

ITEM NO.1501 Court 4 (Video Conferencing)
(For Judgment)

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 961/2021

NEIL AURELIO NUNES & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 166090/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 151435/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 107531/2021 - EX-PARTE AD-INTERIM RELIEF
IA No. 107530/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 139369/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 117671/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 151431/2021 - INTERVENTION APPLICATION
IA No. 146778/2021 - INTERVENTION APPLICATION
IA No. 146595/2021 - INTERVENTION APPLICATION
IA No. 472/2022 - INTERVENTION APPLICATION
IA No. 166095/2021 - INTERVENTION/IMPLEADMENT
IA No. 110006/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/
FACTS/ANNEXURES
IA No. 139366/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS /
FACTS/ANNEXURES
IA No. 117669/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND
GROUNDS)

WITH

W.P.(C) No. 967/2021 (X)

(IA No. 107614/2021 - EX-PARTE AD-INTERIM RELIEF
IA No. 107613/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 110016/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS /FACTS
/ANNEXURES)

W.P.(C) No. 1002/2021 (X)

(IA No. 135308/2021 - INTERVENTION APPLICATION
IA No. 111778/2021 - STAY APPLICATION)

W.P.(C) No. 1021/2021 (X)

(IA No. 139402/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND
GROUNDS)

W.P.(C) No. 1105/2021 (X)

(IA No. 127675/2021 - EX-PARTE STAY
IA No. 127676/2021 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 20-01-2022 These petitions were called on for pronouncement of judgment today.

For Petitioner(s) Mr. Subodh S. Patil, AOR

Mr. Vivek Singh, AOR
Mr. Ramesh Allanki, Adv.

Mr. Vivek Singh, AOR

In W.P. (C) No. 961/2021

Mr Arvind Datar, Sr Adv
Dr Charu Mathur, AOR
Ms Tanvi, Adv.
Mr Sanjay Kumar Dubey, Adv.
Mr Rahul Unnikrishnan, Adv.
Mr Malak Bhatt, Adv.

In W.P.(C) No. 967/2021

Mr Arvind Datar, Sr Adv
Dr Charu Mathur, AOR
Ms Tanvi, Adv.
Mr Sanjay Kumar Dubey, Adv
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In W.P.(C) No. 1105/2021

Dr Charu Mathur, AOR
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For Respondent(s)

Mr. Gurmeet Singh Makker, AOR

Mr. Maninder Singh, Sr. Adv.
Mr. Gaurav Sharma, AOR
Mr. Kirtman Singh, Adv
Mr. Waize Ali Noor, Adv.
Mr. Dhawal Mohan, Adv
Mr. Prateek Bhatia, Adv
Ms. Srirupa Nag, Adv.
Mr. Taha Yasin, Adv

Mr. Amrish Kumar, AOR
Mr. R. Nedumaran, AOR

Mr. A. Mariarputham, Sr. Adv.
Mr. V. Krishnamurthy, Sr. Adv./AAG
Dr. Joseph Aristotle S., AOR

Mr. V. K. Biju, AOR

Ms. Ria Sachthey, Adv.
Mr. Chetanya Singh, Adv.
Mr. Amlendu Kumar Akhilesh Kumar Jha, Adv.
Mr. Shaji George, Adv.
Ms. Vijay Laxmi, Adv.

Ms. Archana Pathak Dave, AOR
Mr. Kumar Prashant, Adv.
Ms. Vanya Gupta, Adv.
Mr. Avnish Dave, Adv.
Mr. Parmod Kumar Vishnoi, Adv.
Ms. Himanshi Shakya, Adv.

Mr. Devashish Bharuka, AOR
Mr. Mithu Jain, AOR
Mr. Subodh S. Patil, AOR

Mr. Shashank Ratnoo Adv.
Mr. Vikram Hegde, AOR
Mr. Shantanu Lakhotia, Adv.

- 1 Hon'ble Dr Justice Dhananjaya Y Chandrachud pronounced the judgment and order of the Bench comprising His Lordship and Hon'ble Mr Justice A S Bopanna.
- 2 In terms of the signed reportable judgment and order, the following conclusions have been arrived at:
 - (I) The reservation for OBC candidates in the AIQ seats for UG and PG medical and dental courses is constitutionally valid for the following reasons:
 - “(i) Articles 15(4) and 15 (5) are not an exception to Article 15 (1), which itself sets out the principle of substantive equality (including the recognition of existing inequalities). Thus, Articles 15 (4) and 15 (5) become a restatement of a particular facet of the rule of substantive equality that has been set out in Article 15 (1);
 - (ii) Merit cannot be reduced to narrow definitions of performance in an open competitive examination which only provides formal equality of opportunity. Competitive examinations assess basic current competency to allocate educational resources but are not reflective of excellence, capabilities and potential of an individual which are also shaped by lived experiences, subsequent training and individual character. Crucially, open competitive examinations do not reflect

the social, economic and cultural advantage that accrues to certain classes and contributes to their success in such examinations;

- (iii) High scores in an examination are not a proxy for merit. Merit should be socially contextualized and reconceptualized as an instrument that advances social goods like equality that we as a society value. In such a context, reservation is not at odds with merit but furthers its distributive consequences;
- (iv) Articles 15 (4) and 15 (5) employ group identification as a method through which substantive equality can be achieved. This may lead to an incongruity where certain individual members of an identified group that is being given reservation may not be backward or individuals belonging to the non-identified group may share certain characteristics of backwardness with members of an identified group. The individual difference may be a result of privilege, fortune, or circumstances but it cannot be used to negate the role of reservation in remedying the structural disadvantage that certain groups suffer;
- (v) The scheme of AIQ was devised to allot seats in State-run medical and dental institutions in which students from across the country could compete. The observations in **Pradeep Jain** (supra) that the AIQ seats must be filled by merit, must be read limited to merit vis-à-vis residence reservation. This Court in **Pradeep Jain** (supra) did not hold that reservation in AIQ seats is impermissible;
- (vi) The Union of India filed an application before this Court in **Abhay Nath** (supra) placing the policy decision of the Government to provide reservation for the SC and ST categories in the AIQ seats since until then in view of the confusion on demarcation of seat matrix, there was no clarity on whether reservations could be provided in the AIQ seats. The Union Government was not required to seek the permission of this Court before providing reservation in AIQ seats. Therefore, providing reservation in the AIQ seats is a policy decision of the Government, which will be subject to the contours of judicial review similar to every reservation policy;
- (vii) It was clarified in **Dinesh Kumar (II)** (supra) that the total seats demarcated for AIQ shall be determined without excluding reservation as was earlier directed by **Pradeep Jain** (supra) and clarified in **Dinesh Kumar (I)**. However, this Court in **Buddhi Prakash Sharma** (supra) had erroneously construed the clarification in **Dinesh Kumar (II)** to mean that there should be no reservation in AIQ seats. Therefore, the order in **Abhay Nath** (supra) was only clarificatory in view of the observations in **Buddhi Prakash Sharma** (supra); and
- (viii) Clause 11 of the information bulletin specifies that the reservation applicable to NEET-PG would be notified by the coun-

selling authority before the beginning of the counselling process. Therefore, the candidates while applying for NEET-PG are not provided any information on the distribution of seat matrix. Such information is provided by the counselling authority only before the counselling session is to begin. It thus cannot be argued that the rules of the game were set when the registration for the examination closed.”

- (II) The challenge to the constitutional validity of OBC reservation in AIQ seats introduced through the notice dated 29 July 2021 is rejected in view of the above discussion.
- (III) Pending application(s), if any, relating to the issue of OBC reservation implemented through the notice dated 29 July 2021 stand disposed of.
- (IV) The implementation of EWS reservation in AIQ seats in NEET UG and PG seats for the academic year of 2021-2022 is allowed. The EWS category shall be identified in view of the criteria in O.M No. 36039/1/2019.
- (V) The challenge to the validity of the criteria determined by the Pandey committee for the identification of the EWS category shall be listed for final hearing in the third week of March 2022.
- (VI) List the Petitions on 21 March 2022.

(NEETA SAPRA)

COURT MASTER (SH)

(Signed reportable judgment and order are placed on the file)

(SAROJ KUMARI GAUR)

BRANCH OFFICER