

IN THE SUPREME COURT OF INDIA

[S.C.R., Order XXI Rule 3 (1) (a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020

(Petition under Article 136 of the Constitution of India arising out of the Impugned Interim Order dated 22.06.2020 in W.P No. 8324 of 2020 and batch passed by the Hon'ble High Court of Judicature at Madras)

With

Prayer for Interim Relief

Position of the Parties

BETWEEN:

In the High
Court

In this
Hon'ble
Court

State of Tamil Nadu
Represented by_____

Petitioner

Petitioner

Versus

1. UNION OF INDIA, through the
Secretary Ministry of Health
and Family Welfare Nirmal
Bhawan Near Udyog Bhawan
Metro Station Maulana Azad
Rd. New Delhi

Responde
nt

No.1

Contestin
g

Responde
nt No.1

2. Secretary, Ministry of Human
Resource Development
No.1, West Block, Rama

Responde

Contestin

- | | | |
|---|----------------------|--|
| Krishna Puram,
New Delhi, Delhi 110066 | nt
No. 2 | g
Responde
nt
No.2 |
| 3. The Medical Council of India
Represented by its Secretary
Pocket 14, Sector 8 Dwarka
Phase 1 | Responde
nt No. 3 | Contestin
g
Responde
nt
No.3 |
| 4. The Director General of
Health Services
Room No. 446-A
Nirman Bhawan, New Delhi | Responde
nt No. 4 | Contestin
g
Responde
nt
No.4 |
| 5. Ministry of Social Justice
and Empowerment
Shastri Bhavan, New Delhi | Responde
nt No. 5 | Contestin
g
Responde
nt
No.5 |
| 6. The National Board of
Examination
Rep by its Chairman, Ansari
Nagar,
Mahatma Gandhi Marg, New
Delhi | Responde
nt No. 6 | Contestin
g
Responde
nt
No.6 |

- | | | |
|---|----------------------|--|
| 7. Dental Council of India
Rep by its Secretary
Aiwan-E-Galib Marg
Kotla Road, Temple Lane
Opp. Mata Sundari College
for Women
New Delhi – 110002 | Responde
nt No. 7 | Contestin
g

Responde
nt

No.7 |
|---|----------------------|--|

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT
OF INDIA.

THE SPECIAL LEAVE PETITION OF THE PETITIONER
ABOVENAMED:

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition of the Petitioner above named is preferred against the Impugned Interim Order dated 22.06.2020 in W.P No. 8324 of 2020 and batch passed by the Hon'ble High Court of Judicature at Madras (hereinafter, also the "Impugned Order") whereby the Hon'ble High Court has erroneously acceded to representations made by the Respondents and unjustifiably kept in the Petitioner's writ petition in abeyance till this Hon'ble Court issues orders in an ostensibly identical matter in *Saloni Kumari v Director General Health Services & Ors* bearing W.P.(C) No. 596 of 2015 which is tentatively listed for 08.07.2020.

1A. It is also declared that no Writ Appeal or Letters Patent Appeal lies against the Impugned Order. The present Petition is filed only against the Impugned Interim Order dated 22.06.2020 in W.P No. 8324 of 2020 and batch passed by the Hon'ble High Court of Judicature at Madras

2. QUESTIONS OF LAW:

A. Whether the Impugned Order was passed in ignorance of the order dated 11.06.2020 passed by this Hon'ble Court in W.P.(C) No. 507 of 2020 and batch?

B. Whether the Impugned Judgment deserves to be set aside for effectively denying the Petitioner the remedy available under Article 226 of the Constitution?

C. Whether the Court below failed to appreciate that in the Petitioner's writ petition time is of the essence as second round of counselling for medical seats is already underway and therefore its direction to keep the writ petition in abeyance is tantamount to denying the Petitioner its remedy under law?

D. Whether the Impugned Order deserves to be set aside for unquestioningly acceding to the Respondent's statement that the issues raised in the Petitioner's writ petition are the same as in the case of *Saloni Kumari v Director General Health Services & Ors* bearing W.P.(C) No. 596 of 2015?

E. Whether this is a ripe case for providing for provisional reservation for OBCs by way of interim relief subject to the

outcome of the writ petitions?

F. Whether the Impugned Order deserves to be set aside for entertaining the Respondents' contention that there is a constitutional bar to the Petitioner's writ petition in the form of Article 131 of the Constitution?

3. DECLARATION IN TERMS OF RULE 3(2):

The Petitioner states that no other petition seeking leave to appeal has been filed by the Petitioner against the Impugned Interim Order dated 22.06.2020 in W.P No. 8324 of 2020 and batch passed by the Hon'ble High Court of Judicature at Madras.

4. DECLARATION IN TERMS OF RULE 5:

The Annexures P-1 to P-4 produced along with this Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the Court/Tribunal below against whose order the leave to appeal is sought for in this Petition.

5. GROUNDS:

Leave to appeal is sought on the following grounds:

5.1 The Hon'ble High Court has failed to appreciate that the Respondents are stalling adjudication of the issue. The Ld. Court has been misled by the Respondents' contentions and has unjustifiably kept the Petitioner's writ petition in abeyance till this Hon'ble Court issues orders in an ostensibly identical matter in *Saloni Kumari v Director*

General Health Services & Ors, W.P.(C) No. 596 of 2015 which is tentatively listed for 08.07.2020. The fact that the High Court has adjourned the matters to 9.7.2020 indicates that the High Court is awaiting the result of *Saloni Kumari*.

5.2 The Hon'ble High Court failed to apply its mind to the fact that the Respondents have taken specific stand in their Counter Affidavit filed before the said court in which they admit to implement OBC quota reservation in the AIQ seats (reference is at paragraph 11 of the common counter-affidavit dated 17.06.2020 filed by the Respondents before the Hon'ble High Court in the present writ petitions, Annexure P-8).

5.3 Hon'ble High Court in effect declined from entertaining the writ petitions because of the contentions taken by the Respondents in spite of the fact that the Respondents had conceded to the prayer sought for in the writ petition.

5.4 The Court below erred by paying heed to the statements made by Respondent Nos. 1,2 and 4 in their counter-affidavits filed in the Petitioner's writ petition, namely that as the *Saloni Kumari* case is pending before the Hon'ble Apex Court the Petitioner ought to implead itself as a party in that case. The Hon'ble High Court did not take into consideration that the prayers sought in *Saloni Kumari* is for implementation of reservation which the Respondents themselves agree that they are ready and willing to implement. In addition, the Hon'ble Court failed to appreciate that there is no order of stay or injunction from

this Hon'ble Court from implementing OBC reservation in AIQ seats.

5.5 Further, it is submitted that there is insufficient nexus between the *Saloni Kumari* petition and the writ petition filed by the Petitioner before the Hon'ble High Court. In *Saloni Kumari*, the Petitioner is seeking extension of 27% reservation for OBCs in Central Education Institutions already provided under the 2006 Act to seats in non-Central Institutions. Thus *Saloni Kumari* is seeking extension of the 2006 Act for provision of OBC reservations in non-Central Education Institutions. However, in contradistinction, the present Petitioner is seeking for application of rules of reservation as applicable in the State of Tamil Nadu primarily under the *Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993* ("1993 Act") which provides for 30% reservation for backward classes and 20% reservation for Most Backward Classes and Denotified Communities (total 50% reservation) plus 18% for SCs and 1% for STs. Thus the prayers and attendant issues for determination are materially different. Moreover, the prayer for reservation in *Saloni Kumari* is restricted to seats surrendered by the State of U.P. to AIQ and does not concern the State of Tamil Nadu which has its own reservation laws. Also, the State of Tamil Nadu's population demographic is unique and so are the ideological sensibilities of the population when it comes to reservation

policy. As such the Petitioner cannot reasonably be expected to implead itself in *Saloni Kumari* and the Hon'ble High Court erred to this extent.

5.6 On 17 June 2020, the Respondents 1, 2 and 4 proceeded to file a common counter-affidavit in which it admitted that barring central institutions, no reservations for OBCs has ever been implemented in the AIQ. However, the Respondents have filed an affidavit before this Hon'ble Court that they would be implementing reservation under OBC quota for the AIQ seats on a state to state basis.

5.7 It is submitted that there is no rationale in adjourning the matter before the Hon'ble High Court in view of the specific stand taken by the respondents in the Counter that they are also looking to implement OBC quota reservation in the AIQ

5.8 The Hon'ble High Court also erred by being swayed by a further jurisdictional challenge raised by the Respondents that the Hon'ble Apex Court had previously in the case of *Union of India v. Akhil Bhartiya OBC Mahasangh* [bearing SLP(C) No. 20287/2018] found that the issue of reservations in the AIQ has been before the Hon'ble Apex Court on numerous previous occasions and that "*OBC quota is clearly a matter of the scheme*". Therefore, this Hon'ble Court in *Akhil Bhartiya OBC Mahasangh* stayed pending proceedings before the Nagpur Bench of the Hon'ble High Court of Bombay whilst granting liberty to parties to implead in pending matters before the Apex Court.

5.9 The Hon'ble High Court failed to consider that the order passed by this Hon'ble Court in *Akhil Bhartiya OBC Mahasangh* has no bearing on the present case as the prayer sought in *Akhil Bhartiya OBC Mahasangh* was comparable to *Saloni Kumari*, in that both petitioners sought for 27% reservation for OBCs.

5.10 Moreover, the Hon'ble High Court has ignored the fact that this Hon'ble Court in order dated 11.06.2020 has, instead of entertaining the Petitioner's petition under Article 32 of the Constitution, expressly granted liberty to the Petitioner to seek relief before the Hon'ble High Court under Article 226.

5.11 The Hon'ble High Court has nullified the grant of such liberty because if this Hon'ble Court wanted the High Court to await orders in the case relating to *Saloni Kumari*, it would not have felt the need to grant liberty to approach the High Court.

5.12 The position advocated by the Respondents and seemingly adopted by the Hon'ble High Court in the Impugned Order has the effect of leaving the Petitioner without any remedy especially where time is of the essence and second round of counselling is already underway. The tone and tenor of the Hon'ble High Court's order offends against the principle of *ubi jus ibi remedium* (wherever there is right, there is remedy) and has the effect of rendering the reliefs sought in the writ petition infructuous.

5.13 The Impugned Order also fails to dismiss the

contention taken by the Respondents that the Petitioner's writ petition is not maintainable under Article 226 as it is a dispute between the State of Tamil Nadu and the Centre for which the correct recourse would be Article 131 of the Constitution.

5.14 The Court below overlooked the fact that the Petitioner has the independent right under the Constitution to invoke Article 226 powers of the Hon'ble High Court and this is completely distinct from the powers of this Hon'ble Court under Article 131 of the Constitution. To this end, Article 131 starts with the proviso "*subject to the provisions of this Constitution*", and is generally recognised as a distinct remedy to Article 226.

6. GROUNDS FOR INTERIM RELIEF:

6.1 It is humbly submitted that the Impugned Judgment is *ex facie* erroneous and causes miscarriage of justice.

6.2 In the interest of brevity, the Petitioner craves leave of this Hon'ble Court to rely upon the submissions made in the main grounds, which may be read as part and parcel of the interim grounds.

6.3 It is evident that the Hon'ble High Court has in effect declined from entertaining the Petitioner's writ petition because of the erroneous contentions taken by the Respondents.

6.4 In light of the same, grave and substantial injustice will

be caused to the Petitioner if the Impugned Order is not stayed and the Hon'ble High Court is not directed to expeditiously hear and dispose of the batch of writ petitions pending before it, of which the Petitioner's is one such petition.

6.5 It is pertinent that the allocation of medical seats for the academic year 2020-2021 is already underway and on 16.06.2020 the results for second round of counselling were announced the candidates are in the process of reporting to the allotted Institute/College.

6.6 In addition to directing for expeditious disposal of the writ petitions, it is humbly prayed that this Hon'ble Court may provide for provisional reservation for OBCs to seats surrendered by the State of Tamil Nadu to the All India Quota for academic year 2020-21 as the final allocation of seats is imminent.

6.7 Failure to grant the aforementioned interim reliefs would render the Petitioner's prayer in the writ petition infructuous and would deny hundreds of seats to deserving OBC candidates thus further reinforcing their social and educational disadvantage and further perpetrating mass inequality in the State of Tamil Nadu.

6.8 Thus, in the given facts and circumstances, balance of convenience lies in the Petitioner's favour.

6.9 It is submitted that irreparable loss and injury will be caused to the Petitioner if the Hon'ble High Court is not directed to expeditiously hear and dispose of the batch of writ petitions and further, if provisional reservation is not directed by this Hon'ble Court. In contradistinction thereto, no loss or injury will be caused to the Respondents if the same is stayed.

7. MAIN PRAYER:

It is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. Grant the special leave to appeal Impugned Interim Order dated 22.06.2020 in W.P No. 8324 of 2020 and batch passed by the Hon'ble High Court of Judicature at Madras; and

B. Pass any such other order or orders as this Hon'ble Court may deem fit and proper.

8. PRAYER FOR INTERIM RELIEF:

It is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. Stay the operation and execution of the Impugned Interim Order dated 22.06.2020 in W.P No. 8324 of 2020 and batch passed by the Hon'ble High Court of Judicature at Madras;

B. Direct the Hon'ble High Court to expeditiously hear and dispose of the writ petitions bearing W.P No. 8324 of 2020 and batch including W.P.(C) No. 8361 of 2020;

C. Direct the Respondents to provide for 50% reservation for Backward Classes, Most Backward Classes and Denotified Community in admission to the seats shared by the Petitioner to All India Quota in undergraduate, postgraduate and diploma medical and dental courses in the State of Tamil Nadu as per the rules of reservation followed in the State for the academic year 2020-21, subject to the outcome of the present Special Leave Petition and/or writ petitions bearing W.P No. 8324 of 2020 and batch including W.P.(C) No. 8361 of 2020; and

D. Pass or grant such other interim relief, or orders, or directions as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED ON:

DRAWN & FILED BY:

PLACE: NEW DELHI

Advocate for the

Petitioners