

WRIT PETITION (CIVIL) NO(s). 265 OF 2006

ASHOKA KUMAR THAKUR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS

Respondent(s)

W.P.(C)No.269/2006, 598/2006, 29/2007, 35/2007, 53/2007,
336/2007, 313/2007, 335/2007, 231/2007, 425/2007, 428/2007 and Contempt
Petition (c)No.112/2007 in W.P.(C)No.265/2006

JUDGMENT

By Court

1. The Constitution 93rd Amendment Act, 2005, is valid and does not violate the "basic structure" of the Constitution so far as it relates to the State maintained institutions and aided educational institutions. Question whether the Constitution (Ninety Third Amendment) Act, 2005 would be constitutionally valid or not so far as "private unaided" educational institutions is concerned, is not considered and left open to be decided in an appropriate case.

Justice Bhandari, in his opinion, has, however, considered the issue and has held that the Constitution (Ninety Third Amendment) Act, 2005 is not constitutionally valid so far as private un-aided educational institutions are concerned.

2. Act 5 of 2007 is constitutionally valid subject to the definition of 'Other Backward Classes' in Section 2(g) of the Act 5 of 2007 being clarified as follows : If the determination of 'Other Backward Classes' by the Central

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Government is with reference to a caste, it shall exclude the 'creamy layer' among such caste.

Quantum of reservation of 27% of seats to Other Backward Classes in the educational institutions provided in the Act is not illegal.

Act 5 of 2007 is not invalid for the reason that there is no time limit prescribed for its operation but majority of the Judges are of the view that the Review should be made as to the need for continuance of reservation at the end of 5 years.

The writ petitions are disposed of in the light of majority judgment.

However, in the Contempt Petition No.112/2007 in W.P.(C)No.265/2006, no orders are required.

.....CJI
(K.G. BALAKRISHNAN)

.....J.
(Dr.ARIJIT PASAYAT)

.....J.
(C.K. THAKKER)

.....J.
(R.V.RAVEENDRAN)

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.....J.
(DALVEER BHANDARI)

NEW DELHI;
10TH APRIL, 2008

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ITEM NO.1A COURT NO.1 SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 265 OF 2006

ASHOKA KUMAR THAKUR Petitioner(s)

VERSUS

UNION OF INDIA & ORS Respondent(s)

WITH
W.P.(C)No.269/2006, 598/2006, 29/2007, 35/2007, 53/2007,
336/2007, 313/2007, 335/2007, 231/2007, 425/2007, 428/2007 and Contempt
Petition (c)No.112/2007 in W.P.(C)No.265/2006

Date: 10/04/2008 These Petitions were called for judgment today.

For Petitioner(s) Petitioner-In-Person
in W.P.(C)No.265/06

W.P.(C) 35/07 Mr. Vikas Mehta, Adv.
Mr.Gopal Sankaranarayanan,Adv.
Mr.Arjun Suresh, Adv.

W.P.(C) 29 & 335/07 Mr. M.L. Lahoty, Adv.
Mr. Paban K. Sharma, Adv.
Mrs. Poonam Lahoty, Adv.
Mr. Himanshu Shekhar, Adv.

W.P.(C) 269/06 Mr. Anurag Sharma, Adv.
Mr. Prashant Kumar, Adv.

W.P.(C) 598/06 &
W.P.(C) 53/07 Mr. Sushil Kumar Jain, Adv.
Ms. Uttra, Adv.
Mr. Gopal Shanker Narayanan, Adv.
Mrs. Kiran Suri, Adv.

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Mr. Anirudh Sharma, Adv.

Conmt. Pet.(C)
No.112/2007 Mr. Shashi Bhushan, Ad.

W.P.(C) 336/07 Mr. Purushottam S.T., Adv.
Mr. Abhishek Gupta, Adv.
Mr. Anshuman Ashok, Adv.
Mr. H.S. Uppal, Adv.
Ms. Ruchita Uppal, Adv.
Mr. Mohan Pandey, Adv.

W.P.(C) 313/07 Dr. Rajeev Dhavan, Sr. Adv.
M/s. Subramonium Prasad, Raghavendra Srivatsa,
Anirudh Sharma,Hari Kumar G., Abhay Kumar,
Karan Mehta, R. Gopala Krishnan, Jai Kishore
Singh, Purushottam S.T.,Advs.
Mr. Sushil Kumar Jain, Adv.
Mrs. Pratibha Jain, Adv.

W.P.(C) 231/07 M/s. Subramonium Prasad, Raghavendra Srivatsa,Advs.

Mr. Sushil Kumar Jain,Adv.
Mr. Puneet Jain, Adv.
Ms. Christi Jain, Adv.
Mr. H.D. Thanvi, Adv.
Ms. Aprajita Singh, Adv.
Mr. Amish Jha, Adv.
Mr. Vivekanand, Adv.
Mr. Kamal Deep, Adv.
Mr. Pawan Kumar, Adv.

For Respondent(s)1
UOI Mr. Gopal Subramaniam, ASG
Mr.Devadatt Kamat, Adv.
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Mr. Chinmoy Pradip Sharma, Adv.
Mr. T.S. Murthy, Adv.
Mr. Arunabh Patnaik, Adv.
Mr. Rohit Sharma, Adv.
Mr. Sparash Bhargav, Adv.
Ms. Sushma Suri ,Adv.

State of U.P. Mr. Shail Kumar Dwivedi, AAG.
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Mr. Shrish Kumar Misra, Adv.

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Mr. S. Prabu Ramasubramanian, Adv.

Mrs. Indra Jai Singh, Sr. Adv.
Mr. Manoj Saxena, Adv.
Mr. Rajnish Kr. Singh, Adv.
Mr. Rahul Shukla, Adv.
For Mr. T.V. George, Adv.

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Ms. Beena Parkash, Adv.

State of Mizoram Mr. K.N. Madhusoodhanan, Adv.
Mr. R.Sathish, Adv.

Mr. Ranjan Mukherjee, Adv.
Mr. S.C. Ghosh, Adv.

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Mr.Riku Sarma, Adv.
For M/s. Corporate Law Group, Adv.

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Mr.David Rao, Adv.
Mr. Biswajit Meitei, Adv.

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For Mr. D.S. Mahra, Adv.

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Mr. Naveen Kumar Singh, Adv.
Mr. Shashwat Gupta, Adv.

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Ms. Aruna Mathur, Adv.
For M/s. Arputham, Aruna & Co., Adv.

Dr. Kailash Chand, Adv.

State of W.B. Mr. Prashant Bhushan, Adv.

Mr. B.B. Singh, Adv.

Mr. Avijit Bhattacharjee, Adv.

Mrs. Anil Katiyar, Adv.

For U.G.C.

Mr. Amitesh Kumar, Adv.

Mr. Gopal Singh, Adv.

Mr. Vishwajit Singh, Adv.

Mrs. Jayshree Anand, AAG

Mr. K.K. Mahalik, Adv.

Mr. Kuldip Singh, Adv.

Mr. Arun K. Sinha, Adv.

State of Arunachal Pradesh Mr. Anil Shrivastav, Adv.

Mr. Ritu Raj, Adv.

Mr. A. Marriarputham, Adv.

Mr. A. Subba Rao, Adv.

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Mr. D.L. Chidananda, Adv.

Mr. Nikhil Nayyar, Adv.

Mr. Ankit Singhal, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

Mr. C.G. Solshe, Adv.

State of Orissa Mr. Janaranjan Das, Adv.

Mr. Swetaketu Mishra, Adv.

Ms. Kiran Suri, Adv.

Intervenor-in-person

Impleadment Party-in-person

Mr. Manjit Singh, AAG, Haryana

Mr. T.V. George, Adv.

State of Karnataka Mr. Sanjay R. Hegde, Adv.

Mr. Amit Kr. Chawla, Adv.

Mr. Vikrant Yadav, Adv.

State of H.P.

Mr. J.S. Attri, AAG

State of Bihar

Mr. Rituraj Biswas, Adv.

Mr. Mohit Kumar Shah, Adv.

Mr. Gopal Singh, Adv.

Mr. Gaurav Liberhan, Adv.

Mr. Shantanu Krishna, Adv.

Mr. Amit Singh, Adv.

Ms. Mukti Chaudhry, Adv.

Ms. Pritika Dwivedi, Adv.

Mr. Anant Prakash, Adv.

Mr. Abhishek Chaudhary, Adv.

Mr. Amitesh Kumar, Adv.

Mr. Gopal Singh, Adv.

State of Tripura Mr. Rituraj Biswas, Adv.

Mr. Gopal Singh, Adv.

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State of Nagaland Mr. U. Hazarika, Adv.
Mr. Satya Mitra, Adv.
Ms. Sumita Hazarika, Adv.

Intervenor in Mr.V.K.Biju, Adv.
W.P.(C)No.269/06 Mr.D.K.Garg, Adv.

State of M.P. Mr. Vikas Upadhyay, Adv.
Mr.B.S.Banthia, Adv.
Mr.S.Chandra Shekhar, Adv.

In W.P.(C)Nos.425& Mr.Shiva Pujan Singh, Adv.
428/07 Mr.Prabhash Kumar Yadav, Adv.
Mr.Ramji Prasad Kushwaha, Adv.

Respnt/Intervenor Mr. K.Balu, Adv.
Mr. R. Yadav, Adv.
Mr. Vikas Rojipura, Adv.
Mr. E.C. Vidyasagar, Adv.

For Intervenor in
W.P.(C)No.313/07 Mr.Saurabh Ajay Gupta, Adv.
Mr.S.Srinivasan, Adv.
Mr.Ritu Raj Singh, Adv.
Mr.Vivek B.O., Adv.
Mr.Ranbir Yadav, Adv.
Ms.Madhusmita Bora, Adv.
Mr.S.Balaji, Adv.
Mr.S.R.Sharma, Adv.

For JD(U) Mr.E.C.Vidyasagar, Adv.
Mr.Mohit Kumar Shah, Adv.
Mr.Kamal Gupta, Adv.

Hon'ble the Chief Justice of India, Hon'ble Dr.Justice Arijit Pasayat,
Hon'ble Mr.Justice R.V.Raveendran and Hon'ble Mr.Justice Dalveer Bhandari
have pronounced their respective judgments of the Bench comprising Hon'ble
the Chief Justice of India, Hon'ble Dr.Justice Arijit Pasayat, Hon'ble Mr.Justice
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C.K.Thakker, Hon'ble Mr.Justice R.V.Raveendran and Hon'ble Mr.Justice
Dalveer Bhandari.

Per majority, it was opined that the Constitution 93rd Amendment Act,
2005, is valid and does not violate the "basic structure" of the Constitution so
far as it relates to the State maintained institutions and aided educational
institutions. Question whether the Constitution (Ninety Third Amendment) Act,
2005 would be constitutionally valid or not so far as "private unaided"
educational institutions is concerned, is not considered and left open to be
decided in an appropriate case.

Hon'ble Mr.Justice Dalveer Bhandari, in his opinion, has however,
considered the issue and has held that the Constitution (Ninety Third
Amendment) Act, 2005 is not constitutionally valid sofar as private un-aided

educational institutions are concerned.

The writ petitions are disposed of and the contempt petition is also disposed of, in terms of four separate signed reportable judgments.

(G.V.Ramana)

(Veera Verma)

Court Master

Court Master

(Signed reportable judgments are placed on the file)