

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO. 961/2021

IN THE MATTER OF:

NEIL AURELIO NUNES AND ORS. ...PETITIONERS

VERSUS

UNION OF INDIA AND ORS. ...RESPONDENTS

INDEX

S.No.	Particulars	Page No.
1.	Written note of submissions on behalf of the Respondent Nos. 1, 2 and 5	

Date: 05.01.2022

FILED BY:

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- (i) In the instant case, the NEET PG examination Schedule is as under:
- (a) Release of Information Brochure - 23.02.2021
 - (b) Commencement of Registration Process - 23.02.2021
 - (c) Last date of Registration - 15.03.2021
 - (d) Scheduled examination date - 18.04.2021
 - (e) Postponed for 4 months on - 03.05.2021
 - (f) New date of examinations - 13.07.2021
- (ii) It is submitted that the Impugned Notice was introduced on 29.07.2021, i.e., much prior to the date on which exams were conducted and/or commencement of the counselling process. Therefore, the allegation of the Petitioners that the Government of India has changed the rules of the game midway is misconceived and is liable to be rejected.
- (iii) So far as the first date i.e. 23.2.2021 is concerned, on that date only an information bulletin was issued only for the purpose of conducting NEET examination. It is submitted that in the NEET-PG 2021 bulletin, (**@Page 84 of W.P. Paperbook in W.P. (C) 961/2021**), it is categorically stated under the heading 'Counselling and Reservation' as follows:
- 11.1. Reservation of PG seats shall be as per norms of the Government of India and respective State Governments as may be applicable.
- 11.2. A separate handbook informing details of the conseling process and applicable reservation shall be released by the designated counselling authority for NEET-PG 2021".

- (iv) It is submitted that publication of information brochure / bulletin for examination is the first and separate part of the process. As evident from the above quoted clauses 11.1 and 11.2, the real process begins with commencement of counselling process. It is on that date that the rights will be crystallised.
- (v) The declaration of counselling process was issued on 29.7.2021 which was simultaneously with the impugned decision dated 29.7.2021 [Annexure P/5 page 121 in W.P. [C] No.961 of 2021]. It is thus clear that “rules of the game” as argued by the petitioner starts from 29.7.2021 [when Notification for counselling is issued] and not before that.

B. RESERVATION IN AIQ SEATS HAS ALREADY BEEN IMPLEMENTED IN THE CURRENT ACADEMIC YEAR:

3. It is submitted that reservation in AIQ seats in terms of notice dated 29.07.2021 has already been implemented in MDS admissions for the current academic session, i.e., 2021-2022. It is submitted that in compliance with the order of this Hon'ble Court dated 11.08.2021 in W.P.(C) 680/2021 titled as “*Debraj Samanta and Ors. v Medical Counselling Committee (MCC) and Ors.*”, counselling for MDS admissions for academic session 2021-2022 commenced on 20.08.2021.
4. It is submitted that the AIQ scheme was introduced in the year 1986 to provide for domicile-free merit-based opportunities to students from any State to aspire to study in a good medical college located in another State. AIQ, at present, consists of 15% of total available UG seats and 50% of total available PG seats in Government medical colleges. Initially, there was no reservation in AIQ scheme up to 2007. In 2007,

this Hon'ble Court in the matter of *Abhay Nath & Ors. Vs. University of Delhi & Ors.*, reported in (2009) 17 SCC 705, permitted the reservation of 15% for Scheduled Castes and 7.5% for Scheduled Tribes in the AIQ scheme. When the Central Educational Institutions (Reservation in Admission) Act came into force in the year 2007 providing for uniform 27% reservation to OBC, the same was implemented in all the Central Educational Institutions. However, this had not been extended to the AIQ seats of State medical and dental colleges earlier.

5. It is submitted that due reservation, both, to the backward category as well as the EWS category, is on the broader considerations of equality of opportunities and the equality mandate viewed in the perspective of social justice. The Government of India has, therefore, decided to provide for 27% reservation for OBC and 10% reservation for EWS in the AIQ scheme vide the Impugned Notice. The OBC students from across the country will now be able to take benefit of this reservation in AIQ scheme to compete for seats in any State. The reservation in AIQ being a central scheme, the Central List of OBC shall be used for this reservation. Around 1500 OBC students in MBBS and 2500 in Post Graduate courses will be benefitted through this reservation.
6. In order to provide benefit to students belonging to EWS category in admission to higher educational institutions, a Constitutional Amendment [The Constitution (One Hundred and Third Amendment) Act, 2019] has been made in the year 2019 which enabled the provision of 10% reservation for EWS category. Accordingly, seats in medical/dental colleges were increased over two years in 2019-20 and 2020-21 to accommodate this additional 10% EWS reservation so that

the total number of seats available for unreserved category do not get reduced.

7. In the AIQ scheme, the benefit of reservations for EWS had not been extended earlier. Therefore, along with the 27% reservation for OBC, 10% reservation for EWS has been extended in AIQ seats for all the undergraduate/postgraduate medical/dental courses from the current academic year 2021-22 vide the Impugned Notice. This will benefit around more than 550 EWS students for MBBS and around 1000 EWS students for PG Medical courses each year.
8. It is submitted that in the last six years, MBBS Seats in the country have increased by 56% from 54,348 seats in 2014 to 84,649 seats in 2020 and the number of PG seats have increased by 80% from 30,191 seats in 2014 to 54,275 seats in 2020. In the same period, 179 new medical colleges have been established and now the country has 558 (Govt.: 289, Pvt.: 269) medical colleges.
9. It is reiterated that to lay down the criteria for reservations for the admissions in the AIQ seats of the medical/dental courses is within the powers of the Government of India and this essentially is a question of policy. It is submitted that the same depends, inter alia, on an overall assessment and survey of the requirements of various categories of persons for whom it is essential to provide facilities for such higher education. It is further reiterated that no new reservation scheme has been introduced vide the impugned notice.



C. IMPUGNED NOTICE IS WITHIN THE EXISTING SCHEME OF RESERVATIONS AND IS CONSTITUTIONALLY VALID:

10. It is submitted that the extension of reservations in AIQ seats to the extent of 27% for OBC and 10% for the EWS are in consonance with the provisions of the Constitution of India and the existing scheme of reservation. It is pertinent to submit that the reservations for OBC to the extent of 27% in the Central Educational Institutions, whether aided or maintained by the Central Government, is already in the place. The same is now being extended to the AIQ seats for UG/PG admission in the Medical and Dental Courses. It is pertinent to submit that the reservations for EWS was introduced in the year 2019. The same was implemented in Central Institutes/Universities in the NEET-UG counselling from the year 2019 onwards and in NEET-PG counselling from 2020 onwards. It is, therefore, respectfully submitted that the EWS reservation is already in place and the same is now being extended to the AIQ seats for UG/PG admission in the Medical and Dental Courses. It is further submitted that the reservations for EWS is in line with The Constitution (One Hundred and Third Amendment) Act, 2019, and on the prescribed parameters of eligibility criteria (*viz.* gross annual income etc.). Therefore, no new scheme of reservation has been created by the Impugned Notice.
11. It is respectfully submitted that the Government of India is within its powers to lay down the criteria for reservations for the admissions in the AIQ seats in the medical/dental courses. This essentially is a question of policy and depends, inter alia, on an overall assessment and survey of the requirements of various categories of persons for whom

it is essential to provide facilities for such higher education. The contours of judicial review in such matter have been aptly defined in the judgment of *B.K. Pavithra v. Union of India*, (2019) 16 SCC 129, which is the “*Barium Chemicals test*”. [Para 95-106].

D. CONSTITUTIONAL VALIDITY OF THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019 HAS BEEN REFERRED TO A LARGER BENCH AND ITS OPERATION HAS NOT BEEN STAYED:

12. That this Hon’ble Court vide order dated 05.08.2020 in W.P. (C) No. 55 of 2019 titled as “*Janhit Abhiyan v Union of India and Ors.*” and connected matters, has held that the challenge to constitutional validity of the Constitution (One Hundred and Third Amendment) Act, 2019, which provides for EWS reservations in the matters of admission to educational institutions and in appointments involves substantial questions of law as to the interpretation of the Constitution and as such are required to be heard by a Bench of five Hon’ble judges in view of the provisions of the Article 145(3) of the Constitution of India and Order XXXVIII of the Supreme Court Rules, 2013, and therefore referred the said matter to a Bench of five Hon’ble judges. It is respectfully submitted that this Hon’ble Court while referring the abovementioned matter to a Bench of five Hon’ble judges did not stay the operation of The Constitution (One Hundred and Third Amendment) Act, 2019 and as such the said Constitution Amendment Act is in operation and, therefore, inclusion of the same in the Impugned Notice cannot be questioned in the present Writ Petition. A true copy of the reference order dated 05.08.2020 passed by this

Hon'ble Court in W.P. (C) 55 of 2019 is annexed as **Annexure-R/1** to the Counter Affidavit filed by the Respondent Nos. 1 & 2 dated 06.10.2021.

E. RESERVATION IN POST GRADUATE COURSES

13. It is submitted that while certain observations have been made by this Hon'ble Court from time to time on the desirability or otherwise of the reservations in post graduate courses, the Constitutional validity of the same has never been held to be unconstitutional. On the other hand, in Dr. Pradeep Jain's case, domicile-based reservation in PG courses has been upheld. Briefly, the cases which dealt with this issue (without examining the constitutional validity) are as below:-

S. No.	Name of the case	Para	Comments
i	Dr. Pradeep Jain and Ors. v. Union of India and Ors., 1984 (3) SCC 654.	22	Dealt with the desirability for domicile and institutional reservations in PG courses. However, the Hon'ble Court upheld institutional preference in admissions to PG courses.
ii	Dr. Preeti Srivastava v. State of Madhya Pradesh, 1999 (7) SCC 120.	10	The Hon'ble Court observed that it was not getting into the question of reservation in PG courses.
iii	Saurabh Chaudhri and Ors. v. Union of India, 2003 (11) SCC 146.	64 - 70, 72, 91, 108	The question considered is at para 64 of the judgement. The Hon'ble Court affirmed the ratio laid down in Dr. Pradeep Jain's case. Infact, Hon'ble Mr. S. B. Sinha, J. in his concurring opinion at paragraph no. 91

S. No.	Name of the case	Para	Comments
			specifically held that institutional reservation cannot be held to be unconstitutional.
iv	Tanvi Behl v. Shrey Goel and Ors., (2020) 13 SCC 675.	20, 24, 25	The question as to whether the domicile-based reservation in PG medical course is constitutionally valid is referred to a larger bench.

F. SOME IMPORTANT FACETS PERTAINING TO THE NOTIFICATION DATED 29.7.2021 [ANNEXURE P/5 AT PAGE 121]

14. In all Central Government Institutions like IITS, NITs and IIITs and in all Central Universities, both 27% OBC reservation and 10% EWS was made applicable and continues to apply since January, 2019. So far as the OBC reservation is concerned, it is applicable in all Central institutions and Central Universities right from 2006.
15. Vide the impugned Notification dated 29.7.2021 [Annexure P/5 page 121 in W.P. [C] No.961 of 2021] it was made applicable to 15% UG Seats and 50% of PG Seats in All India quota.
16. The impugned Notification dated 29.7.2021 mentions, *inter alia*, MDS admissions. By the time an assurance was given to this Hon'ble Court that all India Quota with respect to PG/UG counselling will not start, the counselling in MDS seats was already over by applying the reservation criteria of 27% OBC and 10% EWS [as per the impugned notification dated 29.7.2021]

17. The same reservation of 27% for OBC and 10% for EWS is applied in all Central Government employment including appointment through UPSC.
18. More importantly, so far as the present admission process is concerned, the admission of EWS seats by 10% will not be at the expense of other categories. The Ministry of Education has taken a decision to increase seats both in UG and PG so as to accommodate EWS reserved candidates. Accordingly, the total number of seats in UG have been increased from 54,348 to 84,469 and the total number of seats PG have been increased from 30,191 to 54,275.
19. In other words, when the number of seats are increased keeping in view the poorest of the poor namely EWS category students, non-implementation of 10% reservation for EWS would result in annulment of benefits to other candidates who do not suffer from economic weakness and, therefore, do not fall within EWS category.

G. PRESENT PETITIONS ARE NOT MAINTAINABLE UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA:

20. That the present batch of Writ Petitions filed under Article 32 of the Constitution of India are not maintainable for want of infringement of fundamental rights of the Petitioners herein. It is submitted that the Petitioners have failed to demonstrate as to in which manner the Impugned Notice is going to affect their fundamental rights. In absence of such infringement, the present Petition is an abuse of process of law and is liable to be dismissed. It is further submitted that the Petition has admittedly not been filed in Public Interest.

21. It is submitted that the grievance of the Petitioners is unfounded and misconceived. No cogent grounds have been raised by the Petitioners in the Writ Petitions in support of their alleged infringement of fundamental rights and, therefore, the same do not warrant any indulgence by this Hon'ble Court. Further, it is submitted that, in any event, the Petitioners ought to have exercised their remedy, if any, under Article 226 of the Constitution of India.

WHEREFORE, for the reasons stated above, this Hon'ble Court may be pleased to dismiss the present Writ Petitions and also reject any prayer for interim relief.