

ITEM NO.4

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No. 55/2019

JANHIT ABHIYAN

Petitioner

VERSUS

UNION OF INDIA

Respondent

WITH

W.P.(C) No. 596/2019 (X)

(I.A. No. 84633/2019 - INTERVENTION APPLICATION)

Date : 30-05-2019 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE ANIRUDDHA BOSE  
(VACATION BENCH)

For Petitioner

Mr. Gourab Banerji, Sr. Adv.  
Mr. Premlal Krishan, Adv.  
Mr. Akash Kakade, Adv.  
Mr. Neelmanj Pant, Adv.  
Mr. Swetab Kumar, Adv.  
Mr. Rahul Arya, Adv.  
Ms. Raka Chatterjee, Adv.  
Mr. S.P. Mukherjee, Adv.  
Mr. Somanatha Padhan, AOR

Mr. Yadav Narendra Singh, AOR  
Mr. Ashutosh Yadav, Adv.  
Mr. Abhishek Yadav, Adv.

For Respondent

Mr. Tushar Mehta, SG  
Mr. Ankur Talwar, Adv.  
Ms. Shraddha Deshmukh, Adv.  
Mrs. Anil Katiyar, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR  
Mr. Anoop Kandari, Adv.

Mr. Gaurav Sharma, AOR  
Mr. Dhawal Mohan, Adv.  
Ms. Amandeep Kaur, Adv.

Ms. Vishakha, Adv.  
Mrs. Hemantika Wahi, Adv. (AOR)

Mr. Vivek Singh, Adv. (AOR)  
Mr. Swastik Dalai, Adv.

Ms. Liz Mathew, AOR

Mr. V.K. Biju, AOR

Mr. R.C. Kohli, AOR

Mr. K.V. Mohan, AOR

I.A. 84633/2019

Mr. Sanjay R. Hegde, Sr. Adv.  
Mr. Govind Jee, Adv.  
Mr. Krishna Kumar Singh, Adv. (AOR)

Intervenor-in-person, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The entitlement of the petitioners to an appropriate interim order is the precise question that is being dealt with by the Court by the present order.

By the 103<sup>rd</sup> Constitutional amendment, after clause (5) of Article 16, the following clause numbered as clause (6) has been inserted:-

“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.”

Though an enabling provision, the State of Maharashtra by notifications dated 12.2.2019 and 7.3.2019 has extended the benefit of reservation to the extent of 10% to economically weaker sections, inter alia, in postgraduate medical courses. The bone of contention between the parties is whether the aforesaid decision following the Constitutional amendment will

apply to the ongoing admission process which had commenced in the month of November, 2018 i.e. well before the coming into force of the Constitutional amendment (January, 2019) and the notifications of February and March, 2019.

Not only we are reminded of the time-tested principle of law that the modalities of selection cannot be changed after initiation of the process, in a similar matter involving reservation of 16% seats for socially and educationally backward classes including the Maratha community in the educational institutions in the State of Maharashtra in terms of provisions of the Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments in the Public Services and Posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018, the Bombay High Court had taken the view that the said Act having come into force with effect from 30.11.2018, could not be made applicable to the very same admission process as the same had been initiated earlier i.e. on 2.11.2018. The special leave petition against the said order of the Bombay High Court has since been dismissed by this Court.

Having considered the matter, we are of the view, at this stage, that though the State may act under the enabling provision contained in Article 16(6) of the Constitution, as introduced by the 103<sup>rd</sup> Constitutional amendment, unless additional seats are sanctioned by the Medical Council of India, the existing seats cannot be subjected to the provisions of the aforesaid Constitutional amendment by issuing appropriate notifications, as has been done in this case. Though the above view is a tentative view, on the basis

thereof, we deem it proper to declare that the notification of the State of Maharashtra dated 7.3.2019 insofar as the admission to postgraduate medical courses is concerned, will have no application to the ongoing process of selection, so as to enable the representatives of the economically weaker sections to avail of the benefit of reservation for admission to postgraduate medical courses. While making the above declaration, we have kept in mind the need to balance the competing claims which balance could be upset by claim of equity, if the reserved category candidates are allowed to undergo the medical course(s) and in the event their admission is found to be untenable at a later stage of the present proceedings. We have, therefore, deemed it appropriate to pass the above interim directions/to make the aforesaid interim declaration pending final decision in the writ petitions before us. Needless to say, it is always open for the Medical Council of India to sanction additional seats, if deemed fit.

I.A. no. 84633/2019 filed for intervention stands disposed of.

(Deepak Guglani)  
Court Master

(Anand Prakash)  
Court Master