

A NEIL AURELIO NUNES & ORS.

v.

UNION OF INDIA & ORS.

(Writ Petition (C) No. 961 of 2021)

B JANUARY 07, 2022

**[DR DHANANJAYA Y CHANDRACHUD AND
A.S. BOPANNA, JJ.]**

- Education – Reservation – National Eligibility cum Entrance Test (NEET)– Notice issued implementing reservation for OBC (non-creamy layer) and Economically Weaker Section (EWS) categories in the All India Quota (AIQ) seats – Challenge to – Held: A detailed interim order on the applicability of the EWS criteria as notified by OM 2019 for NEET-PG 2021 is necessitated – Validity of the OBC reservation in the AIQ seats in NEET-PG and NEET-UG is upheld – Counselling on the basis of NEET-PG 2021 and NEET-UG 2021 be conducted by giving effect to the reservation as provided by the notice, including the 27 per cent reservation for the OBC category and 10 per cent reservation for EWS category in the AIQ seats – Further, the recommendation of Pandey Committee (formed by Union Government to review the criteria for identifying EWS) that the criteria stipulated in OM 2019 be used for 2021-2022 is accepted – The criteria for the determination of the EWS notified by OM 2019 be used for identifying the EWS category for candidates who appeared for NEET-PG 2021 and NEET-UG 2021 examinations – Validity of the criteria determined by the Pandey Committee for identification of EWS would prospectively for the future be subject to the final result of the petitions – Petitions be listed for final hearing on the validity of the EWS criteria as recommended by the Pandey Committee.*

CIVIL ORIGINAL JURISDICTION: Writ Petition (C) No. 961 of 2021.

G (UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

With

Writ Petition (C) Nos. 967, 1002, 1021 and 1105 of 2021.

H Tushar Mehta, SG, K. M. Nataraj, Vikramjit Banerjee, ASGs, V. Krishnamurthy AAG, Arvind Datar, Shyam Divan, P. Wilson, A.

Mariarputham, Anand Grover, Sr. Advs., Dr. Charu Mathur, Sanjay Kumar Dubey, Rahul Unnikrishnan, Malak Bhatt, Vivek Singh, Shrirang Choudhary, Subodh S. Patil, Chaitanya Deshpande, Ms. Supriya Patil, Kanu Agrawal, Apoorv Kurup, Vatsal Joshi, Shailesh Madiyal, Sugosh Subramaniam, Amrish Kumar, Ms. Archana Pathak Dave, Ms. Swarupama Chaturvedi, Vikas Bansal, Gurmeet Singh Makker, Gaurav Sharma, Kirtiman Singh, Waize Ali Noor, Dhawal Mohan, Prateek Bhatia, Ms. Srirupa Nag, Taha Yasin, R. Nedumaran, Ms. Chandra Priya C., Mukul Lather, Dr. Joseph Aristotle S., V. K. Biju, Ms. Ria Sachthey, Chetanya Singh, Amlendu Kumar Akhilesh Kumar Jha, Shaji George, Ms. Vijay Laxmi, Devashish Bharuka, Ms. Sarvshree, Justine George, Apporve Karol, Mithu Jain, Kartikay Trivedi, Shashank Ratnoo, Vikram Hegde, Shantanu Lakhotia, Kumar Prashant, Ms. Vanya Gupta, Avnish Dave, Parmod Kumar Vishnoi, Varun Thakur, Brajesh Pandey, Varinder Kumar Sharma, Advs. for the appearing parties.

The Order of the Court was passed by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. There is a challenge, in this batch of petitions under Article 32 of the Constitution, to a notice which was issued by the Directorate General of Health Services in the Union Ministry of Health and Family Welfare on 29 July 2021. The notice implements a 27 per cent reservation for Other Backward Classes¹ (non-creamy layer) and a 10 per cent reservation for the Economically Weaker Section,² while filling up 15 per cent undergraduate and 50 per cent post-graduate³ All India Quota⁴ seats in pursuance of the National Eligibility cum Entrance Test⁵. The notice takes effect from the current admission year, 2021-2022. The petitioners are doctors who appeared in the NEET-PG 2021 examination.

2. The petitions were instituted on 24 August 2021 to challenge the validity of the notice dated 29 July 2021. Notice was issued by this Court on 6 September 2021. The NEET-PG results were announced on 28 September 2021. Arguments were heard in part on 7 October 2021. It was argued that there cannot be any reservation for the OBC and

¹ “OBC”

² “EWS”

³ “PG”

⁴ “AIQ”

⁵ “NEET”

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- A EWS category in the AIQ seats in NEET-PG and that the criteria for the determination of the EWS category notified by O.M 36039/1/2019⁶ was unconstitutional. By an order dated 21 October 2021, this Court sought clarifications in regard to the criteria provided by the OM of 2019 of using Rs 8 lakhs as the cut - off income limit for identifying EWS.
- B Two weeks were granted to the Union Government to file an affidavit in this regard. When the batch was taken up for hearing on 21 October 2021, the Union Government had not filed the affidavit. The ASG, Mr KM Nataraj informed this Court that an affidavit will be filed within two days. By an order dated 21 October 2021, this Court then formulated issues requiring the Union Government to disclose the rationale for the
- C adoption of the criteria used to identify the EWS. On 25 October 2021, the Union Government of its own accord deferred the counselling due to the pendency of the petitions. Thereafter, the Union Government filed an affidavit justifying the EWS criteria on 26 October 2021 stating that the criteria was adopted after due deliberation within the Ministry of Social Justice and Empowerment and all the concerned stakeholders.
- D 3. When the matter was listed for hearing on 28 October 2021, the Solicitor General sought an adjournment and requested that the petitions be heard after Diwali. On 25 November 2021, this Court was informed by the Solicitor General that the Union Government has taken a considered decision to revisit the criteria for determining the EWS and requested four weeks to complete this exercise, which was acceded to by this Court. The Union Government formed a Committee⁷ on 30 November 2021 to review the criteria for identifying EWS. The Committee submitted its report on 31 December 2021. Thereafter, the Union Government filed an affidavit before this Court accepting the
- E recommendations of the Committee including the recommendation that the existing criteria for identifying EWS be retained for the present admission year 2021-2022.
- F 4. The petitions were taken up for urgent hearing by this Court on 5 January 2022 after a request was made by the Solicitor General. It G was submitted on behalf of the Union Government that the OBC and EWS reservation (with the old criteria according to OM 2019) be allowed to be implemented for the current admission year of 2021.

⁶ “OM 2019”

H ⁷ “Pandey Committee”

5. We have heard Mr, Arvind Datar, Mr Shyam Divan and Mr Anand Grover, Senior Counsel and Mr Shirang Choudary, Ms. Archana Pathak Dave, Mr Apoorva Karol, Mr Subodh Patil and Mr Varun Thakur for the doctors and intervenors challenging the validity of the reservations for OBC and EWS categories. On the other side, we heard Mr Tushar Mehta, Solicitor General, Mr. Nataraj, Additional Solicitor General, Mr P Wilson for the Dravida Munnetra Kazhagam, Mr Mariarputham for the State of Tamil Nadu, and Mr Biju and Mr. Shashank Ratnoo for the intervenors.

6. The submissions which have been urged before this Court over a span of two days necessitate a detailed interim order on the applicability of the EWS criteria as notified by OM 2019 for NEET-PG 2021. The formulation of the reasons in the interim order on the EWS reservation would take some time. The validity of the OBC reservation in the AIQ seats in NEET-PG and NEET-UG is upheld for reasons to follow. In the meantime, there is an urgent need to commence the process of Counselling. We are hence issuing the following operative directions at this stage :

7. (i) We accept the recommendation of the Pandey Committee that the criteria which have been stipulated in OM 2019 be used for 2021-2022 in order to ensure that the admission process is not dislocated; E
- (ii) Counselling on the basis of NEET-PG 2021 and NEET-UG 2021 shall be conducted by giving effect to the reservation as provided by the notice dated 29 July 2021, including the 27 per cent reservation for the OBC category and 10 per cent reservation for EWS category in the AIQ seats; F
- (iii) The criteria for the determination of the EWS notified by OM 2019 shall be used for identifying the EWS category for candidates who appeared for the NEET-PG 2021 and NEET-UG 2021 examinations; G
- (iv) The validity of the criteria determined by the Pandey Committee for identification of EWS would prospectively for the future be subject to the final result of the petitions; and H

- A (v) The petitions shall be listed for final hearing on the validity of the EWS criteria as recommended by the Pandey Committee in the third week of March 2022.

8. Reasons shall follow.

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Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Directions issued.