be held (19th and 26th April, 7th, 13th, 20th and 25th May and 1st June 2024) with the dates when the CA Intermediate and Final Examinations are to be held (2nd to 5th, 8th to 11th and 14th to 17th May and 20th, 22nd, 24th and 26th June 2024), Mr. Srinivasan points out that care has been taken to ensure that there is no examination held on 6th, 7th, 12th and 13th May 2024, so as to enable the candidates, should they so choose, to cast their votes and return in time to undertake the examinations. Mr. Srinivasan also cites a decision of the Supreme Court in *Dr. R. Dinesh Kumar Reddy v. Medical Counselling Committee (MCC)*².

9. Apropos the hypothetical Guwahati resident who is scheduled to undertake her examinations at Pune, Mr. Srinivasan submits that to factor in such candidates as well, the ICAI had provided a window of three days between 27 and 29 March 2024, should they so choose, to select a centre, to undertake the examinations, which was closer to their hometown or the place where they would be on the day of elections. Many candidates, he submits, actually availed the said option and rescheduled their examination centre/venue. If a handful of the candidates have not done so, they cannot implore this Court to interfere with the schedule of the examinations for that reason.

Analysis

² 2022 SCC OnLine SC 616



10. *Ubi jus, goes the adage, ibi remedium.* A remedy can only follow a right. The hope that the law can be a panacea for every difficulty faced by every citizen in this country, though a cherished ideal, must remain, at the end of the day, Utopian.

11. The mere fact that certain individual candidates may face a hardship in undertaking it cannot constitute the basis for this Court to derail the entire CA Intermediate, or Final, examination, which presently is to be undertaken by as many as 4,36,246 candidates. Indeed, this Court is surprised that such a request has even been made.

12. None of the factors cited by Mr. Srivastava can constitute the basis for this Court to direct holding of the CA Intermediate and Final Examinations on any date other than the dates presently scheduled in that regard. As Mr. Srinivasan points out, no examination has been scheduled for any date when the elections are being held. In fact, there are only two of the dates of elections, which are proximate to the date when the examination is to be held. The respondent has taken care to ensure that no examination is held either on the date of elections or on the date immediately prior thereto. The elections are to be held on 7th and 13th May 2024 and there is no examination scheduled for 6th, 7th, 12th or 13th of May 2024. None of the other dates, for which the examinations are scheduled, conflict in any way, or are even proximate, to the dates on which the elections are to be held.

13. The respondent has, therefore, been proactive and ensured that the right of the candidates, who are to undertake the examinations, to



cast their votes, is not affected by conducting of the examinations. The scheduling of the examination has been so done as to ensure that an individual candidate is able, should she so desire, to cast her vote *and* undertake the examination. No more can be expected of the respondent. It is for the individual candidates now to work out their schedules, and adjust their itineraries accordingly.

14. The petitioners are less than fair to the security administration in place, in their rather bleak prediction that there is likely to be chaos, commotion and violence during elections. General elections are periodically held, and the Court has, given past experience, no reason whatsoever to doubt the capacity, or the capability, of the security machinery in place, to ensure that the elections take place in a free and fair atmosphere.

15. If, despite this, an individual candidate chooses not to venture out during elections, that is her, or his, personal decision. The schedule of the CA examinations cannot be adjusted to suit the choices and predilections of individual candidates.

16. Other considerations, such as non-availability of hotels, transportation, possible disturbances in the areas, and such other arguments, are mere imponderables. Candidates have to make adjustments. The respondent's duties and responsibilities cannot extend to ensuring that candidates have places to stay and adequate boarding and lodging facilities during examination time. Such arguments can hardly constitute the legitimate basis to reschedule an examination of the magnitude of the CA Intermediate and Final



Examinations.

17. Insofar as the argument that loudspeakers and other disturbances may come in the way of the candidates studying for the examinations, is concerned, it need hardly be stated that candidates, who are undertaking an examination such as CA Intermediate and Final Examinations, are expected to be of a calibre which would enable them to diligently study for the examinations despite such external disturbances. In any event, these arguments, again, are founded on imponderables, which cannot be the basis for this Court directing rescheduling of the examinations.

18. There is obviously no similarity between the present case and the situation which arose during the period of COVID-19. No detailed discussion is required in that regard. The Lok Sabha elections which are to be scheduled in April and May 2024, cannot even remotely be likened to the situation in which the country found itself during the COVID 19 pandemic. The orders passed by the Supreme Court during that cataclysmic period are obviously *sui generis*. They cannot constitute a guideline for this Court to follow with respect to holding of examinations during the period of Lok Sabha elections.

19. There is obviously no infraction either of Article 14 or of Article 21 in the present case. As Mr. Srinivasan points out, the respondent had provided a window for candidates who desired to relocate their examination centres to be close to their hometowns, or the places where they had to cast their votes. Candidates who failed to avail that option can hardly complain. Even otherwise, given the care



that has been bestowed to ensure that the dates of examination and dates of election do not clash or conflict, this argument loses all force. The comparison between candidates who are undertaking the examination this year and those who undertook the examination in other years when there were no elections, is completely alien to Article 14. They are neither identically, nor even similarly, situated. Article 14 forbids discrimination amongst equals, not unequals. No plea of discrimination can be based on a comparison between candidates undertaking examinations during election year and others. Else, there would have to be an absolute proscription on holding of examinations during election year altogether.

20. The plea of violation of Article 21 is based on the prediction, of the petitioners, that the entire nation is bound to be in a state of turmoil during elections. There is no basis for this presumption. We are headed for elections, not civil war.

21. It is only in the rarest of rare circumstances – if at all – that a Court can interfere with the schedules fixed for conducting examinations held on a national level. The circumstance must be one which renders it *impossible* for candidates to undertake the examination if held as scheduled. A situation such as a national lockdown, or the position which prevailed when the COVID-19 pandemic was at its peak, may justify such an order. Nothing short of that would suffice. The conducting of the General Lok Sabha elections can hardly constitute a justifiable ground to seek such a relief.



22. Insofar as the alternate prayer for permitting a student, who is unable to attempt a particular paper, only to reattempt that paper instead of having to attempt all the papers of the examinations, this Court cannot rework the rules of the examinations.

23. It is clear on the face of it that this petition is completely bereft of substance. The petition is accordingly dismissed.

24. Needless to say, if the respondent should, of its own accord, decide to reschedule the CA examinations, this judgment shall not act as a fetter in that regard.

CM APPL. 21034/2024 and CM APPL. 21035/2024

25. The applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

APRIL 8, 2024

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Click here to check corrigendum, if any