**SYNOPSIS**

The present Writ Petition is being filed against the action of the Respondents in denying reservations to the Socially and Educationally Backward Classes (OBCs) (Non-Creamy Layer) into the Undergraduate (MBBS/BDS) and Post Graduate (MD/MS) and PG Diploma Medical Courses pursuant to the Constitution (Ninety –Third Amendment) Act, 2005 (S.2) inserting Clause 5 to Article 15 of the Constitution of India which came into effect from 20.01.2006 and the Central Educational Institutions (Reservation in Admission) Act, 2006 (Hereinafter referred as ‘Act 5 of 2007’ or the ‘Act’) to provide reservations in admissions of students belonging to SCs, STs and OBCs to Central Educational Institutions.

It is submitted that as per section 3 of the said Act, the reservation of seats in admission in the Central Educational Institutions, 15% of seats shall be reserved for the SCs, 7.5% seats shall be reserved for the STs and 27% to the Other Backward Classes out of the annual permitted strength in each branch of study or faculty.

The Hon’ble Supreme Court in the case of Pradeep Jain (Dr.) Vs. Union of India reported in (1984) 3 SCC 654, directed that out of Post Graduate seats to be filled by the various colleges in India, 50% of seats shall be admitted on the basis of the All India Entrance Examination.

The Scheduled Castes and Scheduled Tribe candidates approached this Hon’ble Court in W.P.(C).No.138 of 2006, W.P.(C).No.18 of 2005 and batch seeking to provide reservations in favour of SC and ST students out of the 50% of the seats to be filled by the All India Entrance Examinations. This Hon’ble Court disposed of the I.A.No.7 of 2007 in W.P.(C).No.18 of 2005 by order dated 31.01.2007 directing to provide reservations for SCs and STs out of 50% seats to be filled by the All India Entrance Examination. As admissions were over, the said Writ petitions were dismissed as having become infructuous by order dated 16.07.2010.

The Constitutional Validity of the Constitution (Ninety Third Amendment) Act, 2005 inserting Clause 5 to Article 15 and the Central Educational Institutions (Reservation in Admission) Act, 2006 - No.5 of 2007 relating to the reservations of 27% in favour of the Other Backward Classes was questioned in this Hon’ble Court in W.P.No.265 of 2006 and batch and the Five Judges Bench of this Hon’ble Court in Ashoka Kumar Thakur Vs. Union of India decided on 10.04.2008 upholding the Constitutional Validity of the Constitution (Ninety Third Amendment) Act, 2005 and also the Act No.5 of 2007 holding that the reservations of 27% of seats to other Backward Classes in the educational institutions shall be provided excluding the creamy layer.

The Government of India, Ministry of Human Resources and Development, Department of Higher Education issued O.M. No.1-1/2005-U.1.A/847 dated 20.04.2008 to provide reservations under Article 15 (5) of the Constitution of India and Act No.5 of 2007 in favour of the OBCs (27%), SCs (15%) and STs (7.5%) in the Central Educational Institutions.

The Government of India also issued O.M. No.17-1/2011-U1 dated 25.05.2012 issuing certain clarifications not to adjust the meritorious candidates who qualified in the General merit list against the reserved seats. The merit does not carry any caste, community, religion or race. The merit list can contain all castes and communities. Therefore, the candidates who qualify in the general merit cannot be shown against the reserved seat. In so far as the decision of Government of India pursuant to the recommendations of the National Commission for Minorities Act, 1992 to provide reservations of 4.5% out of 27% reservations for OBCs, it is submitted that the said decision of the Government of India was set aside by the Division Bench of the Hon’ble High Court of A.P. in P.I.L. No.1, 22 and 56 of 2012 dated 28.05.2012 reported in 2012 SCC OnLine AP 113 against which an Appeal was filed before this Hon’ble Court by the Government of India vide S.L.P.(c) No.18379 of 2012 wherein by order dated 13.06.2012, this Hon’ble Court declined to grant stay of the Order of the Hon’ble High Court and the main case is pending before this Hon’ble Court.

It is submitted that by Orders dated 23.03.2012 in I.A.No.16 of 2012 in Civil Appeal No.1944 of 1993 in the case of Anand S. Biji Vs. State of Kerala and order dated 09.05.2017 in W.P. (C) No.267 of 2017, a scheme has been approved by this Hon’ble Court, according to which, the Directorate General of Health Services, in Ministry of Health and Family Welfare, the Government of India has been entrusted with the responsibility to conduct Online Counselling for allotment of Undergraduate (MBBS/BDS) seats in participating Central Educational Institutions and State Government Medical colleges of the country. As per the Online counselling 27% reservations are provided to the OBCs, 15% reservations to the SCs and 7.5% reservations to the STs in Central Institutions. The reservations in 15% All India Quota for the undergraduate seats means the seats which are included in National pool by the participating State Government Institutions. Out of this 15% All India quota (MBBS/BDS) seats, 15% seats are reserved for the SCs, 7.5% seats are reserved to the STs but 27% reservations are not provided to OBC candidates in the Institutions other than the central institutions.

Similarly, the Directorate General of Health Services, Ministry of Health and Family Welfare has been entrusted with the responsibility for the distribution of seats available under 50% Post Graduate (MD/MS) and PG Diploma Courses seats in participating Central Educational Institutions and State Government Medical colleges of the country by way of an entrance test namely National Eligibility cum Entrance Test (NEET) conducted by the National Board of Examinations. As per the online counselling, 27% reservations are provided to the OBCs, 15% reservations to the SCs and 7.5% reservations to the STs in Central Government Medical/Dental Colleges. The distribution of seats available under 50% All India Quota for the Post Graduate seats means the seats which are included in National pool by the participating State Government Institutions. But the distribution of seats available under 50% of the Post Graduate (MD/MS/PG Diploma courses) seats in respect of the Medical/Dental colleges/Institutions other than the Central Government are concerned, 15% seats are reserved for the SCs, 7.5% seats are reserved to the STs, but 27% reservations are not provided to OBC candidatesin the State Government Institutions other than the Central Educational Institutions.

It is submitted that in so far as the reservations in 15% All India quota MBBS/BDS Undergraduate seats are concerned, the SCs are provided 15% and STs are provided 7.5% reservations in the entire quota in all Central and State Institutions, but in so far as the 27% reservations to OBCs are concerned, the reservations are provided in the Central Educational Institutions but not in the State Government Institutions other than the Central Educational Institutions.

The Directorate General of Health Services entrusted the job of conducting National Eligibility cum Entrance Test (NEET-PG) to the National Board of Examinations for making admissions as per the aforesaid scheme.

Hitherto, the Central Government used to fill up all the seats of Undergraduate and P.G. seats by conducting a Common Entrance Test following the rule of reservations of 27% in favour of OBCs, 15% in favour of SCs and 7.5% in favour of STs in all the Central Government Institutions. Similarly, the State of A.P. and Telangana used to fill up all the seats of the State by conducting a Common Entrance Test by providing 29% in favour of OBCs, 15% in favour of SCs and 7.5% in favour of STs in all the State Government Institutions as well as private medical colleges.

The Central Government is continuing its policy of implementing reservations in favour of OBCs, SCs and STs in respect of the admissions of all the UG and PG colleges of the Central Government Institutions.

Pursuant to the directions of this Hon’ble Court to have a common Entrance Test, the participating State Governments have agreed to have the common National Eligibility cum Entrance Test (NEET) and to fill up the 50% of their Post Graduate (MD/MS) and PG Diploma courses by the Directorate General of Health Services and the remaining 50% of seats filled by the concerned State Government/Designated Counselling Authority. However, 50% seats to be distributed by the Directorate of Health Services and the remaining 50% of seats by the concerned State Government/Designated Counselling Authority through NEET only. The 50% seats of the National pool of the State Government PG (MD/MS) and P.G. Diploma courses belonging to the concerned States were enjoying the reservations as per the respective rule of reservations of the States. The participating States never gave up their right to implement the Rule of Reservations in favour of OBCs. Even now the 50% of the PG (MD/Ms) and P.G. Diploma courses to be filled by the concerned State Government/Designated Counselling Authority, the Rule of Reservation of the concerned State is being continued. But the remaining 50% of seats available under 50% quota to be filled by the Directorate General of Health Services, the 27% reservations are not being providedin the State Government Institutions other than the Central Educational Institutions.

Similarly, the 15% of National Pool for admissions in Undergraduate medical colleges, the OBCs were enjoying the Rule of Reservations as per the respective Rules of the States. On mere participating by the States for the Common Eligibility Entrance Test, the Directorate General of Health Services is denying to provide the 27% of reservations to the OBCs out of 15% of the Common Pool. The State Governments are implementing the rule of reservations in favour of OBCs for the remaining 85% of the seats filled up by the concerned State Government/Designated Counselling Authority.

The action of the Respondents in denying the reservations for the OBCs in the 15% All India Quota for Undergraduate seatsin the State Government Institutions other than the Central Educational Institutions and 50% of All India quota PG (MD/Ms) and P.G. Diploma courses seatsin the State Government Institutions other than the Central Educational Institutions is illegal, arbitrary, against Article 14 of the Constitution of India, discriminatory and unconstitutional. The right of OBCs to have reservations in the seats belonging to the State Government situated within the respective States has not taken away by any Act or enactment or by any judgments of this Hon’ble Court. Equality before law prohibits discrimination. The concept of “equal protection of laws” requires the States to give special treatment to persons in different situations in order to establish equality among all. Therefore, equals could be treated equally while un-equals would have to be treated equally. Treating un-equals as equals is to perpetuate inequality.

This Hon’ble Court in the case of Anand S. Biji Vs. State of Kerala reported in (2012) 13 SCC 713 have approved certain guidelines about method and manner of distribution of the seats available under 15% All India quota of Undergraduate seats and 50% of the All India P.G seats but never dealt with the 27% reservations in favour of OBCs, 15% reservations in favour of SCs and 7.5% reservations in favour of STs. The right of OBCs to get reservations in respect of State Government UG & PG Medical seats has not been taken away. In fact in para 6 of the said judgement it is stated as follows: “*6.Since the modifications were sought with regard to an order passed by this Court on 22-4-1993 [Anand S. Biji v. State of Kerala, (1993) 3 SCC 80], we considered the matter at length and perused the record. We also found that no notices are required to be sent to any of the parties or the State Governments as the proposed modifications in the said order are only beneficial to the candidates appearing in the said examination. These candidates would not only be saving considerable time if online counselling is permitted but would be able to save money as well. It would also have a greater transparency in the whole process.”*

The State of A.P & Telangana participated in the National pool for the distribution of 15% of undergraduate seats in the medical colleges of the State Government from the year 2017-18 and for 50% of the PG seats in the medical colleges of the State Government from the year 2018-19. There are about 4064 UG seats in the National pool of 15% and 7942 PG seats under 50% National pool of all the participating States. In the Central institutions of the medical colleges for the undergraduate and PG seats 27% reservations are provided in favour of OBCs, 15% seats in favour of SCs and 7.5% seats in favour of STs by virtue of Central Educational Institutions (Reservation in admission) Act, 2006 and the OM issued by the Ministry of Human Resources Development vide OM No.1-1/2005-U.IA/847 dated 20.04.2008.

The Respondents in utter violation of Constitutional Rights guaranteed in favour of OBCs to enjoy 27% reservations in the Central and State Government Institutions are denying the said 27% reservations for the OBCs in the State Government Institutions other than the Central Educational Institutionswhile providing 15% reservations for SCs and 7.5% reservations for STs.It is pertinent to note that the States of A.P. and Telangana prior to the merger used to provide 29% reservations to the OBCs.

The Petitioners are seeking to implement the rule of 27% reservations in favour of OBCs for the academic year 2019-20 and onwards in the UG and PG courses. All over India, the OBCs are entitled for 27% reservations in the undergraduate medical courses and they are entitled to be allotted 1097 seats. But whereas the reservations are implemented in the Central Educational Institutions only by allotting 69 seats which constitutes 1.69% and OBCs have lost 1028 seats during the admission process for the Academic Year 2018-19 and if 27% reservations are not provided in favour of OBCs again the same loss will be incurred by the OBCS. Similarly, the OBCs are entitled 27% reservations i.e., 2144 seats in PG colleges out of the National pool of 7942 seats. As the Government is only implementing 27% reservation in respect of PG seats in the Central Institutions and they are going to get 233 seats only i.e., 2.9% and they are going to lose 1911 seats. The similar loss was incurred during the Academic Year 2018-19. The details of the Academic Year 2018-19 of the allotment of seats and the loss of seats caused to the OBCs are as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Academic Year | Course | Total Seats in National Pool | No. of Seats should be allotted for OBCs as per 27% reservation | Actual no. of seats allotted for OBCs | No. of seats lost by the OBCs |
| 2018-19 | MBBS UG | 4064 | 1097 | 69 (1.69%) | 1028 |
| 2018-19 | PG | 7942 | 2144 | 233 (2.9%) | 1911 |

It is submitted that on 05.03.2019, the Respondents have issued the Schedule for conducting the counselling for the Admissions into PG (MD/MS) and PG Diploma Courses for the Academic Year 2019-20 which is commencing from 12.03.2019.

Therefore, the Petitioners are constrained to file this Writ Petition under the extraordinary jurisdiction of this Hon’ble Court under Article 32 of the Constitution of India as their fundamental rights guaranteed under Part III have been infringed.

**LIST OF DATES**

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| 22.06.1984 | That this Hon’ble Court in Dr.Pradip Jain V/s. Union of India, reported in (1984) 3 SCC 654 dealt with the issues arising due to requirement of place of residence of student, in the States for the purposes of admission to Medical Courses, and provided for creation of All India Quota i.e., 30% for MBBS and 50% for PG courses. |
| 28.02.2005 | That this Hon’ble Court in Budhi Prakash V/s. Union of India & others reported in (2005) 13 SCC 61 held that as a result of judgement in Saurabh Chaudhary & the order dated 08.02.2005 in Buddhi Prakash’s case, All India Quota for PG admission again increased and was made 50% |
| 20.01.2006 | That the Parliament enacted the Ninety Third Amendment to the Constitution of India wherein Article 15(5) was added with object to uplift the Educationally Backward Classes (OBC) or S.C, S.T by making provision for their admissions in Educational Institutions aided or unaided, non-minority Institutions.  |
| 04.01.2007 | That the Parliament passed Central Educational Institutions (Reservation in Admission) Act, 2006 (Act No.5 of 2007). |
| 08.01.2007 | Letters were issued by the Universities Grants Commission to the Registrar of various Universities enclosing therewith the Central Educational Institutions (Reservation in Admission) Act, 2006 for their implementation. |
| 31.01.2007 | This Hon’ble Court disposed of the I.A.No.7 of 2007 in W.P.(C).No.18 of 2005 and also passed an Interim Order in W.P.(c) No.138 of 2006 directing to provide reservations for SCs and STs out of 50% seats to be filled by the All India Entrance Examination. |
| 20.04.2008 | The Government of India, Ministry of Human Resources and Development, Department of Higher Education issued O.M. No.1-1/2005-U.1.A/847 to provide reservations under Article 15 (5) of the Constitution of India and Act No.5 of 2007 in favour of the OBCs (27%), SCs (15%) and STs (7.5%) in the Central Educational Institutions. |
| 11.08.2008 | The Hon’ble Supreme Court in W.P.(C) No.18 of 2005 disposed of the matter in the light of the order dated 31.01.2007 passed by this Hon’ble Court on 31.01.2007. |
| 16.07.2010 | This Hon’ble Court disposed of the W.P.(C).No.138 of 2006 which was filed seeking to provide reservations in favour of SC and ST students out of the 50% of the seats to be filled by the All India Entrance Examinations as having become Infructuous. |
| 23.03.2012 | That this Hon’ble Court in Anand S Biji Vs. State of Kerala reported in (2012) 13 SCC 713 approved the provisions of conducting online counselling for UG & PG Medical and Dental Courses. |
| 25.05.2012 | That the Government of India also issued O.M. No.17-1/2011-U1 issuing certain clarifications not to adjust the meritorious candidates who qualified in the General merit list against the reserved seats.  |
| 20.06.2012 | The Central Educational Institutions (Reservation in Admission) Act, 2006 (Act No.5 of 2007) was amended and Central Educational Institutions (Reservation in Admission) Amendment Act, 2012 was published in the Gazette of India |
| 28.09.2012 | A Letter was issued by the Universities Grants Commission to the Registrar enclosing The Central Educational Institutions (Reservation inAdmission) Amendment Act, 2012. |
| 30.07.2015 | A case vide W.P.(C) No.596 of 2015 which is pending before the Hon’ble Supreme Court of India |
| 23.03.2016 | A Letter was issued by the University Grants Commission to the Registrar for Revised Budget Estimates for 2015-2016 under Non-Plan of Central Universities |
| 03.06.2016 | A Letter was issued by the University Grants Commission to the Registrar for the implementation of reservation policy in admission and appointment. |
| 09.05.2017 | The Hon’ble Supreme Court in the case of Anand S. Biji Vs. State of Kerala and order dated 09.05.2017 in W.P. (C) No.267 of 2017, a scheme has been approved by this Hon’ble Court, according to which, the Directorate General of Health Services, in Ministry of Health and Family Welfare, the Government of India has been entrusted with the responsibility to conduct Online Counselling for allotment of Undergraduate (MBBS/BDS) seats in participating Central Educational Institutions and State Government Medical colleges of the country. As per the Online counselling 27% reservations are provided to the OBCs, 15% reservations to the SCs and 7.5% reservations to the STs in Central Institutions. |
| 02.11.2018 | The National Board of Examination released the Information Brochure of NEET PG for the admissions of PG (MD/MS) and PG Diploma course |
| 31.12.2018 | All India Backward Classes Federation was registered under the Societies Registration Act of 1860 |
| 08.01.2019 | A Letter was issued by the BC, SC, ST Minority Students Federation to the Hon’ble Chief Minister Andhra Pradesh Government relating to injustice for OBCs in allotting UG (MBBS) and P.G. (Medical) Seats in State Government Medical Institutions |
| 31.01.2019 | The National Board of Examination released result of NEET PG entrance examination |
| 05.03.2019 | The Directorate General of Medical and Family Welfare released the Schedule of Counselling to be commenced from 12.03.2019 |
| 08.03.2019 | Hence this Writ Petition. |