

R E V I S E D

ITEM NO.1+12

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.961/2021

NEIL AURELIO NUNES & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for IA No.107531/2021-EX-PARTE AD-INTERIM RELIEF and IA No.107530/2021-EXEMPTION FROM FILING AFFIDAVIT, IA No. 117671/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No.110006/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.117669/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

WITH W.P.(C) No.967/2021 (X)

(With appln.(s) for EXEMPTION FROM FILING AFFIDAVIT ON IA, 107613/2021, EX-PARTE AD-INTERIM RELIEF ON IA 107614/2021 and PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 110016/2021)

W.P.(C) No.1002/2021 (X)

(With appln.(s) for STAY APPLICATION ON IA 111778/2021)

W.P.(C) No. 1021/2021 (X)

W.P.(C) No.1105/2021 (X)

(With appln.(s) for IA No 127675/2021 EX-PARTE STAY and IA 127676/2021 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 21-10-2021 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE VIKRAM NATH  
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. Arvind Datar, Sr. Adv.  
Ms. Charu Mathur, AOR  
Mr. Rahul Unnikrishnan, Adv.

Mr. Sanjay Kumar Dubey, Adv.

WP 1002/2021 Mr. Vivek Singh, AOR

WP 1021/2021 Mr. Subodh S. Patil, AOR

**For Respondent(s)** Mr. K.M. Nataraja, ASG  
Mr. Gurmeet Singh Makker, AOR  
Mr. Apoorv Kurup, Adv.  
Mr. Shailesh Madiyal, Adv.  
Mr. Vatsal Joshi, Adv.  
Mr. Sughosh Subramanyam, Adv.  
Mr. Sharath Nambiyar, Adv.

Mr. Maninder Singh, Sr. Adv.  
Mr. Gaurav Sharma, AOR  
Mr. Kirtman Singh, Adv.  
Mr. Waize Ali Noor, Adv.  
Mr. Dhawal Mohan, Adv.  
Mr. Prateek Mohan, Adv.  
Ms. Srirupa Nag, Adv.  
Mr. Taha Yasin, Adv.

Mr. Amrish Kumar, AOR

Mr. P. Wilson, Sr. Adv.  
Mr. R. Nedumaran, Adv.  
Mr. Apoorv Malhotra, Adv.

Mr. A. Mariarputham, Sr. Adv.  
Mr. V. Krishnamurthy, Sr. Adv./AAG  
Dr. Joseph Aristotle S., AOR

Mr. V. K. Biju, AOR  
Mr. Amlendu Kumar Akhilesh Kumar Jha, Adv.  
Mr. Abhay Pratap Singh, Adv.  
Mr. Shaji George, Adv.  
Ms. Vijay Laxmi, Adv.

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

1 On 7 October 2021, when the proceedings under Article 32 of the

Constitution were taken up, an opportunity was granted to the Union government to file an affidavit clarifying the basis for adopting Rs 8 lakhs as the income criterion for determining the EWS category. In addition, the Ministry of Health and Family Welfare has already been impleaded as a party to these proceedings. Permission was granted to implead the Department of Social Justice and Empowerment and the Department of Personnel Training. Though two weeks have elapsed since the last hearing, no affidavit has been forthcoming.

- 2 Mr K M Nataraj, the learned Additional Solicitor General states that he has received oral instructions and would be in a position to file the affidavit within a period of two days. At the same time, during the course of the hearing, we have formulated certain issues in regard to the criteria adopted for identification of the EWS category. We propose to formulate them in this order so that the Union government can bring clarity to the issues by filing its affidavit. The specific issues on which a disclosure shall be made in the affidavit are as follows:
  - (i) Whether the Union government undertook an exercise before arriving at the criteria for the determination of the EWS category;
  - (ii) If the answer to (i) above is in the affirmative, whether the criteria are based on the report submitted by Major General Sinho (2010). If the criteria are based on Major General Sinho's report, a copy of the report should be placed on the record of these proceedings;
  - (iii) Whether the EWS category is over inclusive;
  - (iv) The income limit in the criteria for the determination of the creamy layer of the OBC category and the EWS category is the same, namely, Rs 8 lakhs. While the creamy layer in the OBC category is identified for excluding a section of the community that has 'economically progressed' to such an extent that the

social backwardness of the community diminishes, the EWS category is identified to include the segment which is 'poorer' when compared to the rest of the community. Therefore (a) the income criterion in respect of the OBC category is aimed at exclusion from a class while in the case of the EWS category, it is aimed at inclusion; and (b) the OBC category is socially and educationally backward and, therefore, has additional impediments to overcome as compared to those belonging to the general category. In these circumstances, would it be arbitrary to provide the same income limit both for the OBC and EWS categories;

- (v) Whether the differences in the GDP/per capita income of different States have been accounted for while arriving at Rs 8 lakhs income limit;
- (vi) Whether the differences in the purchasing power between rural and urban areas have been accounted for while fixing the income limit; and
- (vii) According to the notification of Union government (OM No. 36039/1/2019), families which have an income lower than Rs 8 lakhs would be excluded from the EWS category if the family holds assets of (a) five acres of agricultural land and above; (b) a residential plot of 100 square yards and above in notified municipalities and 200 square yards and above in areas other than notified municipalities; and (c) a residential flat of 1000 square feet and above. In this context, a disclosure may be made on the following aspects:
  - (i) On what basis has the asset exception been arrived at and was any exercise undertaken for that purpose;

- (ii) Whether municipalities as required under the exception have been notified;
- (iii) The reason why the residential flat criterion does not differentiate between metropolitan and non-metropolitan areas.

- 3 We grant liberty to the Union government to place its affidavit on record making a full disclosure on the record on the issues raised above since the Court must be apprised of the nature of the exercise undertaken while fixing the income criterion for the EWS category. In this context, it would be significant to note that the explanation to Article 15(6) which was introduced as a result of the 103<sup>rd</sup> Constitutional Amendment in 2019, specifically enunciates that for the purposes of Article 15(6) and for Article 16(6), economically weaker sections shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. It is in this context that it would be necessary for the Union government to disclose before the Court the nature of the exercise which was undertaken to categorize the economically weaker section as mandated by the provisions of the explanation to Article 15. We may clarify at this stage that the Court is not embarking upon any issue of policy while requiring such a disclosure to be made before it, but will determine as to whether the constitutional requirements have been duly complied with.
- 4 Counter affidavit, if any, be filed on or before 26 October 2021.
- 5 List the Writ Petitions on 28 October 2021 as the first item on the Board.

**(CHETAN KUMAR)**  
**A.R. -cum-P.S.**

**(SAROJ KUMARI GAUR)**  
**Court Master**

ITEM NO.1

COURT NO.4

SECTION X

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**Court Master**