

IN THE SUPREME COURT OF INDIA

(ORIGINAL CIVIL JURISDICTION)

WRIT PETITION (Civil) No. of 2021

[WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING COMMUNICATION DATED 29.07.2021 ISSUED BY RESPONDENTS THROUGH RESPONDENT NO.2]

IN THE MATTER OF:

Dr. Apurv Satish Gupta and Anr.

..Petitioners

Versus

Union of India &Ors.

..Respondents

PAPER-BOOK

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COUNSEL FOR THE PETITIONER :: MR. SUBODH S. PATIL.

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PROFORMA FOR FIRST LISTING

AI

Section: IX

The Case Pertains to:

- ☐ Central Act (Title): NA
- ☐ Section: NA
- ☐ Central Rule (Title): NA
- ☐ Rule No(s): NA
- ☐ State Act (Title): NA
- ☐ Section: NA
- ☐ State Rule (Title): NA
- ☐ Rule No(s): NA
- ☐ Impugned Interim Order (Date): NA
- ☐ Impugned Final Order/Decree (Date): NA
- ☐ High Court (Name): NA
- ☐ Names of Judges: NA
- ☐ Tribunal/Authority (Name): NA

1. Nature of Matter ☐ Civil ☐ Criminal
2. Petitioner/Appellant No.1: Apurv Satish Gupta
- Email Address: NA
- Mobile Phone No.: NA
3. Respondent No.1: Union of India
- Email Address: NA
- Mobile Phone No.: NA

4. a. Main Category Classification: 4100. ALLOCATION OF 15% ALL
INDIA QUOTA IN
ADMISSION/TRANSFER TO
MEDICAL COLLEGES

A2

- b. Sub Classification: NA
5. Not to be Listed before: NA
6. Similar/Pending Matter(s): a. Similar matter pending- Diary No. **19820/2021** and 20808/21.
b. No Similar matter disposed of.
7. **Criminal Matters:**
a. Whether accused/convict has surrendered: ☐es ☐No ☒NA
b. FIR No. NA Date of FIR: NA
c. Police Station: NA
d. Sentence Awarded: NA
e. Period of sentence undergone including period of Detention/Custody Undergone: NA
8. **Land Acquisition Matters:** NA
a. Date of Section 4 Notification: NA
b. Date of Section 6 Notification: NA
c. Date of Section 17 Notification: NA
9. **Tax Matters:** State the Tax Effect: NA
10. Special Category Matter (First Petitioner/Appellant Only):
☐ Senior Citizen>65 Years ☐SC/ST ☐Woman/Child ☐Disabled
☐ Legal Aid Cases ☐In Custody ☐NA
11. Vehicle Number (In Case of Motor Accident Claims Matters): NA



[SUBODH S. PATIL]

Code No. 1984,

Advocate-on-Record for the Petitioner/Appellant

Registered Clerk: Mr. Shekhar Anand

Date: 07.09.2021

SYNOPSIS

This Writ Petition is being filed with a prayer for issuance of Writ in the nature of Mandamus or any other Writ or direction thereby quashing the decision of respondents herein to introduce 27% reservation quota for Other Backward Class (OBC) and 10% quota for EWS category in the State Government Medical Institutions, being ultra-virus to Constitution of India (One Hundred and Second) Amendment Act 2018 communicated vide notice dated 29.07.2021 through respondent no.2 herein, from Academic year 2021-22.

Petitioner nos. 1 and 2 herein are students who have applied for NEET for post graduate and under graduate course in medicine respectively from unreserved.

It is submitted that the said decision of the respondents has resulted in great hardship to thousands of aspiring doctors who either want to hold a undergraduate or post graduate degree in medicine and who are from unreserved category. It is also submitted that this decision of the respondents is also in violation of Constitutional mandate and law laid down by this Court repeated in catena of Judgments.

It is further submitted that in *Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors.*, **2021 SCC OnLine SC 362**, this Court has

ruled that the 102nd Constitutional Amendment takes away the power of the State Government to identify the SEBCs. This Hon'ble Court has recorded a finding to the effect that the list to be prepared by the President is illusory as yet. There may be many years till that list is prepared. However, it is necessary that there should be a revision of the list of SEBCs. This revision of list is mandated by the Section 11 of the National Commission for the Backward Classes Act, 1993.

Thus, there is no contemporaneous data to show that the categories included in the OBCs are backwards. It is also to be noted that since 2007, i.e. after the implementation of OBC reservation in the central institutions in 2007, there was no demand to extend the same to All India Quota. There being no circumstances to compel the Government to make provisions for reservation. There is no logical reason why this has been done now.

Therefore, when there is no data showing inadequacy of representation in education in States for OBCs and when the same is not demanded by the public at large and also that it is not mandated in law, the action on the part of Government to fix 27% quota for OBCs and 10% quota for EWS category in State Government Medical Institutes is not justified. It is also pertinent to note here that there should be sufficient reasons as to why the government should deprive the meritorious students by providing reservation on the basis of

caste.

It is also submitted that by virtue of Constitution (One Hundred and Second) Amendment, OBCs have been defiled in Clause 26C of Article 366. Further Article 342A provides that a list covering SEBCs shall be prepared by the President. However, when that list is not ready, it would be wrong to provide reservation in a new area on the basis of existing list which has not been verified even as per the National Commission for Backward Classes Act 1993. Therefore, any attempt by the Government to apply reservation policy or re-introduce/extend the existing reservation scheme without complying requirement of Article 342A would ultimately result in violation of Constitutional mandate.

There is no rationale for introducing 10% quota for EWS category in State Government Medical Institutions. The quota for EWS and OBCs has been fixed only on simple arithmetic calculation without there is actual data.

However, without taking into account mandate of law, respondents have went on issuing the impugned notice thereby introducing 27% reservation to OBCs and 10% reservation to EWS and 10% quota for EWS category from the academic year 2021-22.

Therefore, the petitioners are desirous of filing present Writ Petition as their interest is severely hampered due to the action of respondents.

LIST OF DATES

1984	After the pronouncement of Judgment in the case of <i>Pradeep Jain & Ors. v. Union of India & Ors.</i> 1984 (3) SCC 654 , whereby this Hon'ble Court, in order to ensure domicile free and merit based opportunities to students purposing/intending to pursue undergraduate or post-graduate courses in Medical/Dental courses such as (MMBS/MD/MS/Diploma/BDS/MDS), the respondent government came up with a reservation policy thereby providing 15% reservation of total available seats in Undergraduate Courses and 50% reservation of total available seats in Post-Graduate Courses in medical stream. It is pertinent to note here that the said reservation did not have any quota for specific category of persons, but was purely based on merit.
1985	Thereafter, in <i>Dr. Dinesh Kumar & Ors. Vs. Motilal Nehru Medical College, Allahabad & Ors.</i> 1985 (3) SCC 22 , this Hon'ble Court explained that suppose there are 100 seats in a medical college or university and 30% of the seats

	<p>are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. Thus, 30% of 70% seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference. it is further submitted that this Hon'ble Court in the same case also observed and recorded that "that not less than 25 per cent of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All India Entrance Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled."</p>
2003	<p>It is respectfully submitted that thereafter in the case of <i>Saurabh Chaudri & Ors. Vs. Union of India & Ors.</i>, 2003 (11) SCC 146, the percentage of seats to All-India Entrance Examination was increased to 50%.</p>
2005	<p>It is further submitted that in <i>Buddhi Prakash Sharma Vs. Union of India</i>, 2005 (13) SCC 61, this Hon'ble</p>

	<p>Court, on 28.2.2005, was pleased to hold that the total number of Post Graduate seats on All India Basis would be worked out on the basis of 50% of the total number of seats without any exclusion. The Order indicated that out of 50% that are allocated are to be admitted by All India Entrance Examination and it was made clear that there shall not be any seats excluded on reservation.</p>
2006	<p>In the meanwhile the respondent Union of India introduced and got passed Constitution (Ninety-Third Amendment) Act, 2006 whereby it provided for special arrangement for special provisions for socially and educationally backward classes [OBCs in particular] of citizens or for the Scheduled Castes or the Scheduled Tribes in admissions to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. Central Educational Institutions (Reservation in Admission) Act, 2006 was also passed by the Parliament, which provided for 27% reservation to other backward classes i.e. OBCs in medical admissions. Said Amendment as well as enactment were challenged before this Hon'ble Court in Writ Petition (civil) 265 of</p>

	2006 titled as <i>Ashoka Kumar Thakur Vs. Union of India</i> .
2007	It is also submitted that this Hon'ble Court reviewed its Judgment/Order passed in the case of Buddhi Prakash Sharma in the matter of <i>Abhay Nath & Ors. Vs. University of Delhi & Ors. 2009 17 SCC 705</i> , vide Order dated 31/01/2007 , and clarified and further made it clear that the 50% of the seats to be filled up by All-India Entrance Examination shall include the reservation to be provided for SC/ST students. Thus, the reservation quota for SC and ST students came in existence by virtue of this Order/clarification. [15% for SC and 7.5% for STs].
10.04. 2008	This Court while disposing off the case of <i>Ashoka Kumar Thakur Vs. Union of India</i> , Writ Petition (Civil) 265 of 2006, 2008 (6) SCC 1 , vide its Judgment dated 10/04/2008, held that to strike the Constitutional balance, it is necessary and desirable to ear-mark certain percentage of seats out of permissible limit of 27% for socially and economically backward classes. Thus, the reservation for OBCs in Central Government aided medical institutions came to be in existence. However, the

said reservation scheme was restricted only to Central Government Medical Institutions and was not extended to State Government Medical Institutions. SC and ST reservation in the aforesaid manner continued to apply for medical undergraduate and post-graduate courses. In the same case this Hon'ble Court further held that There has to be proper identification of Other Backward Classes (OBCs.). For identifying backward classes, the Commission set up pursuant to the directions of this Court in Indra Sawhney No.1 has to work more effectively and not merely decide applications for inclusion or exclusion of castes. While determining backwardness, graduation (not technical graduation) or professional shall be the standard test yardstick for measuring backwardness. It was also held in the same case that so far as determination of backward classes is concerned, a Notification should be issued by the Union of India. This can be done only after exclusion of the creamy layer for which necessary data must be obtained by the Central Government from the State Governments and Union Territories. Such Notification is open to challenge on the ground of wrongful exclusion or inclusion. Norms must

	<p>be fixed keeping in view the peculiar features in different States and Union Territories. It was further directed that there must be periodic review as to the desirability of continuing operation of the Statute. This shall be done once in every five years.</p>
11.08.2018	<p>Subsequently by virtue of Constitution (One Hundred and Second) Amendment Act, 2018, which was notified on 11th August, 2018, under Article 366 of the Constitution Sub-Clause 26 (C) was added which reads as under-</p> <p><i>“(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;”</i></p> <p>a. That Article 342A reads as under:-</p> <p><i>"342A. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.</i></p> <p><i>(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued</i></p>

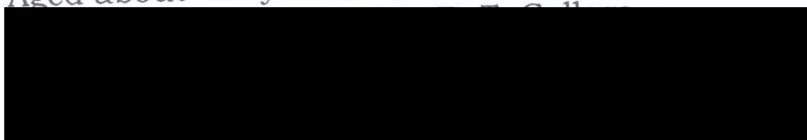
	<p><i>under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."</i></p> <p>Thus, a bare reading of these Articles and definition would clearly mean that socially and Economically Backwards Classes (hereinafter referred to as SEBC) are to be listed by the President of India and notified thereafter. However, no such exercise has been undertaken till date by the President of India. Thus, the requirement of Constitution vis-à-vis SEBC has not been complied with. Therefore, any attempt by the Government to apply reservation policy or re-introduce/extend the existing reservation scheme without complying requirement of Article 342A would ultimately result in violation of Constitutional mandate.</p>
05.05. 2021	<p>In the meantime this Hon'ble Court also passed its Judgment in the case of <i>Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors.</i>, 2021 SCC OnLine SC 362, wherein this Hon'ble Court has categorically observed that the list of SEBCs which is to be prepared by virtue of 102nd Amendment Act is illusory yet and it is</p>

	necessary that there should be a revision of the list of SEBCs. This revision of list is also mandated by the section 11 of the National Commission for the Backward Classes Act, 1993 (hereinafter referred to as NCBC Act).
29.07.2021	it is submitted that without complying with the provisions of law and Judgments passed by this Hon'ble Court, the respondents herein sought to introduce 27% reservation for OBCs in the All India Quota in State Government Institutions. The Respondent No.2 has also issued a notice dated 29.07.2021 to this effect so also respondent no.1 has issued a press release dated 29.07.2021 thereby reiterating the contents of notice issued by respondent no.2 whereby 27% reservation for OBCs and 10% for EWS was introduced in the AIQ in State Government Medical Institutions.
07.09.2021	Hence the present Writ Petition.

IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL JURISDICTION
WRIT PETITION (CIVIL) No.OF 2021
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. Dr. Apurv Satish Gupta,
 Aged about- 25 years, R/o C/o



2. Sooryanshu Prashant Mulawkar,
 Aged - 18 years, R/o Near Tirthankar Hospital,



....Petitioners

VERSUS

1. Union of India
 Through- its Secretary,
 Ministry of Health and Family Welfare,
 'A' Wing, Nirman Bhavan, New Delhi-110001.
 Phone No. 011-23061863, 23063221.
 Email: secyhw@nic.in

...Respondent No.1

2. Director General of Health Services,
 Ministry of Health and Family Welfare,
 Room No. 446-A, 'A' Wing,
 Nirman Bhavan, New Delhi-110001.
 Phone No. 011- 23061063 23061438 (Extn. 2681)
 Email: dghs@nic.in

...Respondent No.2

3. National Medical Council,
 Thorough- it's President,
 Post-Graduate Medical Education Board,
 Pocket- 14, Sector - 8, Dwarka Phase -1
 New Delhi-110077.
 Phone No. 011-25367033, 25367035, 25367036, 25367037.
 Email: president.marb@nmc.org.in,
 marb@nmc.org.in, pg@nmc.org.in.

...Respondent no. 3

4. National Commission for Backward Classes,
Through its Chairperson,
Trikoort - 1, Bhikaji Cama Place, R.K. Puram,
New Delhi, Delhi 110066
Phone: 011-26189210, 26183152,
Email: bhagwanlal.s@ncbc.nic.in

...Respondent no. 4

ALL ARE CONTESTING RESPONDENTS.

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT TO THEREBY QUASHING AND SETTING ASIDE THE COMMUNICATION DATED 29.07.2021 ISSUED BY RESPONDENTS THROUGH RESPONDENT NO. 2.

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SUBMITTED:

1. This Writ Petition is being filed with a prayer for issuance of Writ in the nature of Mandamus or any other Writ or direction thereby quashing the decision of respondents herein to introduce 27% reservation quota for Other Backward Class (OBC) in the State Government Medical Institutions, being ultra-virus to Constitution of India (One Hundred and Second) Amendment Act 2018 communicated vide notice dated 29.07.2021 through respondent no.2 herein from Academic year 2021-22.

1A. The Petitioners are Medical Practitioners/student. The impugned decision of the respondents has resulted in serious violation of fundamental rights as contemplated under Article 14 and Article 21 of the Constitution of India, of petitioners herein, who are seeking admission to Undergraduate/Postgraduate courses in Medical stream under All India Quota. True copy of Government Photo ID of petitioner no.1 dated NIL is annexed herewith as **Annexure P-1** (Pg.) and true copy of Government Photo ID of petitioner no.2 dated NIL is annexed herewith as **Annexure P-2** (Pg.). True copy of admit card dated NIL of petitioner no.1 for NEET PG Test 2021 is annexed herewith as **Annexure P-3** (Pg.) and true copy of admit card of petitioner no.2 dated NIL for NEET- UG Test for 2021 is annexed herewith as **Annexure P-4**. (Pg.).

1B. That the Respondent No. 1 is the Union of India, represented by the Secretary, Ministry of Health and Family Welfare, which is the Ministry responsible for the formulation of national policies and programs vis-à-vis admission to medical institution in the Country including reservation schemes.

1C. That the Respondent Nos. 2 is the Directorate of Medical Education which is the authority who has issued instant notice

which is subject matter of present proceedings under the instructions of respondent no.1 herein.

1D. That respondent no.3 is the Medical Council which the Apex body of Medical Practitioners and has been entrusted with the task of maintaining record and issuing practice license to the medical professional in the Country.

1E. That Respondent No.4 is the National Commission for Backward Classes, an agency entrusted with the task of creating and maintaining national data for backward classes.

1F. That due to the act of respondents herein interest of the petitioners in seats under All India Quota for medical students in Medical Institutions controlled by State Government and his right to be considered for the same on the basis of pure merit has been violated. The action of respondents herein violates Fundamental Rights of the petitioners as guaranteed under Article 14 i.e. right of equality and Article 21 i.e. right to life and personal liberty (without following due process of law) of the Constitution.

2. FACTS OF THE CASE:

a. That after the pronouncement of Judgment in the case of *Pradeep Jain & Ors. v. Union of India & Ors.* **1984 (3) SCC 654**, whereby this Hon'ble Court, in order to ensure domicile free and

merit based opportunities to students purposing/intending to pursue undergraduate or post-graduate courses in Medical/Dental courses such as (MMBS/MD/MS/Diploma/BDS/MDS), the respondent government came up with a reservation policy thereby providing 15% reservation of total available seats in Undergraduate Courses and 50% reservation of total available seats in Post-Graduate Courses in medical stream. It is pertinent to note here that the said reservation did not have any quota for specific category of persons, but was purely based on merit.

- b. That thereafter in *Dr. Dinesh Kumar & Ors. Vs. Motilal Nehru Medical College, Allahabad & Ors.* **1985 (3) SCC 22**, this Hon'ble Court explained that suppose there are 100 seats in a medical college or university and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. Thus, 30% of 70% seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference.
- c. That it is further submitted that this Hon'ble Court in the same case also observed and recorded that "that not less than 25 per cent of the total number of seats without taking into account any

reservations, shall be made available for being filled on the basis of All India Entrance Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled."

- d. That it is respectfully submitted that thereafter in the case of *Saurabh Chaudri & Ors. Vs. Union of India & Ors.*, **2003 (11) SCC 146**, the percentage of seats to All-India Entrance Examination was increased to 50%.
- e. That it is further submitted that in *Buddhi Prakash Sharma Vs. Union of India*, **2005 (13) SCC 61**, this Hon'ble Court, on 28.2.2005, was pleased to hold that the total number of Post Graduate seats on All India Basis would be worked out on the basis of 50% of the total number of seats without any exclusion. The Order indicated that out of 50% that are allocated are to be admitted by All India Entrance Examination and it was made clear that there shall not be any seats excluded on reservation.
- f. That in the meanwhile the respondent Union of India introduced and got passed Constitution (Ninety-Third Amendment) Act, 2006 whereby it provided for special arrangement for special provisions for socially and educationally backward classes [OBCs in particular] of citizens or for the Scheduled Castes or the

Scheduled Tribes in admissions to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. Central Educational Institutions (Reservation in Admission) Act, 2006 was also passed by the Parliament, which provided for 27% reservation to other backward classes i.e. OBCs in medical admissions. Said Amendment as well as enactment were challenged before this Hon'ble Court in **Writ Petition (civil) 265 of 2006** titled as *Ashoka Kumar Thakur Vs. Union of India*.

g. That it is also submitted that this Hon'ble Court reviewed its Judgment/Order passed in the case of *Buddhi Prakash Sharma* in the matter of *Abhay Nath & Ors. Vs. University of Delhi & Ors.* 2009 17 SCC 705, **vide Order dated 31/01/2007**, and clarified and further made it clear that the 50% of the seats to be filled up by All-India Entrance Examination shall include the reservation to be provided for SC/ST students. Thus, the reservation quota for SC and ST students came in existence by virtue of this Order/clarification. [15% for SC and 7.5% for STs].

h. That this Court while disposing off the case of *Ashoka Kumar Thakur Vs. Union of India*, **Writ Petition (Civil) 265 of 2006**, **2008 (6) SCC 1**, vide its Judgment dated 10/04/2008, held that to strike the Constitutional balance, it is necessary and desirable

to ear-mark certain percentage of seats out of permissible limit of 27% for socially and economically backward classes. Thus, the reservation for OBCs in Central Government aided medical institutions came to be in existence. However, the said reservation scheme was restricted only to Central Government Medical Institutions and was not extended to State Government Medical Institutions. SC and ST reservation in the aforesaid manner continued to apply for medical undergraduate and post-graduate courses. In the same case this Hon'ble Court further held that There has to be proper identification of Other Backward Classes (OBCs.). For identifying backward classes, the Commission set up pursuant to the directions of this Court in Indra Sawhney No.1 has to work more effectively and not merely decide applications for inclusion or exclusion of castes. While determining backwardness, graduation (not technical graduation) or professional shall be the standard test yardstick for measuring backwardness. It was also held in the same case that so far as determination of backward classes is concerned, a Notification should be issued by the Union of India. This can be done only after exclusion of the creamy layer for which necessary data must be obtained by the Central Government from the State Governments and Union Territories. Such Notification is open to challenge on the ground of wrongful exclusion or inclusion.

Norms must be fixed keeping in view the peculiar features in different States and Union Territories. It was further directed that there must be periodic review as to the desirability of continuing operation of the Statute. This shall be done once in every 5 years.

- i. That subsequently by virtue of Constitution (One Hundred and Second) Amendment Act, 2018, which was notified on 11th August, 2018, under Article 366 of the Constitution Sub-Clause

26 (C) was added which reads as under-

"(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;"

That Article 342A reads as under:-

"342A. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

Thus, a bare reading of these Articles and definition would clearly mean that socially and Economically Backwards Classes (hereinafter referred to as SEBC) are to be listed by the President of India and notified thereafter. However, no such exercise has been undertaken till date by the President of India. Thus, the requirement of Constitution vis-à-vis SEBC has not been complied with. Therefore, any attempt by the Government to apply reservation policy or re-introduce/extend the existing reservation scheme without complying requirement of Article 342A would ultimately result in violation of Constitutional mandate.

- j. That in the meantime this Hon'ble Court also passed its Judgment in the case of *Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors.*, **2021 SCC OnLine SC 362**, wherein this Hon'ble Court has categorically observed that the list of SEBCs which is to be prepared by virtue of 102nd Amendment Act is illusory yet and it is necessary that there should be a revision of the list of SEBCs. This revision of list is also mandated by the section 11 of the National Commission for the Backward Classes Act, 1993 (hereinafter referred to as NCBC Act).

k. That therefore in view of the Order passed by this Hon'ble Court in the case of *Sharwan Kumar vs. Director General of Health Services & Anr.*, **Writ Petition (C) No.443 of 1993** (and connected matters), dated 30.04.1993 passed in wherein it was directed that in case of any difficulty felt by the Director General of Health Services or any other person including the State Authorities or universities in the implementation of the All India Quota Scheme, they can approach this Court, the petitioners are desirous of filing the instant Writ Petition.

1. That without complying with the provisions of law and Judgments passed by this Hon'ble Court, the respondents herein sought to introduce 27% reservation for OBCs in the All India Quota in State Government Institutions, as well as 10% for the EWS. The Respondent No.2 has also issued a notice dated 29.07.2021 to this effect so also respondent no.1 has issued a press release dated 29.07.2021 thereby reiterating the contents of notice issued by respondent no.2 whereby 27% reservation for OBCs and 10% for EWS category was introduced in the AIQ in State Government Medical Institutions. True copy of notice dated 29.07.2021 issued by respondent no.2 herein is annexed herewith as **Annexure P-5**. (Pg.)

m. That it is further submitted that the respondent Union of India further communicated that it has sought opinion of this Hon'ble Court in the matter and thus the issue involved in this petition is pending before this Hon'ble Court.

3. QUESTIONS OF LAW:

A. Whether or not the act of respondents to introduce 27% quota for Other Backward Class in All India Quota and 10% quota for EWS for the academic year 2021-22 for Medical seats in State Government Medical Institutions without following the Constitutional Mandate pursuant to Constitution (One Hundred and Second) Amendment Act, 2018 and the law declared by this Hon'ble Court in number of Judgments including in the case of ***Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors.***, 2021 SCC OnLine SC 362?

B. Whether or not the action of the respondents to introduce 27% reservation for OBCs and 10% to EWS category in All India Quota in State Government Medical Institutions violates Section 11 of the National Commission for the Backward Classes Act, 1993?

4. GROUNDS:

A) Because there is no contemporaneous data to show that the categories included in the OBCs are backwards. The list compiled

by the Central Government for the implementation of the 'Mandal Commission Report' was an inadequate exercise. Further, it is also submitted that the Mandal Commission Report was rejected by the Supreme Court in the case of *Indra Sawhney Vs. Union of India* **1992 Supp (3) SCC 217**.

- B) Because even after the implementation of OBC reservation in the central institutions in 2007, there was no demand to extend the same to All India Quota There being no circumstances to compel the Government to make provisions for reservation.. There is no logical reason why this has been done now.
- C) Because there's no data regarding the inadequacy of representation in education of OBCs. It is also not demanded by the public at large. Though it is not necessary in law, there should be sufficient reasons as to why the government should deprive the meritorious students by providing reservation on the basis of caste. It is further to say that the 27% and 10% quota for OBCs and EWS respectively, was fixed on the simple arithmetical calculation as to what percentage could be given to the Other Backward Classes.
- D) Because the OBCs are to be found in the Central list. Recently, by the 102nd Amendment to the Constitution, OBCs has been

provided definition the constitution at Clause 26C of Article 366, which says that those classes which are identified by the list to be issued by the President. So the definition of SEBCs is those classes which will be identified by the President under article 342A. When that list is not ready, it would be wrong to provide reservation in a new area on the basis of existing list which has not been verified even as per the National Commission for Backward Classes Act 1993.

- E) Because the Act mandated that there shall be a survey of the SEBCs every 10 years, to rule out over or under inclusion of castes. This exercise has not been undertaken by the Government. Thus, the identification of OBCs by the Government is on the basis of the conclusions of the Mandal Commission. The report of Mandal was based on the census undertaken in 1931. Today (in 2021), the census of 1931 has lost all relevance.
- F) Because the exercise of identification of SEBCs, as per the scheme of Article 342A, is not yet undertaken by the Government. In such circumstances, in absence of any contemporaneous data, the identification of OBCs being in question, the allotment of 27% seats to the existing OBCs and 10% for EWS will be not only detrimental to the interest of the open category but that also adds to the general policy of

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reservation of the Government, where the Government has introduced EWS reservation. EWS reservation was not allowed by the Supreme Court in the case of **Indra Sawhney** (Supra). The Government Order taken out by the then Government of India was declared invalid in view of prevailing Constitutional norms. However, now that the Constitution has been amended vide the 103rd constitutional amendment, EWS has been introduced and this Court has opined (though it was only an oral remark), along with many intellectuals, political party leaders that reservation should be on the basis of economic status of a person and not by caste, the wisdom that caste should be a basis for identification of backwardness of a person or class, has to be ruled out in the current context. In the context of the changed circumstances three decades after **Indra Sawhney's** case, caste distinctions have blurred. So many social reforms including globalization have happened. We stand at a turn in time when so much migration away from villages and to other states has necessitated eradication of caste and it has lost all relevance except for politics and reservation.

G) Because in circumstances as described hereinabove, it would be hazardous to introduce reservation and to perpetuate the troublesome and perilous legacy of reservation. Introduction of

OBC reservation seven decades after the first Amendment and introduction of reservation in education is not only unnecessary but a regressive step in which the Courts should intervene to rule out.

- H) Because in the case of *Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors.*, **2021 SCC OnLine SC 362**, this Court has ruled that the 102nd Constitutional Amendment takes away the power of the State Government to identify the SEBCs. This Hon'ble Court has recorded a finding to the effect that the list to be prepared by the President is illusory as yet. There may be many years till that list is prepared. However, it is necessary that there should be a revision of the list of SEBCs. This revision of list is mandated by the section 11 of the National Commission for the Backward Classes Act, 1993.
- I) Because as per the report of the Justice Rohini Commission there is further review to be done of the reservation for SEBCs for the sake of sub-categorization. The current list of OBCs is incomplete and not up to date and in all circumstances that should not be used for extending further reservations to medical Courses where it was not applicable in the past. Thus, the categories which could be included in the list of backward

category after the review/preparation of fresh list as mandated by law would also be deprived of the benefit of reservation.

- J) Because it is also important to note that there are demands for inclusion of certain castes in the OBC list which are pending adjudication. Those adjudications will take place in their due course of time. However, at present, certain dominant castes in their respective regions have been denied OBC reservation. In this context of the matter, it is necessary to carry out an extensive survey of SEBC and to rule out over-inclusion or under-inclusion of castes in the lists. One such attempt was made in 2011 by the so called Socio-Economic Caste Census (SECC) undertaken by the then Government, the report of which was not made public in view of the discrepancies found in the said census.
- K) Because in the facts and circumstances as enumerated hereinabove, it would be unwise, impractical and illegal to implement the current OBC reservation and to include the All India Quota seats in the ambit of reservations for the castes as are existing in the list without sub-categorization.
- L) Because the action of respondents herein to introduce 27% quota for OBCs and 10% quota for EWS in the State Government

Medical Institutions, that too without following the Constitutional norms, directly affects the rights of thousands of students belonging to un-reserved/meritorious candidates seeking admission under AIQ in State Government Medical Institutions.

M) Because the impugned act of respondents is completely contrary to the law laid down by this Hon'ble Court in various Judgments as mentioned hereinabove.

5. The Petitioners submit that they have not filed any other Petition on the same subject matter or seeking similar reliefs either in this Hon'ble Court or any High Courts except this present Petition.
6. That the petitioners submit that this Hon'ble Court has jurisdiction to decide on the issues those are subject matter of this Petition.
7. That the Petitioners are not involved in any civil/ criminal or revenue litigation which could have any legal nexus with the issues involved in the present Writ Petition.
8. That the Petitioners herein could not approach the Respondents herein due to lack of time and considering the urgency involved in the present case there is no other efficacious remedy available to

them except to approach this Hon'ble Court by way of filing present Writ Petition.

9. The Petitioners crave leave to add, alter or modify any of the above submissions and produce any additional documents.


PRAYER

In view of the foregoing facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to allow this PIL Writ Petition and further be pleased to:

- i) Issue Writ of Mandamus or any other Writ or direction thereby declaring the action of Respondent to introduce 27% quota for OBCs and 10% quota for EWS in 15% UG quota and 50% PG in All India Medical seats in State Government Medical Institutions for academic year 2021-22 is unjust, unfair and contrary to public policy and hence Unconstitutional/illegal; and
- ii) Issue Writ of Mandamus or any other Writ or direction thereby quashing and setting aside notice dated 29.07.2021 issued by respondent no.2 herein and the press release issued by respondent no.1; and

- iii) Grant Ad-interim ex-parte stay on the operation of notice dated 29.07.2021 issued by respondent no.2 till the disposal of this case; and
- iv) Pass such other orders and further orders as may be necessary on the facts and in the circumstances of the case and in the interest of justice.

Drawn and filed by:


[MR. SUBODH S. PATIL]
Advocate for the Petitioner.

Draw on: 04.09.2021.
Filed on: 07.09.2021.

IN THE SUPREME COURT OF INDIA**(ORIGINAL CIVIL JURISDICTION)****WRIT PETITION (Civil) No. of 2021****In the matter of :**

Dr. Apurv Satish Gupta and Anr.

..Petitioners

Versus

Union of India &Ors.

..Respondents

CERTIFICATE

It is further certified that the copies of the Annexure attached to the Writ Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Writ Petition for consideration of this Hon'ble Court. The Annexure filed along with the Writ Petition are true copies of their respective originals. This Certificate is given on the basis of the instructions given by the petitioner whose affidavit is filed in support of the Writ Petition.

New Delhi
Date: 06.09.2021


[SUBODH S. PATIL]
ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

WRIT PETITION (C.) No..... OF 2021

IN THE MATTER OF :Apurv Satish Gupta and ~~Ans~~

Petitioner(s)

Versus

Union of India and Ors.

.....Respondent(s)

AFFIDAVIT

I, Apurv Satish Gupta, Aged 25 years, occ. Medical Professional/Student,

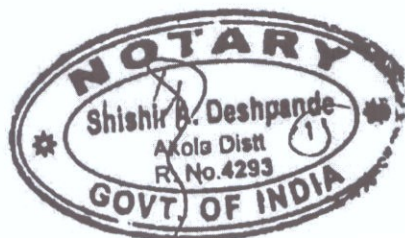
do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner in the present case and being fully conversant with the facts of the case & I am competent to swear present affidavit. I am authorized to swear present affidavit by petitioner No. 2 in the present case and thus I am authorized on his behalf.
2. That the contents of the accompanying Special Leave Petition, List of Dates, facts and Grounds are true and correct to the best of my knowledge and belief. Nothing material is concealed therefrom.
3. That the annexures are true copies of their respective originals.
4. That the Writ Petition has been drawn on 04.09.2021 and was filed on 07.09.2021. The Writ Petition has para from 1 to 9 and Synopsis and List of Dates are at pages B to 1 pages from 1 to 32.

DEPONENT

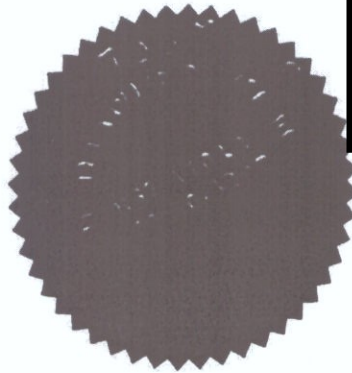
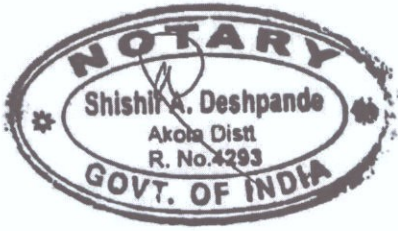
VERIFICATION:

Verified at [REDACTED] on this the 2nd day of August, 2021 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.



DEPONENT

[Signature]
ATTESTED
 Before Me

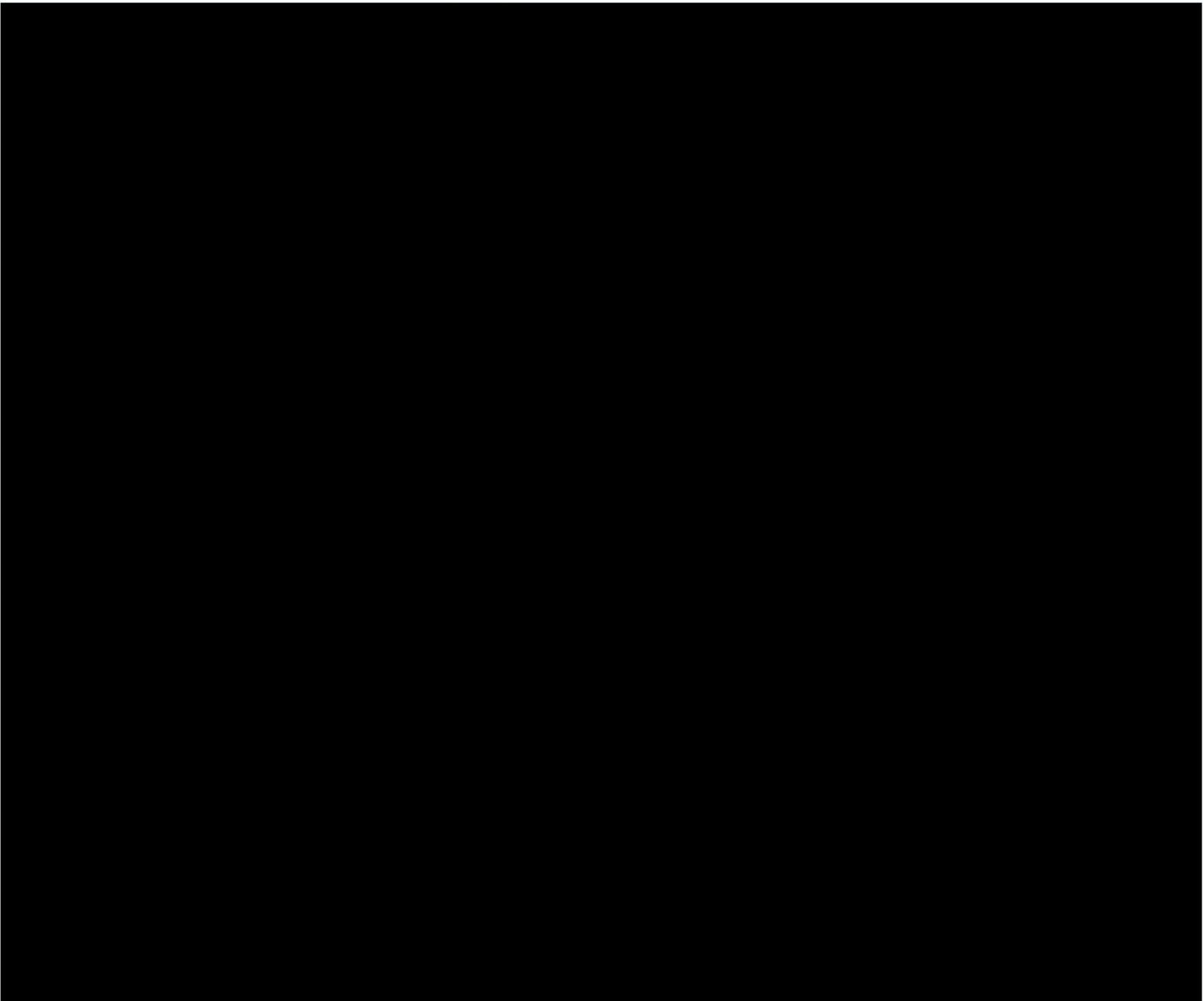


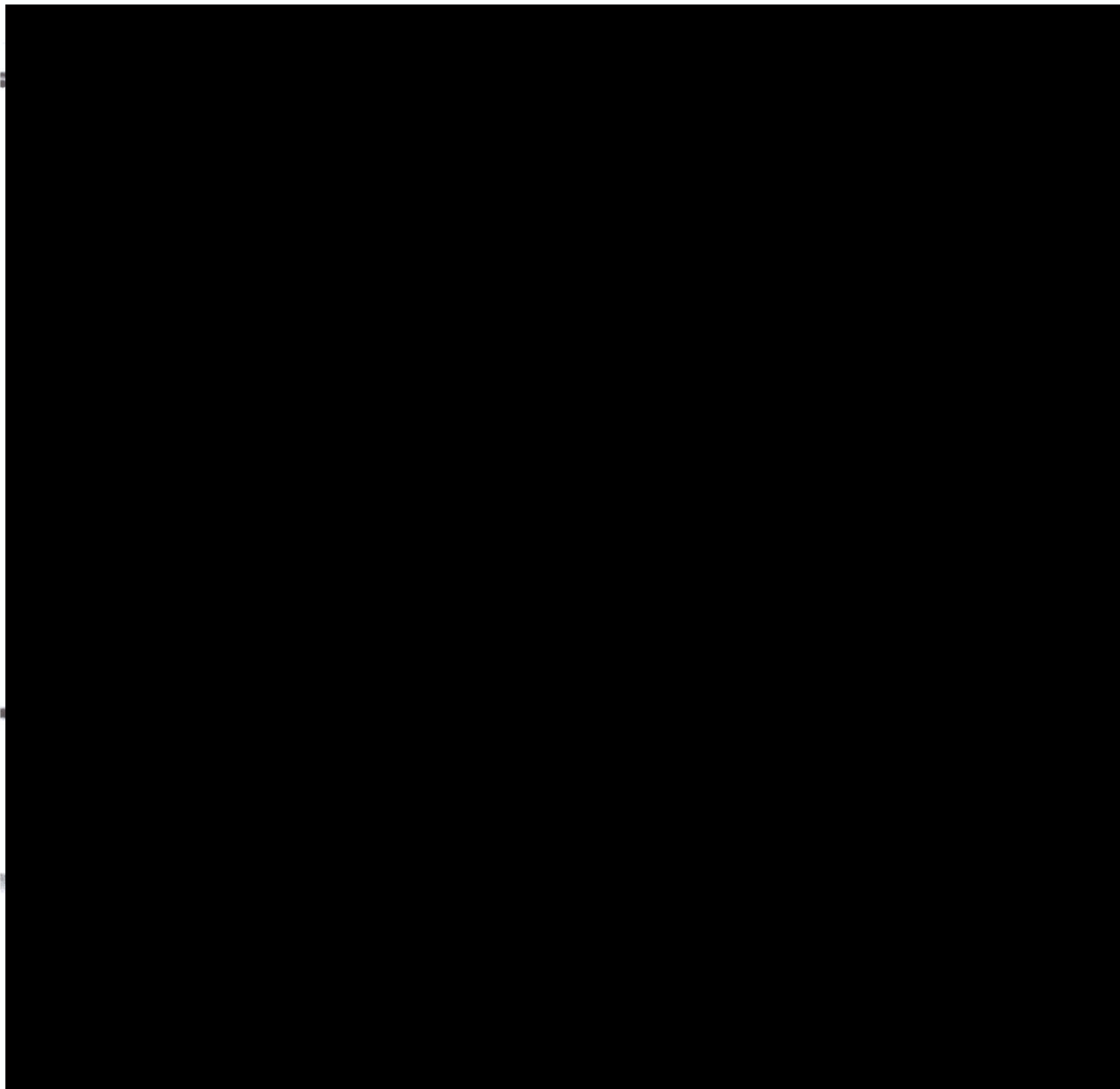
Certified that this document /
Affidavit contains Pages
From 1 to One Page

Shishir A. Deshpande
Shishir A. Deshpande
NOTARY
GOVT. OF INDIA
Opp. Civil Court,
AKOLA (Mah.)
Mob. 9823091377



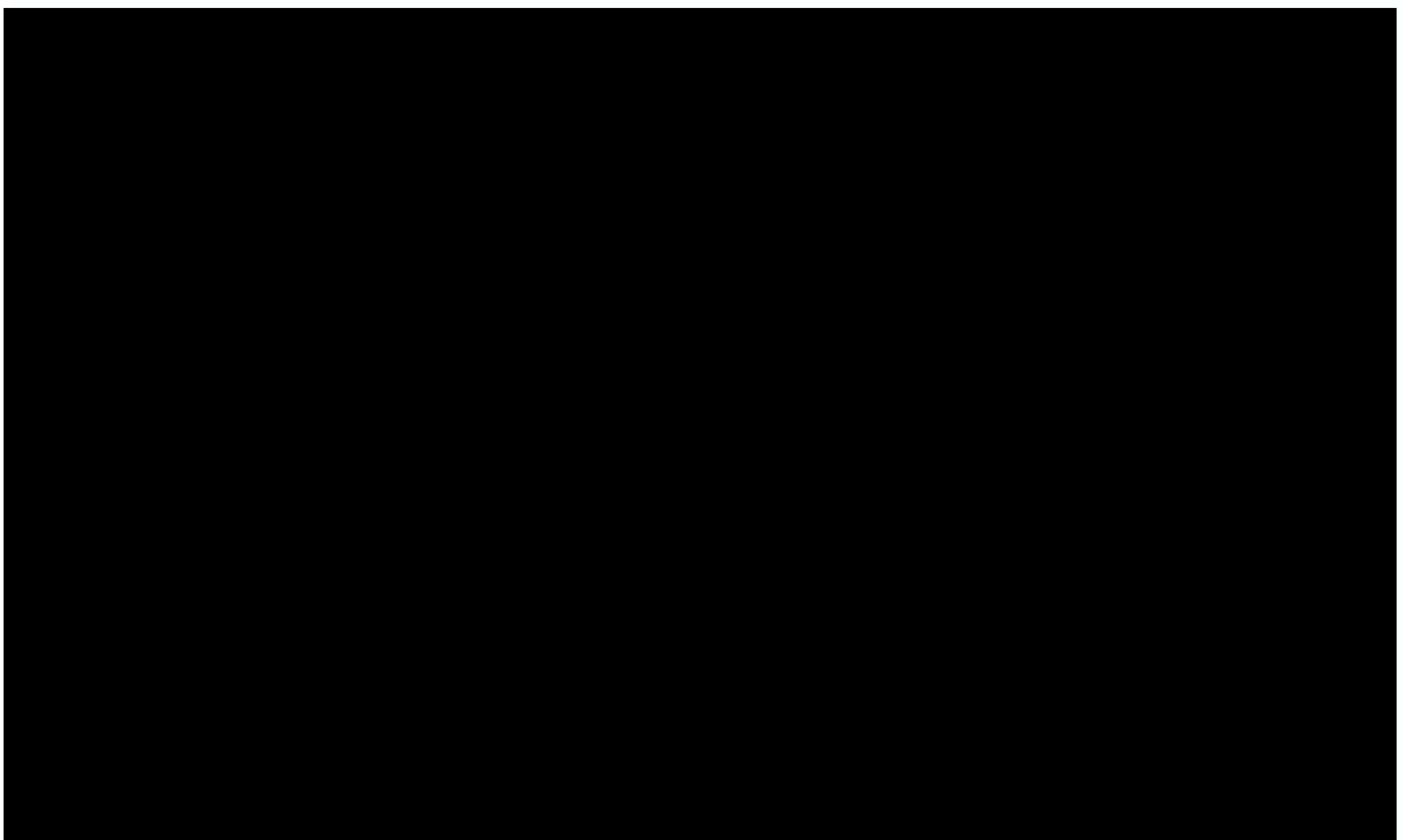
ANNEXURE P-1





ANNEXURE P-2

ANNEXURE P-2



[The page contains a large, faint, and mostly illegible watermark or bleed-through from the reverse side. The text is mirrored and appears to be a formal document, possibly a letter or a report, but the specific words and structure are not discernible.]

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The second part of the paper describes the methodology used in the study, including the data collection and analysis techniques. The third part of the paper presents the results of the study, and the fourth part discusses the conclusions and implications of the findings.

The study was conducted using a quantitative research design. Data was collected from a sample of 100 participants, and the results were analyzed using statistical software. The findings of the study indicate that there is a significant relationship between the variables being studied.

The results of the study suggest that the research has important implications for the field. Further research is needed to explore the relationship between the variables in more detail.

In conclusion, the study has provided valuable insights into the topic and has contributed to the existing body of knowledge. The findings have important implications for the field and suggest that further research is needed.

ANNEXURE P-5

Office of Medical Counselling
Committee,
Email: adgme@nic.in

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF
HEALTH SERVICES MINISTRY
OF HEALTH & FAMILY
WELFARE NIRMAN BHAWAN,
NEW DELHI-110108

Ref.U-12021/06/2021-MEC

Dated: 29-07-2021

NOTICE**URGENT ATTENTION CANDIDATES OF NEET-UG AND NEET-PG:**

It has been decided by the Government of India to implement 27% OBC reservation (Non-Creamy Layer) and 10% EWS reservation in 15% UG and 50% PG All India Quota seats (MBBS/BDS and MD/MS/MDS) (Contributed by the State/UTs). This reservation will take effect from the current Academic session 2021-22.

Consequently, the overall reservation in 15% UG and 50% PG All India Quota seats would be as follows:

- S.C.- 15%—
- S.T.- 7.5%—
- O.B.C.- (Non-Creamy Layer) as per the Central OBC list- 27%—
- EWS- as per Central Government norms- 10%—
- PwD- 5% Horizontal Reservation as per NMC norms—

The eligible Candidates are advised to take note of the above.

Ministry of Health and Family Welfare

**Landmark decision taken by
Government of India in Medical
Education**

**27% reservation for OBCs and 10%
reservation for Economically Weaker
Section (EWS) in All India Quota (AIQ)
Scheme for undergraduate and
postgraduate medical / dental courses
(MBBS / MD / MS / Diploma / BDS /
MDS) from current academic year
2021-22 onwards**

**Nearly 5,550 students will be
benefitted
Government is committed to providing
due reservation both to Backward
Category and EWS Category**

Posted On: 29 JUL 2021 2:48PM by PIB Delhi

Under the visionary guidance of the Prime Minister Shri Narendra Modi, Ministry of Health and Family Welfare has taken a historic and a landmark decision for providing 27% reservation for OBCs and 10% reservation for Economically Weaker Section (EWS) in the All India Quota (AIQ) Scheme for undergraduate and postgraduate medical / dental courses (MBBS / MD / MS / Diploma / BDS / MDS) from the current academic year 2021-22 onwards.

Hon'ble Prime Minister in a meeting held on 26th July (Monday), 2021

had directed the concerned Union Ministries to facilitate an effective solution to this long pending issue.

This decision would benefit every year nearly 1500 OBC students in MBBS and 2500 OBC students in post graduation and also around 550 EWS students in MBBS and around 1000 EWS students in post graduation.

The All India Quota (AIQ) Scheme was introduced in 1986 under the directions of the Hon'ble Supreme Court 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. All India Quota 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, the Hon'ble Supreme Court introduced reservation of 15% for SCs and 7.5% for STs in the AIQ Scheme. When the Central Educational Institutions (Reservation in Admission) Act became effective in 2007 providing for uniform 27% reservation to OBCs, the same was implemented in all the Central Educational Institutions viz. Safdarjung Hospital, Lady Harding Medical College, Aligarh Muslim University and Banaras Hindu University etc. However, this was not extended to the AIQ seats of State medical and dental colleges.

The present Government is committed to providing due reservation both to the backward category as well as the EWS category. The Union Government has now taken a historic decision to provide for 27% reservation for OBCs and 10% reservation for EWS in the AIQ Scheme. The OBC students from across the country shall now be able to take benefit of this reservation in AIQ Scheme to compete for seats in any State. Being a Central Scheme, the Central List of OBCs shall be used

for this reservation. Around 1500 OBC students in MBBS and 2500 in post graduation will be benefitted through this reservation.

In order to provide benefit to students belonging to EWS category in admission to higher educational Institutions, a Constitutional amendment was made in 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 reduce. In the AIQ seats, however, this benefit had not been extended so far.

Therefore, along with the 27% reservation for OBCs, 10% reservation for EWS is also being extended in AIQ seats for all the undergraduate / postgraduate medical/dental courses from the current academic year 2021-22. This will benefit every year around more than 550 EWS students for MBBS and around 1000 EWS students for PG medical courses.

The above decision is the reflection of the Government's commitment to provide due reservation for backward and EWS category students.

This decision is also in sync with the significant reforms carried out in the field of medical education since 2014. During 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. During the same period, 179 new medical colleges have been established and now the country has 558 (Govt: 289, Pvt: 269) medical colleges.

MVHFW/Med Edu- PG UG quota/29th July 2021/5
(Release ID: 1740268) Visitor Counter : 45590

Atul
True copy

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

Apurv Satish Gupta and Anr.

...Petitioner(s)

Versus

The Union of India and Ors.

....Respondent(s)

I/We Undersigned, Petitioner(s) in the above Petition, do hereby appoint

MR. SUBODH S. PATIL, Advocate

and retain to act and appeal for me/us in the above Suit/Appeal/Reference and on my/our behalf to conduct and prosecute or (defend) the same and all Proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review to file and obtain return of documents and to deposit and receive money or my/our behalf in the said Suit/Caveat/Appeal/Petition/Reference and in applications of Review and to represent me/us and to take all necessary steps on my behalf in the above matter. I/we agree to ratify all acts done by the aforesaid advocate in pursuance of this authority.

Dated on this.....21st day.....day of...Aug 2021.....

Accepted, Identified, Satisfied/Certified:


SUBODH S. PATIL
Advocate-on-Record


MEMO OF APPEARANCE

To,

The Registrar
Supreme Court of India,

Sir,

Please enter my appearance on behalf of the Petitioner (s) Appellant (s) Respondent (s) in the above mentioned matter.


SUBODH S. PATIL,
ADVOCATE,
SUPREME COURT OF INDIA,
NEW DELHI.

Dated...07/09/2021

The address for service of the said advocate is:-
O-1/A, Basement,
Jangpura Extension,
New Delhi-110014

CODE NO: 1984.