

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) No. 961 OF 2021**

**IN THE MATTER OF:**

Dr. Neil Aurelio Nunes & Ors. ...PETITIONERS

VERSUS

Union of India & Ors. ... RESPONDENTS

**NOTE ON THE SINHO COMMISSION REPORT FOR  
ECONOMICALLY BACKWARD CLASSES**

The Sinho's Commission was mandated to consult the State Government /Union Territory administrations and field functionaries dealing with welfare measures, legal experts, voluntary organizations, and social activists on the issue of providing reservation and welfare measures to the Economically Backward Classes. The Recommendation and Summary of the Report is mentioned in **Chapter 8 (Pg. 96-101) and Chapter 9 (Pg. 102-112) of report.**

Certain aspects from the recommendations and summary of the report are *inter alia* discussed as under:

- I. The economic needs of EBCs (Economically Backward Classes) among GC (General Category) differ and hence just one criteria of Below Poverty Line (BPL) would not be effective to ensure intended benefits to EBC's**

It is submitted that as per the Sinho's Commission Report (hereinafter referred to as '**Report**') the economic needs also differ among GC. Therefore, to have just one criteria of BPL will not be effective. The figure adopted for determining creamy layer of BC/OBC/MBC cannot be applied mechanically for determining persons who are in the EWS category. Chapter 8 (Recommendation) of the Report, *inter alia* mentions as follows:

*“...The Commission also noted that economic needs of EBCs among GC differ and hence just one criteria of BPL or setting creamy layer as upper limit would not be effective to ensure intended benefits to EBC’s” (@Pg. 97 of report)*

**II. Current Non-taxable limit could be criteria to identify EBCs among GC**

It is submitted that as per the Report, the current non-taxable limit could be criteria to identify EBCs among GC. It is submitted that the current non-taxable limit in India is 2.5 lac. Therefore, in terms of the said recommendation and the current non-taxable limit in India, the income criteria of Rs. 8 lac is unjustified and unreasoned. The current scheme of EBC reservation will only benefit affluent income-tax payers of the country. Chapter 8 (Recommendation) of the Report, *inter alia* mentions as follows:

*“Instead of taking the income limit for creamy layer, current non-taxable limit upto Rs. 1,60,000/- (as may be revised from time to time) could be taken as the criterion to identify EBCs among GC.” (@Pg. 97 of report)*

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*Thus, BPL families and non-income tax paying families could be identified as EBCs among GC. Accordingly, this Commission recommends that all BPL families among GC as notified from time to time and all those families among GC whose annual family income from all sources is below the taxable limit (currently Rs. 1,60,000/- per annum and as may be revised from time to time should be identified as EBCs.” (@Pg. 98 of report)*

**III. Impugned decision is unconstitutional as it breaches the 50% ceiling limit imposed on reservations as laid down by this Hon’ble Court in catena of landmark judgements. Chapter 8 (Recommendation) of the Report, *inter alia* mentions as follows:**

*“This Commission derived the constitutional and legal understanding that “Backward Classes” cannot be identified*

*for providing reservation in employment and admission in educational institutions on the basis of economic criteria alone and hence EBCs could not be identified by the State for extending reservation till necessary constitutional amendments are made or until a different direction is given by the Supreme Court so as to raise the 50 per cent upper limit for reservation. (Clause 8.3 @Pg. 99 of report)*

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*Reservation in Indian context is a form of affirmative action whereby a percentage of posts is reserved in the public sector units, Union and State Civil Services and in educational institutions for socially and educationally backward classes of citizens. This Commission derived the constitutional and legal understanding that "Backward Classes" cannot be identified for providing reservation in employment and admission in educational institutions on the basis of economic criteria alone and hence "Economically Backward Classes (EBCs)" could not be identified by the State for extending reservation till necessary constitutional amendments are made or until a different direction is given by the Supreme Court so as to raise the 50 per cent upper limit for reservations. Reservation in employment and admission in educational institutions to EBCs was not considered by many due to absence of provision in the Constitution of India and upper cap of 50% reservations laid down by the Supreme Court." (Pg. 107- Clause 9.3 (i))*

- IV. Since most of the States have not framed conclusive opinion about reservation to EBCs among GC, the Commission recommended to consider organizing a conference of the Chief Ministers. Lt. Governors, Administrators of all States/UTs and all concerned and based on the resolutions further administrative and legislative action could be taken. Therefore, the income limit of Rs. 8 lac is manifestly arbitrary and unconstitutional. There is no standard or basis of what constitutes "economic weakness". Chapter 8 (Recommendation) of the Report, *inter alia* mentions as follows:**

*"The Commission obtained views of states/ UTs on quantum of reservation and with the single exception of Rajasthan, most of the states have not framed any conclusive opinion about reservation to EBCs among GC. While during visits of*



*“In September 1990 while Shri VP Singh, then Prime Minister was about to implement the recommendations of Mandal Commission, Shri Rajiv Gandhi, Member of Parliament speaking in the Lok Sabha on September 6, 1990 had explained his party's stand and emphasized that within a class assistance should go to the poorest and benefits must reach those who were really poor. The thinking of congress party as articulated in the 1990 speech of Shri Rajiv Gandhi in Parliament was materialized by the Central Government under the then Prime Minister Shri PV Narasimha Rao through issue of a memorandum dated September 25, 1991, giving 10% reservation in jobs and other opportunities to the economically backward sections of the people who were not covered by any of the existing reservation schemes.”( Pg. 103-104 (Clause 9.1 (ii))*

- VI. Economic criteria alone cannot be the basis of reservation.** Chapter 9 (Summary) of the Report, *inter alia* mentions as follows:

*“In 1992, the Supreme Court had struck down the above notification as unconstitutional while adjudicating in the case Indira Sawhney vs. Union of India. The Court's observation was "A backward class of citizens cannot be exclusively identified by the economic criterion. It is of course possible for the government or any other authority to identify a class based on the occupation cum education without reference to caste if it is so advised. There is no constitutional barrier to define more backward and less backward". (Pg. 103-104 (Clause 9.1 (iii))*

- VII. The present revised reservation policy excludes OBCs and the SCs/STs from the scope of the economic reservation.** By way of the 103<sup>rd</sup> amendment, the exclusion of the OBCs and the SCs/STs from the scope of the economic reservation essentially implies that only those who are poor from the open category are expected to avail the benefits of the 10% quota. If the high-income limit of Rs.8 lakhs per annum is applied, then, the economically stronger sections of the OC will capture the very limited seats. The EWS quota will be an instrument of social injustice. Chapter 9 (Summary) of the Report, *inter alia* mentions as follows:

*“The Commission formed the opinion that extending the existing criteria to identify Creamy Layer' among OBCs could well serve as to decide the upper limit or as a criterion for identifying EBC families among GC too. However, OBCs suffer from economic backwardness which is compounded with their social and educational backwardness also while among EBCs economic backwardness is the major concern. The Commission also noted that economic needs of EBCs among GC differ and hence just one criterion of BPL, or setting creamy layer as upper limit would not be effective to ensure intended benefits to EBCs. (Pg. 106- Clause 9.2 (vi))”*

**VIII. No consensus amongst the status on the reservation on the basis of economic backwardness. Therefore, the onus lies on the government to explain the basis to arrive at 8 lac limit and also whether consent of various stakeholders was taken before arriving at the said income limit.** Chapter 9 (Summary) of the Report, *inter alia* mentions as follows:

*“Tamil Nadu Government was providing a total of 69% reservation and categorically disagreed to consider reservation on the basis of economic backwardness. During the course of discussions, it was mentioned that 31% unreserved posts have been left for 12% of the general category population and hence there was no need for considering reservation for the economically backward classes of the general category. West Bengal Government opined that if at all reservation was to be considered on the basis of economic backwardness, then the BPL criteria was ideal for which adequate data was also available. (Pg. 107- Clause 9.3 (iii))”*

**IX. Welfare measures recommended in the Report finds no mention in the Impugned reservation policy.** Chapter 9 (Summary) of the Report, *inter alia* mentions as follows:

*“Representatives of various Social organizations and Non-Governmental Organizations approached the Commission giving justification in favour as well as against providing reservation and welfare measures to the economically backward classes. All the States/ UTS and people at large were in favour of augmenting Welfare measures for the development and betterment of EBCs, in particular, in areas*

*like: soft loans for business and small scale industry upto Rs 5 lakhs; woman headed household should receive attention; improved health care, sanitation, drinking water; a separate Finance & Development Corporation for EBCs to provide for small credit; improved facilities in educational institutions (mid-day meals, scholarships); opening of Navodaya Vidyalays at Block level; emphasis on vocational training to improve skills; allotment of land for house construction and allotment of surplus and for agriculture to the poorest among the poor all the welfare measures provided for OBC be extended to EBCs. Some special health insurance packages for EBC families should be designed for families supporting/ maintaining chronically ill persons to meet the expenses of their long duration treatment. (Pg. 109- Clause 9.4 (i))*

*Focus on skill upgradation is considered vital for development of EBCs. Emphasis should be laid on the opening of skill upgradation centres and tool kits made available to the trainees. They should also be given stipend during the period of training in lieu of the wages to meet the family's requirements. Training could be imparted in apparel making, security guard's jobs, construction work, plumbing, salesmanship in shopping malls, hotel and tourism industry, handloom and handicraft, dance, music and art troupes, etc. "Rojgar Melas" could be organized to facilitate them in getting placements. The children of EBCs needed support for improvement of educational levels at par with OBCs upto class XII standard. Other welfare measures suggested, include free education at all levels; scholarships and soft loans at zero percent interest; free coaching; model schools and hostels; trained teachers to guide EBC students, priority for regular health checkup once a year and medical aid provided for undergoing treatment; financial assistance for treatment of kidney and heart ailments; health insurance; life insurance; pension to widows, senior citizens, and handicapped person; assistance to girls for marriage, assistance to farmers and others affected by unforeseen circumstances/ natural calamities and orphans may be liberally granted financial assistance for purchasing construction materials for construction of 1 room set / 2 room set for meeting basis requirement of accommodation and raising their standard of living. (Pg. 109- Clause 9.4 (ii))"*

**X. The measures suggested by the Commission not implemented by the Government, before arriving at the income limit of Rs. 8 lac.** Arriving at the income limit of Rs. 8 lac is unreasonable and manifestly arbitrary. Uniform figure of Rs.8 lakhs as the benchmark for determining EWS category on all India basis is also violative of Article 14 as it results in treating unequals equally. Statistics show that the *per capita* income in States differ widely- Goa is the State having the highest *per capita* income of almost Rs.4 lakhs whereas Bihar is at the bottom with Rs.40,000. Therefore, determining EWS for all India level requires careful study by an expert committee, so that the ends of social justice are attained. Chapter 9 (Summary) of the Report, *inter alia* mentions as follows:

*“The Commission has suggested holding of a conference of the Chief Ministers, Lt. Governors, Administrators of all States/UTs and all concerned to decide the quantum of reservation for Economically Backward Classes in the government jobs and education vis-a-vis the constitutional modalities for putting the same in place. This is necessary because the various Chief Ministers and Chief Secretaries had proposed during the visit of the Commission to the respective States / UTs to send their advise after taking up this matter in the Cabinet meetings but they did not send it till today.”(Pg. 112- Clause 9.5)*

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