

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION WRIT  
PETITION (CIVIL) NO. 961 OF 2021 AND  
WRIT PETITION (CIVIL) NO. 967 OF 2021**

**I. IN THE MATTER OF**

**Writ Petition (Civil) No. 961 of 2021**

Dr. Neil Aurelio Nunes & Ors. ...Petitioners

Versus

Union of India & Ors. ...Respondents

**II. IN THE MATTER OF**

**Writ Petition (Civil) No. 967 of 2021**

Dr.Yash Tekwani & Ors. ...Petitioners

Versus

Union of India & Ors. ...Respondents

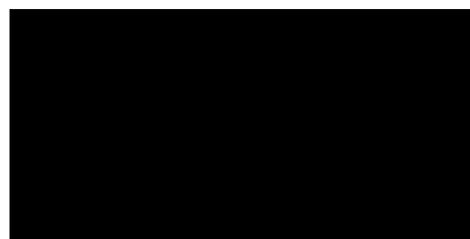
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Date: 06.10.2021

Place: New Delhi

  
**(Dr. CHARU MATHUR)**  
Advocate for the Petitioners



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**WRITTEN SUBMISSION**

**PAPER BOOK**

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**ADVOCATE FOR THE PETITIONERS: CHARU MATHUR**

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**WRITTEN SYNOPSIS OF ARGUMENTS FILED ON**  
**BEHALF OF THE PETITIONERS BY ARVIND P. DATAR,**  
**Sr. ADVOCATE**

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioners in the matter *Dr. Neil Aurelio Nunes & Ors. vs. Union of India & Ors. [Writ Petition (Civil) No. 961 of 2021]* have challenged the amended reservation policy as provided in the notice dated 29.07.2021 (“**Impugned Notice**”) which *inter alia* provides for implementation of 27% OBC reservation and 10% EWS reservation in 15% UG and 50% PG All India Quota seats (MBBS/BDS and

MD/MS/MDS) with effect from the current academic session 2021-22 (“**Impugned policy**”). The Petitioners have further raised a challenge to the One Hundred and Third Amendment) Act, 2019. The Petitioners have also challenged the income limit of Rs. Eight lac per annum for the EWS category.

2. That the Petitioners in the matter *Dr. Yash Tekwani & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 967 of 2021]* have raised a challenge regarding the application of the amended reservation policy for academic year 2021-22.

**Brief Facts :**

1. The registration process for NEET-PG 2021-22 commenced on 23-02-2021 and the registration window closed on 15-03-2021.
2. NEET-PG 2021 was scheduled to be conducted on 18.04.2021. However, pursuant to the directions of the Ministry of Health and Family Welfare (MoHFW), Govt. of India *vide* its letter no. V.11025/215/2020-MEP (FTS8079808) dated 15.04.2021, the exam was postponed till further notice.
3. It is most humbly submitted that the Hon’ble Prime Minister of India, in an official statement made on 03.05.2021, *inter alia* stated the following:
  - a. NEET-PG exam is to be postponed for at least 4 months;
  - b. Medical personnel completing 100 days of COVID-

19 duties will be given priority in forthcoming regular Government recruitments;

- c. Medical interns to be deployed in COVID-19 Management duties under the supervision of their faculty;
  - d. Final Year MBBS students can be utilized for tele-consultation and monitoring of mild COVID-19 cases under supervision of Faculty;
  - e. B.Sc/GNM qualified nurses to be utilized in full-time COVID-19 nursing duties under the supervision of Senior Doctors and Nurses.
  - f. Medical personnel completing 100 days of COVID-19 duties will be given Prime Minister's distinguished Covid National Service Samman.
4. That vide notice dated 13.07.2021 issued by the Respondent No. 1, NEET-PG 2021 was decided to be conducted on 11.09.2021. It was informed *vide* the said notice that a total of 175063 applications have been registered for NEET-PG 2021.
5. That on 29.07.2021, the impugned notice providing for 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) with effect from the current academic session 2021-22, was issued.
- I. 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.**

1.1 The following Constitution Bench decisions held that reservation cannot cross 50%.

- a. *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649
- b. *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217
- c. *M. Nagaraj v. Union of India &Ors.*, (2006) 8 SCC 212
- d. *K. Krishna Murthy v. Union of India*, (2010) 7 SCC 202 at para 67
- e. *Chebrolu Leela Prasad Rao v. State of A.P.*, 2020 SCC OnLine SC 383 at paras 134, 137, 141 and 154
- f. *Dr.Jaishri Laxmanrao Patil &ors. v. The Chief Minister &Ors.*, Civil Appeal No. 3123 of 2020, (Maratha reservation case).

1.2 According to Mandal Commission, approximately 48% of the population of India consists of forward caste/open category. The 103rd Amendment seeks to make special provision for these castes, which is popularly known as “open category/forward community” (OC/FC). Under Article 15(6), a special provision has to be made for EWS section of OC/FC that will require a primary legislation after careful deliberation in Parliament. Such an important provision cannot be done by a press release/office memorandum. In the case of *Indra Sawhney*, the office memorandum was based on the Mandal Commission report, which in turn was based on Kaka Kalelkar Committee. In the present case, there is no such study for determining the class of citizens who will only be eligible for the benefit of EWS. This is

without prejudice to the contention that the 50% limit ought not to be crossed.

## **II. The income limit of Rs.8 lakhs per annum is manifestly arbitrary.**

- 2.1. The annual income limit of Rs. 8 Lakhs per annum for EWS category is manifestly arbitrary and unconstitutional [*Shayara Bano v. Union of India* (2017) 9 SCC 1, 99]. It is submitted that the decision to include people with income limit of Rs.8 Lakhs per annum is done without any basis, whatsoever. There is no standard or basis of what constitutes “economic weakness”.
- 2.2. The figure adopted for determining creamy layer of BC/OBC/MBC cannot be applied mechanically for determining persons who are in the EWS category.
- 2.3. The Notice dated 29.07.2021 issued by the Medical Counselling Committee, *inter alia* provides that reservation of 10% to EWS will be given as per Central Government norms. It is submitted that in the absence of any detailed norms, the criteria of Rupees Eight Lakh per annum to determine the EWS category is legally flawed and unconstitutional.
- 2.4. A copy of the Office Memorandum dated 17.01.2019 numbered as F.No. 200013/01/2018-BC-II is annexed herewith and marked as “**Annexure A-1 (Page -11 to 12)**”
- 2.5. 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.

### **III. Exclusion of the OBCs and the SCs/STs from the scope of the economic reservation**

- 3.1. 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.

### **IV. Actual availability for open categories**

- 4.1. The decisions of the Supreme Court have made it clear that candidates from the reserved categories who are covered by Article 15(4) and 16(4) are also entitled to the seats which are in the open category if they otherwise have the requisite marks. Thus, if the open category cut-off mark is 95, then, a backward class candidate with 95.5 will be eligible to take the seat in the open category as well. This has resulted in the reserved category

candidates taking a large chunk/vacancies in the open category.

- 4.2. Recently, the State of Tamil Nadu appointed the Justice A.K. Rajan Committee and this committee submitted a report primarily pointing out that NEET is disadvantageous and is harmful to the interests of the students of the State Board of Tamil Nadu.
- 4.3. For the purpose of the present petition/application, the data from the Rajan Committee is useful in pointing out the substantially limited number of seats that are actually available to open category candidates. These tables are annexed to the present written submissions as **Annexure A-2 (Page-13 to 15)** Table 7.33 of the Rajan Committee Report shows that distribution of students' admission to MBBS in Government medical colleges results in only 3.6% of the open category seats going to students from the open category itself. In self-financing colleges, it is around 9%. Thus, only 12% of the open category seats (which is 50%) is effectively available for OC students. In Table 7.35, this is further emphasized by pointing out that the forward committee/open category students get only 11% of the open category seats. On the other hand, the backward class candidates occupy 87% of the seats whereas the reservation for them is only 27.5%.
- 4.4. These statistics show that there is a greater need to define the EWS category so that the genuinely indigent students from the forward communities/open categories get a level playing field in MBBS/PG admissions.

4.5. Rajan Committee also highlights the significant role played by coaching classes in getting admission to PG course/MBBS course. The fees for coaching classes is also exorbitant. If a figure of Rs.8 lakhs is fixed, then, the affluent sections of the open category will take away even the 10% reservation quota for the EWS.<sup>1</sup>

**V. Reservation in post-graduation courses is against the decision of this Hon'ble Court in *Dr. Pradeep Jain & Ors. v. Union of India* (1984) 3 SCC 654.**

5.1. Numerous Supreme Court decisions, including *Dr. Pradeep Jain*, have expressed serious concern about the reservation/quota at the PG level. It is submitted that at least at the PG level, the BC category should not be permitted to take the seats in the OC/FC category. Once the candidate is qualified as a doctor, he cannot then be treated as socially and educationally backward and at that stage, his caste becomes irrelevant.

5.2. It may also be noted that under Article 16(4A), in matters of promotion, reservation is available only for SC/ST candidates.

**VI. The application of reservation in the current academic year is completely arbitrary and ought to be stayed.**

6.1. ***Prima facie* case:** There is a strong *prima facie* case because:

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<sup>1</sup>The entire report is available at:

<https://www.thehinducentre.com/resources/article36589938.ece/binary/N21092966.pdf>

- a. EWS reservation takes overall reservation beyond 50%, which has been held by this Hon'ble Court as impermissible;
- b. The income limit of eight lakh is manifestly arbitrary;
- c. The current scheme of EWS reservation will only benefit affluent income-tax payers of the country;
- d. As pointed out earlier, benchmark of Rs.8 lakhs will result in denial of social justice to the genuinely weaker sections of the forward community;
- e. In the Mandal Commission report as well, 4 indicia were relevant for determining the economic status of a particular caste.<sup>2</sup> Even if this indicia are applied, the figure of Rs.8 lakhs will be too high.
- f. Finally, the provisions of Article 15(6) require a notification. This will require a primary legislation and the rules under that will have to be framed. This was done in the case of backward classes where there was a Central statute and different State statutes.

## 6.2. Balance of Convenience:

- a. That the registration process for NEET-PG commenced on 23.02.2021 and the registration

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<sup>2</sup>*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217, 645-646.

window for NEET PG 2021 closed on 15.03.2021. That NEET PG 2021 was earlier scheduled to be organised on 18.04.2021 and was postponed due to the upsurge in the COVID-19 cases and therefore the decision to implement the reservation policy for this academic year is a sheer afterthought. As such, balance of convenience is also in favour of the petitioners.

- b. That the issue with respect to the constitutional validity of EWS quota has been referred to a five judge bench in the matter of *Janhit Abhiyan vs. Union of India & Ors. [W.P. (C) No. 55 of 2019]*. It is submitted that the said reference is still pending.

**6.3. Irreparable injury:** It is submitted that the petitioners and thousands of similarly situated doctors will suffer irreparable injury if the new reservation policy is implemented in this academic year.

In view of the aforementioned submissions, it is most humbly requested that this Hon'ble Court may be pleased to stay the operation of the impugned notice for the current academic year, and/or pass such other and further orders as may deem fit and proper in the facts and circumstance of this case.

FILED BY:

Place: New Delhi  
Date: 06.10.2021

  
[DR. CHARU MATHUR]  
Advocate for the Petitioners

[For Internal Circulation only]

F. No.20013/01/2018-BC-II

Government of India

Ministry of Social Justice and Empowerment

Department of Social Justice and Empowerment

17th January, 2019

Shastri Bhawan, New Delhi

OFFICE MEMORANDUM

**Subject: Reservation for Economically Weaker Sections (EWSs) in civil posts and services in the Government of India and admission in Educational Institutions.**

In pursuance of insertion of clauses 15(6) and 16(6) in the Constitution vide the Constitution (One Hundred and Third Amendment) Act, 2019 and in order to enable the Economically Weaker Sections (EWSs) who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes, to receive the benefits of reservation on a preferential basis in civil posts and services in the Government of India and admission in Educational Institutions, it has been decided by the Government to provide 10% reservation to EWSs in civil posts and services in Government of India and admission in Educational Institutions.

2. Persons who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes and whose family has gross annual income below Rs. 8.00 lakh are to be identified as EWSs for the benefit of reservation. Family for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years. The income shall include income from all sources i.e. salary, agriculture, business, profession etc. and it will be income for the financial year prior to the year of application. Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWSs, irrespective of the family income:

- i. 5 acres of Agricultural Land and above;
- ii. Residential flat of 1000 sq. ft. and above;
- iii. Residential plot of 100 sq. yards and above in notified municipalities;

iv. Residential plot of 200 sq. yards and above in areas other than the notified municipalities.

3. The income and assets of the families as mentioned in para 2 would be required to be certified by an officer not below the rank of Tehsildar in the States/UTs. The officer who issues the certificate would do the same after carefully verifying all relevant documents following due process as prescribed by the respective State/ UT.

4. Every Educational Institution shall, with the prior approval of the appropriate authority, increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats available, excluding those reserved for the persons belonging to the EWSs, are not less than the total seats available in the academic session immediately preceding the date of the coming into force of this O.M.

5. Instructions regarding reservation in employment and admission to educational institutions will be issued by DoPT and Ministry of HRD respectively.

  
(B.L. Meena)

Joint Secretary to the Government of India

To

- ✓ 1. The Secretary, Department of Personnel and Training, North Block, New Delhi
2. The Secretary, Department of Higher Education, Shastri Bhawan, New Delhi



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**Government of Tamil Nadu**

# **Report of the High Level Committee**

**To Study**

**The Impact of NEET on Medical Admissions in Tamil Nadu**

**2021**

**Justice A. K. Rajan**  
**Chairman**

**Table 7.33. Percentage Distribution of Students Admission to MBBS: Social Groups (OC/BC/BCM/MBC/SC/SCA/ST)**

Year	Government College							SF College						
	OC	BC	BCM	MBC-DNC	SC	SCA	ST	OC	BC	BCM	MBC-DNC	SC	SCA	ST
2010-2011	3.73	46.89	4.32	24.99	15.87	3.26	0.95	7.42	50.30	3.79	20.00	14.70	2.88	0.91
2011-2012	3.76	46.62	4.52	25.31	15.62	3.11	1.06	5.83	51.43	3.57	20.24	15.00	2.98	0.95
2012-2013	4.01	45.69	4.39	25.41	16.53	2.94	1.02	4.65	52.63	3.58	20.17	15.16	2.86	0.95
2013-2014	3.34	46.31	4.40	26.08	15.96	2.90	1.01	5.74	50.96	3.83	20.44	15.11	2.92	1.01
2014-2015	2.49	46.80	4.27	26.02	16.33	3.07	1.02	9.23	48.61	3.45	20.13	14.91	2.78	0.89
2015-2016	3.51	48.14	4.49	24.20	15.82	2.86	0.98	4.29	52.81	3.55	20.41	15.09	2.81	1.04
2016-2017	2.58	47.46	4.41	25.64	15.96	2.95	1.00	5.41	51.58	3.58	20.13	15.64	2.66	1.00
2017-2018	7.24	43.51	5.02	24.28	15.99	2.94	1.02	18.50	39.31	3.58	19.65	15.14	2.77	1.04
2018-2019	6.09	46.01	4.32	23.73	15.87	2.99	0.98	14.18	43.28	3.66	19.85	15.19	2.84	1.01
2019-2020	3.77	48.31	4.61	23.91	15.50	2.90	1.01	9.72	46.97	3.74	20.57	15.18	2.77	1.05
2020-2021	3.60	47.47	4.73	24.82	15.47	2.89	1.02	9.09	48.15	3.62	20.12	15.24	2.78	1.01

Analysis of the OC quota shows that the students belonging to the BC/MBC/SC/SCA/ST had lost averagely respectively at least 3% (BC), 5% (MBC), 1.6% (SC), and 0.2% (SCA) when compared before and after NEET (Table 7.35 and Figure 7.22). It should be noted that the ST community has no share at all in OC. The statistical significance of these variations is presented in Table 7.36. The above analysis proves that both within their respective quota and their share in the OC, the backward and disadvantaged communities were affected because of the NEET.

**Table 7.35. Details of Different Social Groups Obtained MBBS Under Open Competition**

Years	FC	BC	BCM	MBC_DNC	SC	SCA	ST
2011-2012	8.25	66.99	3.45	18.04	2.69	0.38	0.19
2012-2013	9.08	63.70	2.97	18.50	5.24	0.35	0.17
2013-2014	7.18	65.80	3.02	20.55	3.16	0.14	0.14
2014-2015	6.07	66.47	2.60	19.80	4.19	0.72	0.14
2015-2016	8.22	71.31	3.34	14.35	2.79	0.00	0.00
2016-2017	8.31	67.56	2.95	18.23	2.68	0.27	0.00
2017-2018	23.39	54.81	4.87	13.89	2.80	0.24	0.00
2018-2019	19.65	61.47	2.92	13.05	2.53	0.38	0.00
2019-2020	12.16	70.38	3.60	12.61	1.24	0.00	0.00
2020-2021	11.62	67.54	4.06	15.57	1.10	0.11	0.00

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