

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2021

DELIVERED ON : 25.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

Contempt Petition No.181 of 2021

Dravida Munnetra Kazhagam
rep. By its Press Relation Secretary
TKS Elangovan
residing at C5, Lloyds Colony
Royapettah, Chennai – 600 014.
having office at
367 & 369, Anna Arivalayam
Anna Salai, Teynampet
Chennai – 600 018.

.. Petitioner

Vs.

1. Mr.Rajesh Bhushan
Secretary
Ministry of Health and Family Welfare
Nirmal Bhavan, Near Udyog Bhawan Metro Station
Maulana Azad Road
New Delhi – 110 011.

2. Mr.R.Subrahmanyam
Secretary to Government
Ministry of Human Resource Development
now known as Ministry of Education
No.1, West Block, Rama Krishna Puram
New Delhi, Delhi – 110 066.

3. Dr.R.K.Vats
Secretary
National Medical Commission
(formerly The Medical Council of India)
Pocket 14, Sector 8 Dwarka Phase I
New Delhi – 110 077.
4. Prof. (Dr.) Sunil Kumar
Director General of Health Service
Room No.446-A, Nirmal Bhavan
New Delhi – 110 001.
5. Dr.Abhijat Sheth
Chairman
The National Board of Examination
Ansari Nagar, Mahatma Gandhi Marg
New Delhi.
6. Dr.J.Radhakrishnan, I.A.S.
Secretary to Government
Department of Health & Family Welfare
Government of Tamil Nadu
Secretariat, Fort St George
Chennai – 600 009.
7. Dr.Sabyasachi Saha
Secretary
The Dental Council of India
Aiwan-E-Gali Marg
Kotla Road, Temple Lane
Opp. Mata Sundari College for Women
New Delhi – 110 002.
8. Dr.B.D.Athani
Medical Counselling Committee
Nirmal Bhawan, New Udyog Bhawan Metro Station
Maulana Azad Road
New Delhi, Delhi – 110 011.

9. Mr.K.Shanmugam, I.A.S.
Chief Secretary to Government
Government of Tamil Nadu
Secretariat, Fort St George
Chennai – 600 009.

.. Respondents

Prayer: Petition under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for wilful disobedience of the order passed by this Court dated 27.7.2020 in W.P.No.8326 of 2020.

For the Petitioner : Mr.P.Wilson, Senior Advocate
for M/s.P.Wilson Associates

For the Respondents : Mr.K.M.Nataraj
Additional Solicitor-General of India
assisted by
Mr.V.Chandrasekaran
Senior Panel Counsel
for respondents 1, 2, 4 and 8

: Mr.P.Muthukumar
Counsel for the State
for respondents 6 and 9

: Ms.Shubharanjini Ananth
Standing Counsel
for 3rd respondent

WEB : Service awaited
COPY : for respondents 5 and 7

ORDER

THE HON'BLE CHIEF JUSTICE

One of the petitioners in a batch of writ petitions which was decided on July 27, 2020 complains of the deliberate and wilful violation of the relevant order. Several senior Union and State officials have been arraigned as contemnors for their perceived failure to act in accordance with the order dated July 27, 2020 (hereinafter referred to as "the said order").

2. The petitioner here is a political party, one which has returned to power in this State following the Assembly elections conducted a few months back. It may also be noticed that most major political parties in the State had filed the other petitions in the batch of petitions that came to be decided by the said order. Even the State Government supported the writ petitions by filing an affidavit.

3. In essence, the prayers in the petitions that were decided by the said order sought implementation of reservation for Other

Backward Classes (OBC) in the All India Quota (AIQ) of the seats surrendered by the State for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State. The prayers in most of the petitions required such reservation to be implemented in the State with effect from 2020-21.

4. The decision of this court is reflected in paragraphs 103 to 106 of the said order. The rival parties – the petitioner and the Union – have copiously referred to the said order to persuade the court at this stage that the ultimate order that was passed was in favour of the contention put forth by either set of adversaries. The petitioner insists that its prayer in the petition was granted and this court accepted, in the said order, that the reservation policy as in vogue in this State would apply to the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State. The Union asserts that the prayer in the petitions to the effect that the reservation as per 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 can be made applicable to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State was expressly declined and the methodology for adopting a policy for reservation to be applied to the AIQ seats at both the admission stages to the under-graduate and post-graduate levels was left to be decided by the committee required to be constituted by the said order.

5. The contents of paragraphs 103 to 106 of the said order assume greater significance in the light of the diametrically opposite interpretations given thereto by the principal dramatis personae herein:

"103. The aforesaid observations, therefore, indicate that a policy relating to extending the benefit of reservations *vis-a-vis* qualifying marks and admissions has to be reviewed jointly by the Central Government as well as by the Medical Council of India. At the same time, once the constitutional mandate enabling the

State to frame a law has been crystallised by the framing of a particular law by the State Government, then its applicability *vis-a-vis* All India quota to the extent the percentage is permissible cannot be ignored. We may, however, caution that the balance which has to be struck is in order to avoid any undesirable disbalance of representation of candidates qualifying on merit in the NEET examinations. The minimum merit and the preparation of the list of candidates entitled to admission having been taken care of by the NEET examinations, it cannot be said that merit would be compromised if reservation is introduced in favour of Other Backward Categories in the All India quota, who have qualified in the NEET examinations, but, that is an issue for which a decision has to be taken upon a joint deliberation and consideration of all such factors that may be necessary so as to implement the policy by any appropriate fusion and the protection of interests and at the same time maintaining a balance of the representations of each category of candidates in their respective proportions.

“104. We are issuing certain directions as we find that the entire constitutional obligation to take a decision

by the Central Government is evidently a necessity when it involves the future career of candidates aspiring in a welfare State to receive their share of opportunity of education. We are not asking the respondents to take a decision on some manifesto, but rather on a clear projection of a firm commitment to a proposal by way of a solemn affidavit before this Court preceded by a similar affidavit before the Apex Court in the case of *Dr.Saloni Kumari v. Director General, Health Services*, involving the rights of the Other Backward category candidates, who, upon being qualified and declared eligible through an entrance examination, are found to be possessed of the merit of getting admission. It is the implementation part of OBC reservation against All India Quota seats which is warranting in the present case on account of an indecisiveness prevailing in proceeding to take a positive step or otherwise in relation to the claim as set out in the writ petitions. This claim is not bereft of substance, but does require an expert decision consciously to fulfill the commitment of the proposal as represented by the Central Government in its own affidavit through the fourth respondent, both in the case of *Dr.Saloni Kumari* and in the present case as

well. We are issuing the directions which are not a policy declaration nor a mandamus to declare a policy. The proposal as committed is already in place as professed by the fourth respondent in his affidavit and legally supportable by a State law. Since the seats are of All India quota, therefore, it requires a decision with the participation of the authorities keeping in view the fact that the control of setting of coordinated standards of higher education is with the Central Government and the Medical Council of India in such matters as held by the Constitution Bench in *Saurabh Chaudri v. Union of India, (2003) 11 SCC 146*.

“105. To apply this on principle, the matter has to be resolved between the State Government and the Central Government with the participation of the Medical Council of India as well as the Dental Council of India and in this view of the matter, we find that it would be appropriate that the issue is referred to a Committee for providing the terms of implementation of such reservation as claimed by the petitioners, which can only be done with regard to the courses that are to be run in future and not in the present academic year as that would disturb the entire selections that have already been set into motion and

are likely to be concluded under the existing scheme. This exercise, therefore, has to be taken with the participation of all these three Organs and for which, we direct the Union of India through the Director General of Health Services, Ministry of Health and Family Welfare, to convene a meeting along with the Health Secretary, Government of Tamil Nadu and the Secretaries of the Medical Council of India and the Dental Council of India in order to finalise the manner in which the facilities of OBC reservation are to be provided for against All India Quota seats in the UG/PG courses with effect from the next academic year as already proposed by the Central Government and discussed hereinabove.

“106. In case, any of the parties intend to contend that they need some clarification from the Apex Court, it is open to them to approach the Apex Court for any such clarification, but the directions given herein shall be complied with and the decision with regard to the implementation of the percentage of reservation that may be offered as indicated above may be announced by the Central Government preferably within three months.”

6. According to the petitioner, whether or not certain seats in government medical colleges or government aided or approved medical colleges have been surrendered by the State to be included as part of the AIQ seats, since the admission is sought and is to be granted in institutions in this State, the relevant institutions would be governed by the Act of 1993. In support of such contention, the petitioner emphasises on several sentences from the business end of the said order, including the observation that when a particular law had been brought by the State Government, "then its applicability *vis-a-vis* All India quota to the extent the percentage is permissible cannot be ignored" from paragraph 103 thereof. Again, the petitioner relies on the further observation at paragraph 104 of the said order to the effect that "The proposal as committed is already in place ... and legally supportable by a State law."

7. Much stress is placed by the petitioner on a letter dated December 18, 2019 written by the then Union Health Minister to a Member of Parliament belonging to the petitioner party that refers

to each State having its own reservation policy for admission to under-graduate and post-graduate medical courses. The third paragraph of the letter is of some significance as the petitioner maintains that it has been construed by this court in the said order to imply that the reservation policy of a State would also apply to the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State. Indeed, at paragraph 75 of the said order, this court noticed the submission on behalf of the Union to the effect that "the States have no role to enforce any reservation on the State surrendered seats of All India Quota unless they are reverted back to them" and found such submission to be "in contrast to the stand taken by the Union Health Minister in his above quoted letter ...". This Court also found the oral submission on behalf of the Union to be at variance with the contents of paragraph 11 of an affidavit filed on its behalf in the proceedings, as the stand taken in the affidavit was understood to imply as follows:

"76. ... the stand taken is that the Central Government has proposed to apply State specific

reservation for OBC on all available All India Quota Under Graduate/Post Graduate seats, subject to a condition that the overall reservation will not exceed 50% of total available seats and the existing reservation of the Un-reserved, Schedule Caste and Scheduled Tribe seats shall not be disturbed.”

8. The petitioner places paragraphs 85 to 97 of the said order where this court dealt at length with a notification of December 21, 2010 issued by the Medical Council of India and the Regulations framed thereunder. In particular, Regulation 5(5) of the Medical Council of India Regulations on Graduate Medical Education, 1997 engaged the attention of this court. At paragraph 85 of the said order, this court observed that the said Regulations of 1997 “categorically indicate that the reservation of seats for respective categories shall be as per applicable laws prevailing in the States/Union Territories.” Though this court went on to record that the relevant provision did not expressly refer to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State, but held that it did not

“specifically exclude it either.” Later in the same paragraph, this court went on to pose a question as to “whether the aforesaid regulations intend to apply reservation only in respect of State sponsored seats and not State surrendered seats to All India quota or central pool.” With respect, the question does not appear to have been expressly answered in the said order.

9. The petitioner submits that the petitioner did carry a petition to the Supreme Court for special leave to appeal against the substance of the said order, but says that the only purpose of the essay was to ensure the implementation of reservation in favour of OBC in the academic year 2020-21 itself. The petitioner refers to an application for interim relief filed in the resultant civil appeal and places the entirety of an interim order dated October 26, 2020 passed by the Supreme Court. At paragraph 1 of the Supreme Court's interim order in Civil Appeal Nos.3518 of 2020 and 3519 of 2020 arising out of SLP (C) Nos.9286 of 2020 and 9592 of 2020 (*The State of Tamil Nadu v. Union of India*), it was observed that

this court's order assailed before the Supreme Court held that “there is no legal or constitutional impediment for extending the benefit of reservation to the Other Backward Class candidates in the State surrendered All India Quota seats of the under-graduate and post-graduate medical courses in the State-run medical colleges within the State of Tamil Nadu ... (*but*) ... the High Court was of the opinion that implementation of the reservation should be after a joint deliberation between the Central Government, Medical Council of India and the State Government.”

10. At the second paragraph of the order passed by the Supreme Court, it confined the discussion to “the benefit of reservation to OBC candidates in the All India Quota for admission in Government-run medical colleges in the State of Tamil Nadu for the academic year 2020-2021.” The petitioner relies on a solitary sentence from paragraph 8 of the Supreme Court order to suggest that this court's order of July 27, 2020 has been recognised by the Supreme Court to have accepted the petitioner's contention in the

writ petition and allowed the same. However, the relevant sentence and the observations later in the paragraph need to be seen together:

“8. ... It is no doubt true that the High Court accepted the submissions of the Appellants that the 1993 Act can be made applicable to the All India Quota seats. However, a direction was given to the Union of India to constitute a committee to work out the modalities of implementation of the reservation for OBC candidates to the All India Quota seats in the State of Tamil Nadu. At present, there is no challenge to the judgment of the High Court except this writ petition wherein the grievance is limited to the direction that the implementation of the reservation will be from next year. ...

The admission to All India Quota seats is done on the basis of marks obtained in the NEET Examination. The Appellant agreed that there is no domicile or residence reservation or preference for the All India Quota seats. All candidates belonging to the OBC category shall be eligible for admission to OBC seats in the All India Quota in the State of Tamil Nadu if reservation is implemented. ...”

11. The request for interim relief, as prayed for by the petitioner herein, was rejected with the observation that this court was justified in holding that since the selection process for the relevant academic year had commenced, the same could not be disturbed. However, the appeals remain pending and, in such sense, the order of this court of July 27, 2020 has not attained finality, though there is no impediment to it being implemented in academic year 2021-22.

12. The petitioner has referred to several provisions from the Act of 1993. The origin of the concept of AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the States has also been traced and how reservation has been applied also to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses has been ascribed to three Supreme Court judgments culminating with a decision rendered in 2009. Such judgments have been dealt with in

extenso in the said order of this court.

13. A judgment reported at (1984) 3 SCC 654 (*Dr.Pradeep Jain v. Union of India*) has first been placed for the acceptance therein of the need for AIQ seats in under-graduate and post-graduate medical courses. The Supreme Court observed that all citizens of India should have access to medical courses, even though some States may not have government-run medical colleges.

14. The petitioner has also relied on a judgment reported at (1986) 3 SCC 727 (*Dinesh Kumar (II) v. Motilal Nehru Medical College, Allahabad*) where the idea of reservation in AIQ seats for under-graduate and post-graduate medical courses was accepted, and the percentages in respect of scheduled castes and scheduled tribes were crystallised in the judgment reported at (2009) 17 SC 705 (*Abhay Nath v. University of Delhi*).

15. In support of its assertion that the full benefit conferred by a beneficial legislation or policy should be reached to the beneficiaries, the petitioner has carried a judgment reported at (1997) 5 SCC 201 (*Ashok Kumar Gupta v. State of Uttar Pradesh*) for the proposition that the court should supply vitality, blood and flesh to constitutional provisions and interpret the same in a broad way to ensure that the goal of social justice is met. In particular, emphasis is laid on the following instructive passage at paragraph 51 of the report:

"51. Therefore, it is but the duty of the Court to supply vitality, blood and flesh, to balance the competing rights by interpreting the principles, to the language or the words contained in the living and organic Constitution, broadly and liberally. The judicial function of the Court, thereby, is to build up, by judicial statesmanship and judicial review, smooth social change under rule of law with a continuity of the past to meet the dominant needs and aspirations of the present. This Court, as sentinel on the qui vive, has been invested with more freedom, in the interpretation of the Constitution than in the

interpretation of other laws. This Court, therefore, is not bound to accept an interpretation which retards the progress or impedes social integration; it adopts such interpretation which would bring about the ideals set down in the Preamble of the Constitution aided by Part III and Part IV – a truism meaningful and a living reality to all sections of the society as a whole by making available the rights to social justice and economic empowerment to the weaker sections, and by preventing injustice to them. Protective discrimination is an armour to realise distributive justice. Keeping the above perspective in the backdrop of our consideration, let us broach whether the rights of the employees belonging to the general (sic reserved) category are violative of Article 14; inconsistent with and derogatory to the right to equality and are void ab initio.”

16. The petitioner places the Act of 1993 to demonstrate that 69 per cent of seats at the admission level in relevant educational institutions are reserved in this State in the following manner: 30 per cent for backward classes; 20 percent for most backward classes and denotified communities; 18 per cent for scheduled

castes; and, one per cent for scheduled tribes. The petitioner asserts that the mandate under such statute binds all educational institutions covered by the definition therein and submits that it matters little as to whether the seats are State- sponsored or a part of the All India Quota, since every relevant educational institution has to follow the statutory command. The petitioner says that the statute received the assent of the President and keeps exalted company in the Ninth Schedule to the Constitution; and that, according to the petitioner, makes it immune to an ordinary challenge in judicial review.

17. The petitioner says that despite the said order requiring an appropriate manner of reservation to be applied at the admission stage of medical courses for the current year, no steps have been taken by the Union or the National Medical Council to implement the full extent of reservation this year. The petitioner refers to the Supreme Court order of October 26, 2020 that also required the modalities for implementation of the reservation for OBC candidates

in the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State to be applicable from academic year 2021-22. The petitioner relies on the order dated July 19, 2021 passed by this court that prodded the alleged contemnors to take steps, but complains that the ultimate decision purported to be announced by the Union goes against the grain of the said order and is also contrary to the relevant observation of the Supreme Court in its order of October 26, 2020.

18. In the order dated July 19, 2021 passed on the present petition, this court observed that the Union's attempt to not implement the OBC reservation in respect of the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State in academic year 2021-22 "appears to be contumacious, in derogation of the order dated July 27, 2020 passed by this Court and contrary to the representation made before the Supreme Court as recorded in the order dated October 26, 2020". The respondents were permitted a week's time

to indicate their considered stand as to the mode and manner of implementation of the OBC reservation in respect of the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State in academic year 2021-22. The order also observed that the admission into the relevant colleges in this State "can only now be upon implementing such reservation quota."

19. The petitioner next refers to the notification issued by the Medical Counselling Committee of the Government of India, Directorate General of Health Services in the Ministry of Health and Family Welfare on July 29, 2021. The petitioner says that the figures indicated in such notification are unacceptable as they are at variance with the extent of reservation for different classes in this State under the Act of 1993. As per the notification of July 29, 2021, the 15 per cent under-graduate and 50 per cent post-graduate seats in government and government-aided medical colleges in this State earmarked as AIQ seats would carry

reservation in the following manner:

(i)	Scheduled Castes	-	15%
(ii)	Scheduled Tribes	-	7.5%
(iii)	OBC (Non-Creamy Layer) as per the Central OBC List	-	27%
(iv)	EWS – as per Central Government norms	-	10%
(v)	PwD – 5% horizontal reservation as per NMC norms		
	Total reservation		59.5%
	(with 5% horizontal reservation for PwD)		

20. The petitioner submits that the said notification, issued during the pendency of the present proceedings, militates against the order dated July 27, 2020 passed by this court, as interpreted by the Supreme Court. The only ground canvassed by the petitioner is that reservation in medical institutions in this State has to be in accordance with the Act of 1993 and no other break-up may be applied.

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21. Though the Union and the State are both represented,

primarily because their officials have been hauled up for perceived contempt, their stands are quite distinct. The State says that its officials could not have done anything more than help in the constitution of the committee as per the said order and respond to the recommendations of such committee. The Union, on the other hand, says that upon the notification of July 29, 2021 being published, nothing survives of the contempt proceedings.

22. The Union refers to the recommendations of the committee constituted in terms of the said order. In its report submitted on October 21, 2020 to the Secretary to the Union Ministry of Health and Family Welfare, the committee set up in terms of the said order referred to the circumstances which led to the constitution of the committee; the proceedings of the committee; the analysis of the issues, and, finally, its recommendations of the manner of application of OBC reservation for AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State. The

committee noted that 1000 out of 2070 post-graduate seats were available to the All India Quota in the State together with 554 seats at the under-graduate level. While analysing the issues, the committee referred to the AIQ scheme consisting of 15 per cent under-graduate seats, totalling 6060 across the country, and 50 per cent post-graduate seats, totalling 9515. The committee observed that the AIQ scheme "is devised by and is being continuously monitored by the Hon'ble Supreme Court of India since 1984" and allotment for admission to such seats "is done by duly constituted Medical Counselling Committee (CCC) of Dte. General of Health services, Ministry of Health & Family Welfare, Govt. of India."

23. At paragraph 4.2 of the report, the committee records that the AIQ scheme was initiated through the Supreme Court judgment in *Dr.Pradeep Jain*, followed by the judgment in *Dinesh Kumar* and, "On the basis of judgment ... of Abhay Nath ... provided the benefit of reservation to SC and ST candidates (15% & 7½%, respectively) for the AIQ Seats in all Government institutions

from the year 2007.” After observing that “State specific reservations with respect to SC and ST has not been applied in AIQ Scheme apparently due to wide variations in such reservations”, the report goes on to indicate the extent of variation from one State to another in a short table which shows that while Madhya Pradesh has 16 per cent reservation for scheduled castes and 20 per cent for scheduled tribes; Gujarat has seven per cent for scheduled castes and 15 per cent for scheduled tribes; Kerala has eight per cent for scheduled castes and two per cent for scheduled tribes; while West Bengal has 22 per cent for scheduled castes and six per cent for scheduled tribes.

24. The report indicates that from 2009 Other Backward Castes (OBC), excluding the creamy layer, had been given 27 per cent reservation in Central educational institutions and Central universities on the basis of the Central Educational Institutions (Reservation in Admission) Act, 2006. The report then refers to W.P.No.596 of 2015 pending before the Supreme Court (*Saloni*

Kumari) where the demand for 27 per cent for OBC in AIQ scheme has apparently been made.

25. The Union refers to the two options suggested by the committee in its final report. It is best to see the exact words of the committee and the options suggested:

“5.3 There exist *two options* for implementation:

(i) **OPTION 1: State specific reservation**

If State specific reservation is to be implemented for OBCs to AIQ Scheme seats contributed by the State of Tamil Nadu as per the provisions of Tamil Nadu Backward Classes, SC & ST (Reservation of Seats in Educational Institutions and of Appointments to Posts in the Services under the State) Act 1993, then a scenario would be created whereby **277 seats from UG courses and 500 seats from PG courses** would have to be earmarked for **OBC category**. This is the crux of demand as submitted by the Tamil Nadu government, and summarized below in Table 13.

(ANNEXURE VII)

Table 13: Demand of State of Tamil Nadu for OBC reservation in AIQ Seats

Course	Total Seats	AIQ Seats	OBC Seats (50%)
UG	3250	554 (@15%)	277
PG	2070	1000 (@50%)	500

5.4 The key concerns to be flagged with this option are:

(i) In this instance, i.e. w.r.t. the State of Tamil Nadu, there is bound to be deviation from the accepted proportion of reservation provided to SC and ST categories from the currently applicable **15% for SC and 7½% for ST** and substitute it with 18% and 1%, respectively, which will necessitate the seeking of permission and directions from the Hon'ble Supreme Court by filing I.A.

(ii) If similar State specific reservations are to be replicated in other States, then deviation in quantum of reservations for SC & ST category is bound to occur in other States as has already been depicted in Table 12 above.

(iii) Although Tamil Nadu Govt. has contended that its

State Act being in Schedule IX of our Constitution deemed out of judicial review, it needs to be verified if the exceeding of ceiling of **50%** in overall reservations, as mandated through the judgment of the Apex Court in the Indira Sawhney case, is feasible legally or not.

(iv) The Central Government would also have to deviate from its uniform policy of providing 27% reservation to OBCs and in the instance of Tamil Nadu would have to enhance it to 50%.

(v) The state government would have to surrender the seats to MCC of DGHS/MoHFW with Roster Points duly certified by competent authority.

5.5. Another key issue the Committee noted is that whether AIQ is to be treated as per the CEI Act or as per the State specific Acts / Rules. Since this matter is a Centre-State issue, consultation with Law Ministry on this particular point shall be required.

(ii) OPTION 2: Extension of OBC reservation as per the provisions of CEI Act 2006 for AIQ Seats

in Tamil Nadu

If however, seats under the AIQ Scheme are considered to be under the Central Government for the purpose of distribution without domiciliary considerations, then application of **27% reservation as per the CEI Act 2006, uniformly across states,** disregarding State specific Acts / Rules, as is done w.r.t. SC & ST reservations seems plausible and implementable.

5.6 The additional 27% OBC seats thus created through Option 2 will be incorporated into the running roster currently maintained by MCC of DGHS/ MoHFW.

5.7 It is to be noted that the second Option being proposed by this Committee is actually the prayer in the petition of Saloni Kumari pending before the Hon'ble Supreme Court, that being heard by the Parliamentary Standing Committee and also the National Commission for Backward Classes.

5.8 If opting of Option 2 will require time for

enactment of relevant laws and framing of rules and regulations, as interim Option 1 can be considered only for Tamil Nadu, keeping in view the issues stated in the aforesaid paragraph.”

26. The Union submits that once a State has surrendered a certain number of seats to the all-India pool, there can be no question of the reservation rules applicable in the State being applied to the seats that the State surrendered to the All India Quota. The Union asserts that the mix of population and the incidence of socially backward sections would differ from State to State and neither the ratio, nor the mix of scheduled castes, scheduled tribes or OBCs can be exactly the same even in two contiguous States.

27. The Union refers to the Act of 1993 and the definition of “Backward Classes of citizens” appearing therein. The Union points out that the definition in Section 3(a) of the Act of 1993 pertaining to “Backward Classes of citizens” includes the most backward

classes and denotified communities and, for a person to obtain the benefit under the statute, he should belong to a backward class as notified in the Tamil Nadu Government Gazette. The Union refers to Section 4(2) of the Act of 1993 which provides 30 per cent reservation for Backward Classes and 20 per cent reservation for most backward classes and denotified communities and says that in several other States, there is no reservation in respect of the persons included as backward classes in this State. Similarly, the Union refers to the high percentage of reservation in this State for scheduled castes to the extent of 18 per cent and the extremely low percentage of reservation for scheduled tribes to the extent of one per cent being indicative of a much larger scheduled castes population in this State and a much smaller scheduled tribes population therein.

28. The Union exhorts that applying the State's reservation quota to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State

would be anathema to the concept of the State surrendering seats to the AIQ scheme, and render the entire AIQ scheme meaningless.

29. The Union places much of the same paragraphs from the said order as is relied upon by the petitioner to suggest that nothing therein, expressly or by necessary implication, requires reservation as per the Act of 1993 to be applied to the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State.

30. The Union says that the reservation for socially and educationally backward classes of citizens cannot exceed 50 per cent as per the Supreme Court dictum in the judgment reported at 1992 Supp (3) SCC 217 (*Indra Sawhney v. Union of India*) rendered by a nine-member Bench. In the same breath, the Union seeks to justify the additional 10 per cent reservation for the economically weaker sections (EWS) on the ground that clause (6) was inserted in Article 15 of the Constitution by the Constitution (One Hundred

and Third Amendment) Act, 2019 that provides as follows:

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—

...

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.— For the purposes of this article and article 16, "economically weaker sections" shall be

such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.”

31. The Union submits that though several challenges have been made to such amendment and the entirety of the Amending Act itself, the matter is pending before a Constitution Bench after a batch of matters led by W.P.No.55 of 2019 filed before the Supreme Court was referred to a Constitution Bench by an order dated August 5, 2020.

32. The Union suggests that all that was required to be done in terms of the said order, has been done. The said order required a committee to make suggestions and for OBC reservation to be introduced at NEET 2021-2022. The Union says that the committee was set up and it duly deliberated upon the matter and submitted its report; whereupon, the appropriate wing of the Union has taken a decision as reflected in the notification of July 29, 2021. The Union maintains that this is not the appropriate stage for testing the

validity of the notification dated July 29, 2021 or questioning the manner of reservation indicated therein. The Union seeks to confine the matter to whether the said order of July 27, 2020 has been complied with in letter and spirit.

33. As to the petitioner's submission that its special leave petition, which has resulted in a civil appeal which is pending in the Supreme Court, was limited to OBC reservation being applied to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State in academic year 2020-21, the Union refers to the petition filed before the Supreme Court, particularly the prayer therein, to suggest that the petitioner understood that its writ petition had been dismissed and the relief that it had sought had been declined by this Court. The Union claims that, in such circumstances, it does not lie in the petitioner's mouth to today read the said order to imply that its petition had been allowed or that the State reservation quota as per the Act of 1993 had been directed to be made applicable to the AIQ seats for

admission to the under-graduate, post-graduate and diploma medical and dental courses in the State.

34. Similarly, the Union submits that since the Supreme Court merely considered, at the interim stage, whether the OBC reservation in AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State should be applied in 2020-21 or in the next academic year, the casual observation from the order dated October 26, 2020 cannot be twisted out of context and interpreted to imply that it was the Supreme Court's understanding of the Division Bench order of this court of July 27, 2020.

35. For such purpose, the Union has relied on a judgment reported at (1996) 6 SCC 44 (*Union of India v. Dhanwanti Devi*) for the following instructive passage at paragraph 9 of the report:

"9. ... It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle

upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contains three basic postulates — (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. ...”

36. The Union has also carried a judgment reported at (1996) 6 SCC 291 (*J.S.Parihar v. Ganpat Duggar*) to rely on paragraph 6 thereof, where the discussion was on whether the Single Judge of the High Court, in contempt proceedings, could redraw a seniority list that had been prepared in purported compliance of a previous order of the court. In the context of the matter before the Supreme Court, such court found that the relevant order which was said not to have been complied with required a seniority list to be prepared; however, in the contempt proceedings, the Single Judge went into

the veracity of the seniority list, which the Supreme Court frowned upon since a faulty seniority list would entitle the petitioner to file a fresh petition and avail of the opportunity of judicial review in course thereof.

37. To start with, it does not appear that the special leave petition carried by the petitioner against the said order was confined to the implementation of reservation in academic year 2020-21 itself, rather than from 2021-22. It is true that the interim application was confined to such aspect, but the special leave petition must be seen as a wholesome challenge to the judgment and order of July 27, 2020 as, in the very first paragraph of the special leave petition, the present petitioner claimed that "the Hon'ble High Court *inter alia* declined from granting the Petitioner's prayer seeking extension of OBC reservation in All India Quota as per the laws in Tamil Nadu on erroneous considerations."

38. In the interim relief sought as part of the special leave

petition itself, the following prayer is indicative of the petitioner's understanding of the judgment and order sought to be appealed against:

“A. Stay the operation and execution of the Impugned Judgment and Final Order dated 27.07.2020 passed by the Hon'ble High Court of Judicature at Madras in W.P. (C) No.8361 of 2020”.

39. At the same time, the counter-affidavit filed on behalf of several Union officials, arraigned as contemnors herein, including the Secretary in the Ministry of Health and Family Welfare, also betrays the general confusion that prevails. At paragraph 4 of such affidavit filed on April 15, 2021, it has been stated, inter alia, as follows:

“4. I respectfully submit that the prayer in the main petition pertained to extending OBC reservation in All India Quota Scheme (AIQ) of MBBS and PG seats. The Scheme as formulated by Hon'ble Supreme Court consists of 15% of total available UG seats in government medical colleges and 50% of total PG seats available in government medical colleges. In the

original scheme, there was no reservation for any category from 1987. In the year 2006, the Hon'ble Supreme Court in the matter of Abhay Nath Vs. University of Delhi allowed reservation for SC/ST in the All India Quota for the first time. In 2015, a petition was filed in the Hon'ble Supreme Court in the matter of Dr. Saloni Kumari and Ors. VS. DGHS praying for implementation of 27% reservation for OBC in the AIQ Scheme. The said petition is still pending in the Apex Court. In this petition, the Ministry in its affidavit filed in 2016 had suggested the Apex Court to apply State specific reservation for OBC under AIQ with the condition that over all reservation would not exceed 50% of total available seats."

40. At paragraph 9 of such affidavit, the relevant Union officials refer to the 69 per cent overall reservation in educational institutions in this State and claim that applying such reservation "would lead to the breach of the Law laid ... in Indira Sawhney's case as it has been clearly held by the Hon'ble Apex Court that the overall reservation should not exceed 50%." After referring to the *Saloni Kumari* case in the following paragraph, the relevant affidavit

indicates that the Central Government "is ready and willing to grant overall reservation consisting of OBC and SC & ST upto 50% ceiling limit in terms of Indira Sawhney's case and anything beyond would defeat the dictum laid down by the Hon'ble Supreme Court."

41. At paragraph 13 of the affidavit, the Union's understanding of the recommendations of the committee directed to be constituted by the said order of this court reveals the following:

"13. ... The Committee offered two options for implementation of OBC reservation in the AIQ Scheme - (i) State Specific reservation as per the OBC reservation prevalent in the respective State; or (ii) uniform 27% reservation as per the provisions of the Central Education Institutions (Reservations in Admissions) Act, 2006."

42. The State of Tamil Nadu, quite naturally, supports the petitioner. The State had filed an affidavit in W.P.No.8361 of 2020, affirmed by its Health Secretary on June 15, 2020. In such

affidavit, the State's understanding of the purpose of the writ petitions appears at paragraph 2 thereof: to the effect that such prayer was for 50 per cent reservation in AIQ seats in the State "for Backward Classes, Most Backward Classes and Denotified Community" in under-graduate, post-graduate and diploma medical and dental streams in the State of Tamil Nadu.

43. After narrating a bit of the historical perspective and referring to the judgment reported at AIR 1951 SC 229 (*B.Venkataramana v. State of Madras*) that led to the First Constitution Amendment in 1951 and the introduction of clause (4) in Article 15 of the Constitution, the affidavit traverses the saga of the increase in reservations, the Mandal Commission recommendations, the judgment in *Indra Sawhney*, and the said Act of 1993 coming into effect in 1994. At paragraph 22 of the affidavit, the State refers to an office memorandum of April 20, 2008 by which the Union Ministry of Human Resource Development indicated that 27 per cent reservation for OBC category would be

followed from 2009 in respect of 15 per cent under-graduate MBBS/BDS seats and 50 per cent post-graduate MD/MS/Diploma/MDS seats of All India Quota, but only in Central educational institutions in the country. Indeed, the averments in such regard appear to be quite confusing – not unlike everything else pertaining to reservation, including its purpose, its duration and particularly the departure that has been made over the years from the understanding of the issue evident from the Constituent Assembly debates and the Constitution itself as originally adopted.

44. What is of significance in the State's affidavit filed in course of the proceedings that culminated in the judgment and order dated July 27, 2020, is that the State indicated that "27% OBC reservation has been provided in Under Graduate admissions in the year 2019-2020 only in two institutes namely ESICMC & PGIMER, Chennai and GMC & ESICH, Coimbatore." There is, therefore, a precedent for applying 27% reservation for OBC in two institutions in the AIQ seats for admission to the under-graduate,

post-graduate and diploma medical and dental courses in this State.

45. In deference to the issue as to reservation for OBC in AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses remaining pending before the Supreme Court in the *Saloni Kumari* case, this court was understandably reluctant to take up the batch of petitions. However, the Supreme Court clarified by an order of July 13, 2020 that "the High Court can proceed to adjudicate the writ petitions on merits" despite the pendency of the *Saloni Kumari* case in the Supreme Court. It was in such backdrop that the relevant writ petitions were taken up and culminated in the judgment and order of July 27, 2020, the operative part whereof has been quoted at the beginning of this judgment.

46. It is first that the elephant in the room has to be banished. It is inconceivable that all States having government-run medical colleges would give up a percentage of seats to an All India

Quota, but would retain the right to enforce reservation in such quota as per the State norms. Indeed, in the initial judgment in *Dr.Pradeep Jain* and the two key judgments in *Dinesh Kumar (II)* and *Abhay Nath* that followed, the need for an All India Quota was mooted since some States in the 1980s may not have had government-run medical colleges or any medical college at all and the Supreme Court frowned on the domicile rule for getting admission to medical courses.

47. The one aspect on which there is no fight is that all the appearing parties accept that the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the States are pursuant to a scheme initiated by Supreme Court orders which requires, subsequent to the *Abhay Nath* judgment, reservation to the extent of 15 per cent for scheduled castes and 7.5 per cent for scheduled tribes. Though the AIQ scheme has been a boon for meritorious candidates in States not having quality medical educational institutions, in

keeping with the fashion of reservation, 22.5 per cent reservation has been applied. Logically, since the Central Act of 2006 provides for an additional 27 per cent reservation for OBC (other than creamy layer), in line with several Supreme Court judgments requiring the wealthy and privileged among the OBC to be excluded from the benefit of reservation, such provision should apply to AIQ seats for medical courses though the seats may be in institutions not run by the Union Government.

48. If a pool of seats is available to candidates from all over the country, irrespective of an individual's place of residence, the State-wise reservation, which is based on demography of the State, cannot hold good for the entire country as the mix of socially backward classes would differ from region to region even within a State. There is no doubt that the Act of 1993 in the State was referred to off and on in the said order, but the general sense that the said order conveys is not the acceptance of the applicability of the reservation policy as per the Act of 1993 to AIQ seats for

admission to the under-graduate, post-graduate and diploma medical and dental courses in the State. A stray sentence from a judgment cannot be read out of context; the general sense that it conveys, its operative part and the specific directions issued therein would be the guiding factors. Indeed, if the said order accepted the applicability of the reservation quota as per the Act of 1993 to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State, there would be no need for the order providing for the setting-up of a committee or for the committee to engage in consultations to arrive at the methodology for applying reservation for OBC candidates.

49. It was only natural that the court was circumspect, since the *Saloni Kumari* case was pending and despite accepting in principle that OBC reservation would apply to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State, the said order did not indicate to what extent such reservation would apply. However,

there can be no doubt that the said order squarely repelled the present petitioner's contention that reservation as per the Act of 1993 would apply to the AIQ seats for admission to the undergraduate, post-graduate and diploma medical and dental courses in the State.

50. Ordinarily, reservations pertaining to admission to educational institutions and appointments to government service are provided by statutory enactments or rules under a particular statute. There is an AIQ pool to which the Act of 1993 could not apply and the Central Act of 2006 would also not apply in terms; and, the extent of reservation for OBC that needed to be applied was pending consideration before the Supreme Court. Unlike the present case, where there is something to go by, this court did not have the advantage of any suggestion from any quarter, while delivering judgment in the batch of writ petitions, as to what extent of OBC reservation should apply or why. What the judgment may be seen to have done is to implore the Union to bring about a

legislation while being aware of the impermissibility on the part of any court to issue a writ in the nature of mandamus to any legislature to bring about any legislation. The most unusual feature of the said order is in its final part in requiring the parties to obtain any clarification from the Supreme Court, if necessary. Ordinarily, a High Court scarcely has the authority to make such an order; except that in this case the legal issue was pending before the Supreme Court in the *Saloni Kumari* case.

51. As to the Supreme Court order of October 26, 2020, it must be said that the passage that the petitioner has placed strong reliance on was a passing comment, at the highest, in the context of the interim application that was before the Supreme Court; though even a *prima facie* view expressed by the Supreme Court has to be taken extremely seriously by the High Court, if only because of the status of the Supreme Court in the judicial hierarchy. While an *obiter* of another High Court or of another bench may be brushed aside, even an *obiter* of the Supreme Court

commands respect, though the *obiter* may not be a part of the *ratio decidendi*, which is the law as declared by the Supreme Court under Article 141 and becomes binding, inter alia, on all courts.

52. The problem here is not as easy as applying the general principles of the doctrine of precedents. Strictly speaking, the doctrine of precedents applies when the enunciation of law in an unconnected previous matter is cited in course of a subsequent lis. In the present case, the difficulty arises in the fact that the present contempt petition arises out of an order which has been carried to the Supreme Court by way of an appeal and an interim order in the appeal observed as to the import of the order dated July 27, 2020. Ordinarily, if the relevant passage can be seen to be integral to the interim application that was decided by the order dated October 26, 2020, it would carry considerable weight in the interpretation of the order dated July 27, 2020 in course of any contempt proceedings arising out of such order. However, since the Supreme Court did not interfere with the order dated July 27, 2020 at all and noticed

that the relevant committee had been set up, there appears to be sufficient basis to the Union's submission that the relevant observation is not an absolute or conclusive finding as to the import of the order dated July 27, 2020.

53. The matter is of some importance as the careers of not only the prospective all-India candidates in the medical entrance seats surrendered by the State in the AIQ would be affected by the present order, it may also have an all-India impact, subject to what may ultimately be decided by the Supreme Court. Now that the bogey of the Act of 1993 has been removed, inter alia, since there cannot be any denotified community or most backward classes or backward classes as per the definition in such enactment in any other State, it is equally unnecessary to delve into the history of reservation or the purpose for which the concept was introduced in the Constitution and how it may have been distorted in course of time. Respected journalist Arun Shourie makes a good argument in *Falling Over Backwards* (ASA, Rupa; 2006), but constructive

criticism may now have gone out of fashion.

54. The principal point that falls for consideration is whether the said order of this court has been complied with. To the extent that a committee was constituted and the committee made its recommendations, the order has been complied with. However, the order may not have contemplated that neither recommendation of the committee would be accepted and a third alternative would be imposed by the Union, though the order required consultation between several stakeholders to arrive at an informed decision. Equally, the first option indicated by the committee was no option at all, as it was absurd to suggest that the State reservation rules would apply to AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State since that would, ipso facto, take the seats away from the AIQ pool back to the State as only backward classes as notified by the State in its official gazette would be entitled to the reservation and not candidates not resident in the State.

55. The easy way out, particularly that the Union tempts the court with since the petition before the court is a contempt petition, is to refer to the quasi-criminal jurisdiction that is the field of contempt and hold that once there is substantial compliance and a possible interpretation of the order, there would be no wilful or deliberate violation of the order for contempt proceedings to be pursued. That would result, in effect, in the several hearings before this court and the Supreme Court in course of the previous round being rendered meaningless and a fresh adjudication being started as to the validity of the notification of July 29, 2021. While that may appear to be the most preferred route where this lis is got rid of and another disposal is recorded, it may not be the most honest approach of a constitutional court to dispose of the lis without an attempt at resolving the dispute, particularly when the matter is of such importance and involves the careers of budding doctors in the country. It is true that the petition before this court is one for the perceived breach of a previous order of this court, but if the present

petition were to be ineffectively disposed of that would result in another petition, multiplicity of proceedings and the issue being left unresolved. It may be in public interest, at times, for courts to be decisive, without being rash, of course. At least there is a safety net even if this court goes wrong for the matter to be decided at the highest stage; but a decision is called for in the matter in the larger public interest. Thus, the question that arises is whether the notification of July 29, 2021 is appropriate in the context of the AIQ scheme which is recognised to be formulated by the Supreme Court.

56. Even though the petition before this court at the moment pertains to the perceived non-compliance of an order of this court, the manner of compliance also falls for consideration. Merely because the immediate lis pertains to the contempt jurisdiction would not imply that this court sheds its plenary authority under Article 226 of the Constitution while considering the manner of implementation of the said order. At any rate, this Bench is the PIL Bench in this court and if a further petition challenging the notification of July 29, 2021 were to

be brought, it is the present Bench which would be tasked with the obligation of dealing with the same.

57. Ideally, Parliament may have legislated and extended the ambit of the Act of 2006 to the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the States, subject to obtaining leave from the Supreme Court, if necessary. That may have given a quietus to the matter. Equally, the expression "making any special provision" in Article 15 of the Constitution – or in comparable Article 16 thereof – does not require an enactment and the executive can issue an order that would be regarded as "provision" within the meaning of the said Article. In a sense, the relevant provision can be seen to have been made in the issuance of the notification of July 29, 2021, though it has the proverbial sting in its tail.

58. Such notification provides for 15 per cent reservation for scheduled castes and 7.5 per cent for scheduled tribes, which cannot be contested in view of the Supreme Court judgments in

such regard. The additions that have been made, therefore, fall for scrutiny. The 27 per cent reservation for OBC is in tune with the Act of 2006 which applies to Central institutions all over the country and also has empirical backing in how the figure of 27 per cent was arrived at. Thus, subject to the decision that may be made by the Supreme Court in *Saloni Kumari*, the 27 per cent reservation for OBC (other than creamy layer) as suggested by the Union would be acceptable. Similarly, there can be no quarrel with the five per cent horizontal reservation as per the applicable norms for persons with disabilities. That is the mandate of the Rights of Persons with Disabilities Act, 2016 and, in any event, the reservation in such case is horizontal, in the sense that it would apply to all categories reserved and unreserved. The only point for consideration is the additional 10 per cent earmarked for economically weaker sections in the said notification of July 29, 2021. Since it was the Union that set about beating the State with the *Indra Sawhney* stick in its affidavit filed on April 15, 2021, by the same yardstick the vertical reservation beyond 50 per cent should also go out.

59. However, in response to this court's specific query in such regard, despite the initial attempt by the Union to wriggle out of having to offer any justification for the contents of the notification of July 29, 2021, the Union has specifically referred to the amended Article 15 of the Constitution pursuant to the Constitution (One Hundred and Third Amendment) Act, 2019. Though the Union indicates that the issue is pending consideration of the Supreme Court, the Union points out that similar amendments brought in previously into Articles 15 and 16 of the Constitution have passed judicial muster. The Union says that there is no impediment, as on date, to the 10 per cent reservation being provided for economically weaker sections in addition to the 49.5 per cent on account of OBC, SC and ST in view of the specific authority under Article 15(4) of the Constitution.

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60. On the face of it, the provision for additional reservation, over and above 50 per cent, permitted by the Constitution (One

Hundred and Third Amendment) Act, 2019 appears to fall foul of the dictum in *Indra Sawhney*. It is also possible to read down the dictum in *Indra Sawhney* to apply in the context of the constitutional provisions then in place. Either way, no conclusive pronouncement in such regard needs to be made at this stage or at this level since the challenge to such amendment is pending consideration before a Constitution Bench.

61. What is undeniable, however, is that the AIQ scheme has been introduced for entrance to under-graduate and post-graduate degrees and diploma courses in government-run or aided medical and dental colleges across the country pursuant to orders of the Supreme Court. Indeed, the appearing parties acknowledge that such scheme is monitored by the Supreme Court. The reservation for scheduled caste and scheduled tribe candidates in the AIQ seats was fixed by an order of the Supreme Court. Thus, it is only to be expected that further reservation in the AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental

courses in the State should be only upon the approval of the Supreme Court.

62. To the extent that 27 per cent of the seats available for admission in Central educational institutions is reserved for OBC candidates, other than the creamy layer, and such figure having been arrived at upon empirical studies being conducted, the provision for 27 per cent reservation for OBC candidates, in addition to the approved reservation for scheduled caste and scheduled tribe candidates as indicated in the notification of July 29, 2021, may be permissible, subject to the formal approval of the Supreme Court being obtained in such regard. In a sense, the in-principle approval of the Supreme Court for providing reservation for OBC candidates in AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses in the State is apparent from the order dated October 26, 2020. To such extent, the provision made for 27 per cent reservation in such regard appears to be permissible, since the Supreme Court approved the

implementation of reservation for OBC candidates beginning academic year 2021-22 by the same order.

63. The appropriate reading of the dictum in *Indra Sawhney* would be that reservation on the ground of status cannot exceed 50 per cent unless there are exceptional circumstances. If the dictum is confined to vertical reservation, as it should be, it would imply that the cap of 50 per cent ought not to be breached. Notwithstanding the 103rd Amendment to the Constitution not having been made at the time the judgment in *Indra Sawhney* was pronounced, it is submitted (with due deference to the fact that the issue is pending consideration before the Constitution Bench) there may be a case for horizontal reservation cutting across the unreserved and reserved categories for the economically weaker sections. For one, even if a common reasonable yardstick were to be applied, economically weaker sections would be found to exist across the board. This may suffice to cater to the perceived need for upliftment of the economically weaker sections without there

being a conflict with the dictum in *Indra Sawhney*. However, the decision in such regard has to be left for another day and at an exalted level.

64. Though the discussion in this judgment pertains to the State of Tamil Nadu, but it must be noticed that reservation in AIQ seats for admission to the under-graduate, post-graduate and diploma medical and dental courses across the States must be uniform. Logically, if the AIQ seats are thrown open to candidates across the country, there cannot be reservation to one extent in one State and reservation to another extent in another State.

65. However, the inclusion of a further 10 per cent by way of vertical reservation for economically weaker sections would require the approval of the Supreme Court and, to such extent, the reservation for economically weaker sections as indicated in the notification of July 29, 2021 has to be regarded as impermissible till such approval is obtained.

66. Accordingly, the present lis is decided by holding as follows:

- i. Since the committee required to be constituted by the order dated July 27, 2020 was constituted and such committee gave its opinion and the Union, or its appropriate agencies, have acted on the basis thereof – albeit not exactly in terms of the recommendations – no case of wilful or deliberate violation of the said order can be said to have been made out.
- ii. The notification of July 29, 2021 issued by the Union as a consequence of the order dated July 27, 2020, appears to be in order insofar as it provides for reservation for scheduled castes, scheduled tribes and OBC categories. The horizontal reservation provided in such notification for persons with disabilities also appears to be in accordance with law.
- iii. The additional reservation provided for economically

weaker sections in the notification of July 29, 2021 cannot be permitted, except with the approval of the Supreme Court in such regard.

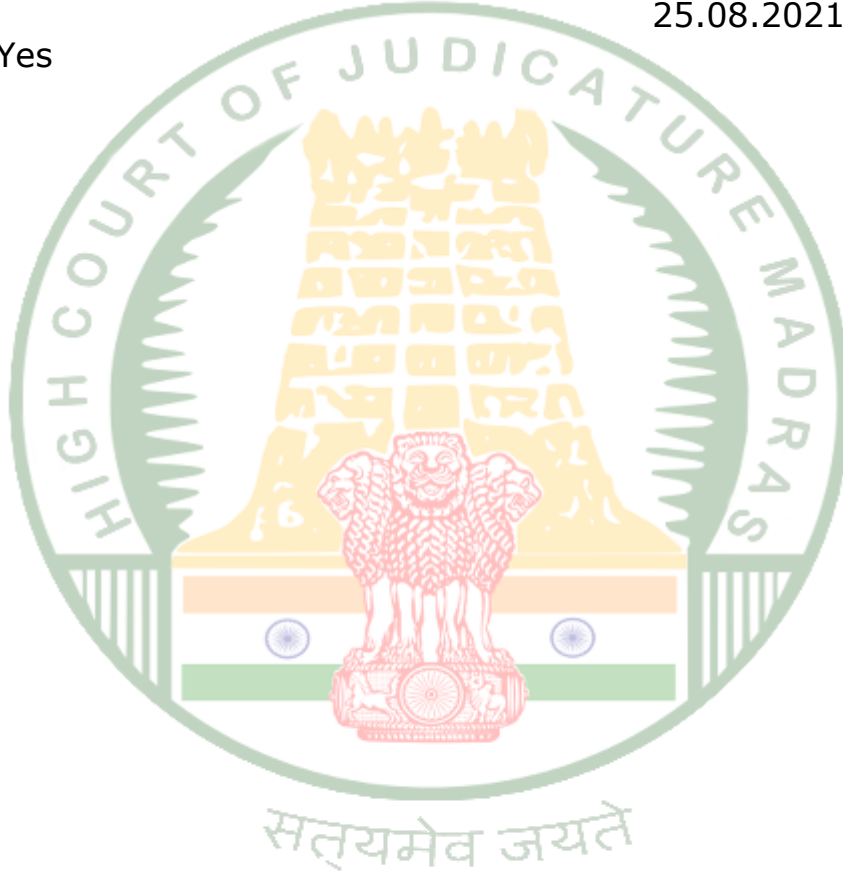
67. Contempt Petition No.181 of 2021 is dropped. Sub-Application No.49 of 2021 is closed. There will be no order as to costs.

68. It may, however, be observed as a footnote that the entire concept of reservation that appears to have been addressed by the Constituent Assembly while framing the Constitution may have been turned on its head by repeated amendments and the veritable reinvigoration of the caste system – and even extending it to denominations where it does not exist – instead of empowering citizens so that merit may ultimately decide matters as to admission, appointment and promotion. Rather than the caste system being wiped away, the present trend seems to perpetuate it by endlessly extending a measure that was to remain only for a short duration to cover the infancy and, possibly, the adolescence of

the Republic. Though the life of a nation state may not be relatable to the human process of aging, but at over-70, it ought, probably, to be more mature.

(S.B., CJ.) (P.D.A., J.)
25.08.2021

Index : Yes
sasi/pkn



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Contempt Petition No.181 of 2021

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU,J.
(sasi/pkn)



Contempt Petition No.181 of 2021

WEB COPY 25.08.2021