

IN THE SUPREME COURT OF INDIA
[ORDER XXXVIII, SCR 2013]
CIVIL WRIT JURISDICTION
WRIT PETITION NO. _____ OF 2020

IN THE MATTER OF:

All India Anna Dravida Munnetra Kazhagam
226, Avvai Shanmugam Salai, Azad Nagar,
Royapettah, Chennai – 600014
Tamil Nadu

..Petitioner

Versus

1. Union of India,
Through the Secretary
Ministry of Health and Family Welfare
Nirman Bhawan
Near Udyog Bhawan Metro Station
Maulana Azad Rd.,
New Delhi – 110011
Delhi ..Respondent No. 1
2. Secretary, Ministry of Human
Resource Development
No.1, West Block, Rama Krishna Puram,
New Delhi, Delhi 110066 ..Respondent No.
2
3. The Medical Council of India
Represented by its Secretary
Pocket 14, Sector 8 Dwarka Phase 1
New Delhi 110077 , Delhi
..Respondent No. 3
4. The Director General of Health Services
Room No. 446-A
Nirman Bhawan, New Delhi 110011
Delhi ..Respondent No.
4
5. The National Board of Examination
Through its Chairman, Ansari Nagar,

Mahatma Gandhi Marg,
New Delhi, Delhi

..Respondent No.5

6. Dental Council of India
Rep by its Secretary
Aiwan-E-Galib Marg
Kotla Road, Temple Lane
Opp. Mata Sundari College for Women
New Delhi – 110002 ..Respondent No. 6

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

MOST RESPECTFULLY SHOWETH:

1. The present Writ Petition is being preferred by the All India Anna Dravida Munnetra Kazhagam ('AIADMK') party on behalf of the People of Other Backward Classes (OBCs), under Article 32 of the Indian Constitution, seeking to implement the 50% reservation for the Other Backward Classes in undergraduate, postgraduate and diploma medical seats of the All India Quota as per law.
2. FACTS OF THE CASE:
 - (i) The Petitioner is presently the ruling party in the State of Tamil Nadu with a longstanding illustrious political history in the State, having first formed Government in 1977. One of the prime ideologies of the petitioner is social justice and the petitioner has been the single most driving force for reservation policy in the State so as to achieve social justice. The petitioner has implemented vital policies and laws on the subject, when in

government and has been responsible for raising reservation for OBCs from 31% to 50%. The same was achieved under its Founder Leader, Dr. M.G. Ramachandran, the former Chief Minister of Tamil Nadu. The AIADMK has been seeking adequate representation for OBCs at the State and Central levels for decades now. A key instance of this was the resolution passed by the Tamil Nadu Legislative Assembly on 30 September 1991 wherein the then General Secretary of the petitioner and the then Chief Minister Dr. J. Jayalalithaa urged the Centre to provide 50% reservation in all its services and educational seats for OBCs in an effort to set an example to other states. Efforts were repeated by then Chief Minister Dr. J. Jayalalithaa at the Chief Ministers' Conference on 10 April 1992, wherein she pushed for 50% reservation without any income caps. The AIADMK has been resolved to ensure the enhancement of social progress of the OBCs. The government of that day i.e., the AIADMK government had brought about an Act to implement the same in the State Assembly and the same came to be passed by the legislature. Thereafter in the face of opposition, the AIADMK government led by Dr. J. Jayalalitha after many struggles managed to obtain Presidential sanction for the inclusion on the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes

(Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 ("1994 Act"), which provided for 50% reservation for OBCs (besides 18% for SCs and 1% for STs), into the Ninth Schedule to the Constitution. Thus, the Petitioner has a long history as a vanguard for the rights of oppressed and socially disadvantaged groups.

- (ii) The present writ petition is brought assailing the grave omission by Respondent No.1 in assuring that OBCs are adequately represented in seats in non-central medical educational institutions. In the past several academic years, OBCs have been grossly underrepresented in the All-India-Quota seats in undergraduate, diploma, PG diploma and postgraduate medical colleges across the country. It is a matter of fact that negligible numbers of OBC candidates were allocated any of the State-surrendered seats to the All India Quota in non-central Government medical institutions. This is in contradistinction to the reservation ethos in the State of Tamil Nadu and the current existing law [the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993] which provides 50% reservation for OBCs (18 % for Scheduled Castes and 1% for Scheduled Tribes).

- (iii) As an illustration, in the 2019 postgraduate admissions, 8137 seats were in the All India Quota and applying even the central reservation quota of 27 % for OBCs as provided for under Central Educational Institutions (Reservation in Admission) Act ('2006 Act'), which in fact has not been implemented, the total number of seats reserved for OBCs under the All India Quota would be 2,197. However, in reality, only 224 seats actually went to OBCs in non-Central Government medical colleges.
- (iv) Therefore, the Writ Petitioner is seeking a writ of mandamus to direct Respondent No.1 to implement 50% OBC reservations in the State of Tamil Nadu in the State-surrendered seats in the All India Quota for all undergraduate and postgraduate medical courses for the year 2020-2021 and also seeks ad-interim relief to safeguard these seats pending disposal of the present writ petition.
- (v) The Indian social system is a caste based hierarchical system. The lower caste people were subject to exploitation by the higher castes and were born with the stigma of socio-economic under-development. The caste system and the provision of reservations go hand in hand in India. The most important stated aim of the Indian reservation system is to boost the opportunities for improved social and instructive position on the underprivileged communities and, thus, allow

them to take their equitable place in the conventional Indian society. Reservation intends to uplift the weaker sections of the society i.e. Scheduled castes, scheduled tribes and the backward classes at par with the other sections. Though it appears as a disobedience of the principles of equality yet its justification is the obligation of a social welfare state.

- (vi) Reservation in the State of Madras has pre-dated the Indian Constitution for instance the Government through 'communal' orders passed in 1921, 1927 and 1947 directed for proportionate representation in Government appointments. After the Constitution came into force, reservations in the State were applied even more vigorously and the State introduced the roster system for the first time in 1951. This zeal on the State level even transposed on the national level when the judgment of this Hon'ble Court in *State of Madras v. Champakam Dorairajan* (AIR 1951 SC 226) led to the first constitutional amendment upholding the efforts of states to promote the advancement of socially and educationally backward classes. When it came to the sphere of education, the 93rd amendment to the Constitution – which extended reservation policies to private educational institutions – also had a monumental impact on upholding States' reservation policies as well.
- (vii) The key law in the State is the "Tamil Nadu

Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993” (“1993 Act”), which provided for the following reservation:

Section 4 - Reservation of seats in educational institutions

(1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of the Backward Classes of citizens and the persons belonging to the Scheduled Castes and the Scheduled Tribes who constitute the majority of the total population of the State of Tamil Nadu, the reservation in respect of the annual permitted strength in each branch or faculty for admission into educational institutions in the State, for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and the Scheduled Tribes, shall be sixty-nine per cent.

(2) The reservation referred to in sub-section (1) shall, in respect of the persons belonging to the Backward Classes, the Most Backward Classes and Denotified Communities, the Scheduled Castes and the Scheduled Tribes, be as hereunder:-

<i>(a)</i>	<i>Backward Classes</i>	<i>Thirty per cent.</i>
<i>(b)</i>	<i>Most Backward Communities.</i>	<i>Twenty per cent.</i>
<i>(c)</i>	<i>Scheduled</i>	<i>Eighteen</i>

	<i>Castes,</i>	<i>per Cent.</i>
<i>(d)</i>	<i>Scheduled Tribes</i>	<i>One per cent.</i>

True Copy of Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 is annexed herewith as Annexure P-1 (pg.____to____)

- (viii) In June 1994, through the efforts of the AIADMK government led by Dr. J. Jayalalithaa, , rallied her resources and obtained the Presidential assent that afforded the 1994 Act protection under Schedule IX of the Constitution.
- (ix) Successive State Governments have also constituted committees of inquiry on the state of backward classes within the State to collate empirical evidence to ensure that State reservation policies are in line with ground reality. Notable among these are the Sattanathan Commission, and J.A.Ambashankar Commission before the State set up the permanent Backward Classes Commission. Tamil Nadu's successful reservation policy is well known and has democratised the public sphere. The exemplary performance of the State on human development indicators further vouches for the significant impact of reservations in Tamil Nadu. However, there is much progress to

be made.

- (x) The importance of reservation particularly in the sphere of education was highlighted by the 5-member bench of this Hon'ble Court in *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1.

6. Reservation is one of the many tools that are used to preserve and promote the essence of equality, so that disadvantaged groups can be brought to the forefront of civil life. It is also the duty of the State to promote positive measures to remove barriers of inequality and enable diverse communities to enjoy the freedoms and share the benefits guaranteed by the Constitution. In the context of education, any measure that promotes the sharing of knowledge, information and ideas, and encourages and improves learning, among India's vastly diverse classes deserves encouragement. To cope with the modern world and its complexities and turbulent problems, education is a must and it cannot remain cloistered for the benefit of a privileged few. Reservations provide that extra advantage to those persons who, without such support, can forever only dream of university education, without ever being able to realise it. This advantage is necessary.

- (xi) In fact, as per the Medical Council of India's Regulations, 1997, 15% of seats in all undergraduate medical colleges and 50% in all postgraduate medical colleges are surrendered to the All India Quota. The respective regulations also states that the reservation of seats in medical colleges or institution for respective categories

shall be as per applicable laws prevailing in States/Union Territories where the medical college is physically situated.

True Copy of Medical Council Of India Regulations on Graduate Medical Education, 1997 is annexed herewith as **Annexure P-2** (pg.____to____). True Copy of Medical Council Of India Postgraduate Medical Education Regulations, 2000 is annexed herewith as **Annexure P-3** (pg.____to____).

- (xii) In 2006, Parliament enacted the “Central Educational Institutions (Reservation in Admission) Act, 2006” (“2006 Act”) which set out quotas for SCs, STs and OBCs to Central educational institutions in the following manner:

<i>(a)</i>	<i>Scheduled Castes</i>	<i>15 per cent</i>
<i>(b)</i>	<i>Scheduled Tribes</i>	<i>7.5 per cent</i>
<i>(c)</i>	<i>Other Backward Classes</i>	<i>27 per cent</i>

True Copy of Central Educational Institutions (Reservation in Admission) Act, 2006 is annexed herewith as **Annexure P-4** (pg.____to ____)

- (xiii) Despite this impetus from the Centre, it has become a case of major concern that OBC candidates continue to be majorly underrepresented in non-Central Government medical institutions. It is pertinent that the 2006 Act does not stand in the way of the Centre to restrict the applicability of reservation other than central educational institutions so far as medical admission to All India Quota is concerned. However, the public records makes it clear that even the 27% of reservation for OBCs is hardly being observed in central educational institutions and certainly not in State colleges.
- (xiv) The surrendering of the seats by States has been at the cost of very negligible numbers of seats actually going to OBC candidates. The net effect is that all States are losing OBC reservations in the seats that they have surrendered to the All India Quota. In the postgraduate admissions for 2019, that were recently concluded, 8137 seats were in the All India Quota. Applying the central reservation of 27%, the total number of seats to be reserved for the OBC quota under the All India Quota (inclusive of state surrendered seats) is 2197. The seats actually allotted to OBC candidates is only 224 in State medical and private medical/dental colleges. As a result, More than 1,973 seats in medical colleges, which were meant for OBC candidates,

are going to general-category students.

- (xv) In the State of Tamil Nadu, the total number of seats in the All India Quota was 886 and had the State's policy of 50% reservation been extended to this, then 443 OBC candidates would have got a seat. In reality, it was just one OBC candidate in the who secured a seat in the All India Quota.
- (xvi) In the year 2018-19, only 220 OBC candidates were admitted to postgraduate courses while they had claim over 2,152 of the 7,982 seats. Similarly, only 66 OBC students were admitted under AIQ to the undergraduate course (MBBS). There are 4,061 AIQ MBBS seats, of which 27 per cent (1,096) should have been filled with OBC candidates.
- (xvii) During this current admission year 2020-21, the OBCs are not given reservation for the seats pooled from the States. The table below breaks down the allocation within the All India Quota of a total Seats of 9550 for the Academic year 2020-21:

SC	1385
ST	669
BC	371 (3.8%)
GNN0	7125 (74.6%)
Economic Weaker sections	653 SEATS

- (xviii) The table below illustrates the total percentage of seats that went to OBCs in the All-India Quota for

both undergraduate and postgraduate courses:

Sr. No.	Year	Total number of seats in AIQ	Number of seats allocated to OBCs	Percentage of seats allocated to OBCs
1.	2017 - 2018	9966	260	2.6%
2.	2018- 2019	12,595	299	2.37%
3.	2019- 2020	8137	224	2.75%
4.	2020- 2021	9550	371	3.8%
5.	Total	40248	1154	2.86% (i.e., average of past three years)

- (xix) It is clear from the aforementioned table that even the 27% reservation for OBCs applicable under the Central Government Institutions under the 2006 Act is not implemented either. According to the latest data, out of 40 Central Universities, a whopping 19 do not fulfil the combined quota (22.5%) allotted to SC, ST students and 17 do not

fulfil the OBC quota.

- (xx) The Petitioner has been taking every step available to improve the participation and elevation of OBCs in State. However all such measures are only half-effective when reservation for OBCs is not even implemented on the All India Quota level.
- (xxi) Aggrieved by the inaction of Respondent No.1 regarding the welfare and education of OBCs and the implementation of reservation for OBCs as per acts and rules, the Petitioner has filed the present Writ Petition before this Hon'ble Court seeking for the implementation of 50% reservation to the Other Backward Classes in all undergraduate, postgraduate, diploma courses in medical and dentistry institutions that are not Central Educational Institutions under the 2006 Act.

3. GROUNDS

- A. The impugned conduct of the Respondents denying reservation in State-surrendered seats to the All India Quota (other than Central Educational Institutions) is unconstitutional, violative of the basic feature of the Constitution and *ultra vires* Articles 14, 15 and 16 of the Constitution of India.
- B. There is no rational basis or intelligible differentia for granting 27% reservation to OBCs admitted to Central Educational Institutions

under the 2006 Act (which itself is not implemented) but not upholding any reservation quota for OBCs in State-captured seats in the All India Quota for non-Central institutions.

- C. It is submitted that even the 27 per cent reservation was not provided to OBCs in the All India Quota seats for undergraduate and postgraduate medical courses in the academic years 2017-18, 2018-19 and 2019-20.
- D. In 2018-19, only 220 OBC candidates were admitted to postgraduate courses while they had a claim over 2,152 of the 7,982 seats. Only 66 OBC students were admitted under All India Quota to the undergraduate course. There are 4,061 AIQ MBBS seats, of which 50 per cent (2030) should have been filled with OBC candidates.
- E. For 2020, out of 9550 seats under All India Quota, 8800 seats are surrendered from the colleges run by the State Governments. Of these 8800 seats, OBCs are not given any reservation (only zero) and the seats are transferred to the General Category, which is unjustified and unconstitutional.
- F. This indifference on the part of the Respondents has the effect of undermining endeavors of Parliament and State Legislatures to bring social justice and equality through affirmative action.

- G. The Respondents have also failed in ensuring that even 27% reservation for OBCs in Central Educational Institutions, as mandated under the 2006 Act, is being followed when in law as the Medical Council of India Regulations, 2000 the reservation policy that ought to have been followed is such policy as it exists in the state where the institution is situated.
- H. The Respondent No.1 is neither following its own policy of 27% reserved seats for OBCs under the 2006 Act nor the state government mandates regarding OBC reservation in the allocation of seats. This has resulted in OBCs being robbed off of 10,000 seats in the last three years at least and many more during the preceding years
- I. There is no rational basis to not extend the 50% reservation for OBCs provided to the State quota from the All India Quota. In fact, a reading of the aforementioned Medical Council of India regulations would suggest that the 50% State reservation should be applied to the All India Quota since there is nothing to differentiate a OBC candidate who falls within the State quota to one who falls outside of the state quota, i.e., in the All India Quota.
- J. That there cannot be any justification for excluding reservation for OBCs in State-captured seats in the All India Quota and that

the consecutive lapses in assuring that reservation is observed is a fraud on the Constitution of India specifically Articles 14 and 15.

- K. The Respondents cannot be permitted to turn a blind eye when a significant number of meritorious OBC students are denied seats in the State -captured seats in the All India Quota.
- L. The Respondents cannot be permitted to thwart efforts by the Petitioner and Governments in other States to uplift the lot of OBCs especially when there is a long road ahead for achieving this goal.
- M. That gross injustice has been committed by the Respondents by failing to implement reservation for OBCs in the State-surrendered seats to the All India Quota in undergraduate, diploma & postgraduate courses in non-Central Educational Institutions.

PRAYER

- i) Issue a Writ of Mandamus or any other appropriate Writ or Order or Direction, directing the present Respondents to implement 50% reservation for Other Backward Classes in admission to the seats shared by State of Tamil Nadu to All India Quota in Under Graduate, Post Graduate and Diploma Medical & Dental Courses in the State of Tamil Nadu as per the Rules of Reservation followed in

State of Tamil Nadu; and

- ii) pass such or further orders as this Hon'ble Court may deem fit to pass and thus render justice.

DRAWN BY:
Gowtham K. Kumar
&
Pallavi Sengupta

FILED BY:

Mohit Singh
Advocate for the Petitioner

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