

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL ORIGINAL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2020

(Under Article-226 of the Constitution of India)

IN THE MATTER OF:

NISHANT KHATRI

... PETITIONER

VERSUS

UNION OF INDIA & ANR.

... RESPONDENTS

WRIT PETITION SEEKING A WRIT, ORDER OR DIRECTION IN
THE NATURE OF WRIT OF MANDAMUS OR CERTIORARI:

A. QUASHING THE 20.04.2008 O.M. OF MHRD, AS VIOLATIVE
OF ARTICLE-15(5) OF THE CONSTITUTION OF INDIA AS
INTERPRETED BY THE HON'BLE SUPREME COURT IN
“*ASHOK KUMAR THAKUR VS. UNION OF INDIA*” [(2008) 6
SCC 1] IN SO FAR AS IT DIRECTS PROVISION OF 27%
RESERVATIONS TO SEBCs/ OBCs IN POST-GRADUATE
COURSES IN CENTRAL EDUCATIONAL INSTITUTIONS
AND;

B. DECLARING THE PROVISION OF 27% RESERVATIONS TO
OBC IN POST-GRADUATE COURSES IN JAWAHARLAL
NEHRU UNIVERSITY FOR THE CURRENT ACADEMIC
YEAR 2020-21, AS UNCONSTITUTIONAL AND OF NO
EFFECT

TO,

HON'BLE THE CHIEF JUSTICE AND HIS/HER COMPANION
JUSTICES OF THE HIGH COURT OF DELHI AT NEW DELHI.

THE HUMBLE PETITION OF THE PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. This is a Writ Petition seeking a writ, order or direction in the nature of mandamus or certiorari quashing the 20.04.2008 Office Memorandum (O.M.) of Respondent No-1, MHRD as violative of Article-15(5) of the Constitution of India as interpreted by the Hon'ble Supreme Court in "*Ashok Kumar Thakur Vs. Union of India*" **[(2008) 6 SCC 1]** in so far as it directs 27% reservations to OBCs in post-graduate courses in Central Educational Institutions and consequently declaring the provision of 27% reservations to OBCs in post-graduate courses in Respondent No-2, Jawaharlal Nehru University (JNU) for the current academic year 2020-21, as unconstitutional and of no effect.

2. **DECLARATIONS/ STATEMENTS/ UNDERTAKINGS:**

- (1) **STATEMENT ON RELIEF:** The main relief is sought against Respondent No-2.
- (2) **STATEMENT ON CAUSE OF ACTION:** The Cause of Action (COA) first arose on 10.04.2008, when a five judge's constitution bench of the Hon'ble Supreme Court in "*Ashok Kumar Thakur vs. Union of India*" **[(2008) 6 SCC 1]** held that there shall be no reservation of OBCs in post-graduate courses. The COA again arose on 20.04.2008, when Respondent No-1, MHRD in contempt of the judgment issued an Office Memorandum (O.M.) directing 27% reservations of OBCs in post-graduate courses in Central Educational Institutions (CEIs). The COA is continuing year after year till date, with all Central Educational Institutions implementing the contemptuous OM of MHRD. The COA last arose on 02.03.2020, when Respondent No-2, JNU, issued its e-prospectus for post graduate courses, implementing the contemptuous OM of MHRD providing 27% reservations to OBCs in its post-graduate courses.
- (3) **STATEMENT ON JURISDICTION:** This Hon'ble High Court has the territorial, subject matter and pecuniary jurisdiction to entertain this Writ Petition under Article-226 of The Constitution of India.

- (4) NON-FILING STATEMENT: The petitioner has not earlier filed a similar petition before this Hon'ble Court or any other court of law.
- (5) STATEMENT ON LOCUS STANDI: Since the petitioner belongs to General/Unreserved Category and intends to pursue Post-Graduate (PG) course (M.Phil/ Ph.D.) from JNU; he is adversely affected by the 20.10.2008 OM of R-1, MHRD and the 02.03.2020 e-prospectus of R-2, JNU, providing 27% reservations to OBCs in PG courses. The petitioner thus has requisite locus to file this petition.
- (6) UNDERTAKING VIS-À-VIS FILING OF DULY AFFIRMED AFFIDAVITS AND COURT FEES: The petitioner undertakes to file duly affirmed Affidavits and requisite court fee within 72 hours from the date of resumption of the regular functioning of this Court.

3. THE PARTIES IN THIS PETITION:

- (1) The petitioner is a General/Unreserved Category candidate and also an Advocate enrolled with the Bar Council of Delhi. Presently the petitioner is pursuing one-year LL.M. from Baba Mast Nath University, Rohtak; a course due to complete in July of this year. The petitioner intends to pursue further post-graduate studies from Jawaharlal Nehru University for which he has duly filled his application form. The last date of submission of forms is 15.03.2020. The entrance exams and interview to the courses have been postponed till further notice owing to COVID-19 pandemic.
- (2) Respondent No-1, is Ministry of Human Resource Development (MHRD), which in contempt of the judgment dated 10.04.2008 of a five judge constitution bench of the Hon'ble Supreme Court passed in Writ Petition (Civil) No. 265 of 2006, titled "*Ashok Kumar Thakur Vs. Union of India*" reported in [(2008) 6 SCC 1], has issued an Office Memorandum (O.M.) dated 20.04.2008, directing 27% reservations of OBCs in post-graduate

courses in Central Educational Institutions (CEIs). The O.M. is being assailed in this WPC.

- (3) Respondent No-2, is Jawaharlal Nehru University (JNU), which on 02.03.2020, issued its e-prospectus for post graduate courses, implementing the contemptuous OM of MHRD providing 27% reservations to OBCs in its post-graduate courses.

4. **FACTS IN BRIEF:**

- (1) The Hon'ble Supreme Court in its judgment dated 10.04.2008 passed in Writ Petition (Civil) No. 265 of 2006, titled "*Ashok Kumar Thakur Vs. Union of India*" [(2008) 6 SCC 1] had upheld the validity of reservations in respect of persons belonging to the other backward classes (OBCs) for admissions under the Central Educational Institutions (Reservation in Admissions) Act, 2006 [No. 5 of 2006] but with two express caveats:

- i. First caveat was that the persons from creamy layer of OBCs would be excluded from reservations (unanimous decision).
- ii. Second caveat was that OBCs would not be eligible for reservations in Post-Graduate Courses (decision by 3:2 majority).
- iii. Relevant pages of the 10.04.2008 judgment as reported in [(2008) 6 SCC 1] is annexed herewith as **Annexure: P-1.**

- (2) Subsequently Respondent No-1, Ministry of Human Resource Development [MHRD] issued an Office Memorandum [OM] No.1-1/2005-U.1.A/847, dated 20.04.2008, wherein it implemented the first caveat by directing exclusion of creamy layer from OBCs reservation. **However, the second caveat was never directed to be implemented.**

- i. True Copy of the 20.04.2008 O.M. of R-1, MHRD is annexed herewith as **Annexure: P-2.**
- (3) The OM of MHRD has been implemented by all Central Educational Institutions (CEI) in all streams of learning. Based

upon the said OM, all the concerned departments have issued their respective notifications implementing 27% OBC reservations in Post-Graduate Educations in Central Educational Institutions.

(4) On 02.03.2020, Respondent No-2, JNU, released its e-prospectus for its post-graduate courses, wherein it implemented the contemptuous O.M. of the MHRD, providing 27% reservations to OBCs in its post-graduate courses.

i. Relevant pages of the e-prospectus of R-2, JNU for the current academic year 2020-21 are annexed herewith as **Annexure: P-3.**

ii. Relevant pages of the Admission Policy of the R-2, JNU for the current academic year 2020-21 are annexed herewith as **Annexure: P-4.**

(5) Since, the petitioner belong to General/Unreserved category and intend to pursue his M.Phil/P.hd. from JNU, both of which are post-graduate courses; the provision of 27% reservations to OBCs by the University in post-graduate courses is adversely affecting his chances of selection and future career prospects by violation of his fundamental rights guaranteed to him by Part-III of the Constitution of India.

i. True Copy of confirmation page of Application for M.Phil. programme at JNU filed by the petitioner is annexed herewith as **Annexure: P-5.**

5. THE LAW: ARTICLE 15(5) OF THE CONSTITUTION:

(1) The “special provisions” permitted under Article-15(5) of the Constitution of India are *inter alia* for Socially and Educationally Backwards Classes (SEBCs). The conjunction used between the words “Socially” & “Educationally” is “**AND**”. This means the classes of citizens have to be **both** socially **as well as** educationally backward to be eligible for reservations under SEBC quota. If a class is either socially or educationally backward but not both

socially AND educationally backward, it is not eligible for reservations under Article-15(5) under SEBC quota.

6. THE 10.04.2008 JUDGMENT: [(2008) 6 SCC 1]:

- (1) In *Ashok Kumar Thakur*, learned Senior Counsel Shri P.P. Rao contended that beyond matriculation or 10+2, a person becomes educationally forward and thus ineligible for reservations in education under Article-15(5) of the Constitution **[(2008) 6 SCC pg. 522, para-215]**.
- (2) The majority (3:2), while rejecting the above contention of the learned senior counsel ruled as follows:
 - i. Hon'ble Mr. Justice Dalveer Bhandari in his separate opinion, emphatically held: *“Once a candidate graduates from a university, the said candidate is educationally forward and is ineligible for special benefits under Article 15(5) of the Constitution for post graduate and any further studies thereafter”* **[(2008) 6 SCC pg. 705 & 706, para-626, and pg. 710, para-644]**.
 - ii. Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice C.K. Thakker in their joint opinion held thus: *“While determining backwardness, graduation (not technical graduation) or professional shall be the standard test yardstick for determining backwardness”* **[(2008) 6 SCC pg. 607, 608, Para- 344, 345 and pg. 626, Para- 358(5)]**.
- (3) The minority (2:3), while rejecting the contention of the learned senior counsel is silent on the stage at which a candidate would become educationally forward:
 - i. Hon'ble Chief Justice K.G. Balakrishnan simply rejected the contention of the petitioners that beyond matriculation or 10+2 a candidate becomes educationally forward, without further elaborating at what stage a candidate would actually become educationally forward **[(2008) 6 SCC pg. 523, para-217 and pg. 526, para-232]**.

ii. Hon'ble Mr. Justice R.V. Raveendran in his separate opinion is also silent on this point except to state that he agrees that the petitions shall stand disposed off in the manner stated by the learned Chief Justice **[(2008) 6 SCC p. 717, para-667]**.

(4) Thus the majority of judges (3:2) of the Five Judge Constitution Bench has expressly held that after graduation (not technical graduation) or professional graduation a person is ineligible for special benefits under Article 15(5) of the Constitution for post graduate and any further studies thereafter.

7. ANALYSIS: APPLICATION OF LAW ON THE FACTS OF THE CASE:

(1) Since the majority judges (3:2) in “*Ashok Kumar Thakur Vs. Union of India*” **[(2008) 6 SCC 1]** have expressly and emphatically held that the SEBC *aka* OBC are ineligible for any reservations in post-graduate courses, the 20.04.2008 O.M. of R-1, MHRD and the 02.03.2020 e-prospectus of R-2, JNU, providing 27% reservations to OBCs in its post-graduate courses is unconstitutional being violative of Article-15 of the Constitution of India as interpreted by the constitution bench of the Supreme Court.

8. MAIN PRAYER: On the basis of the above premises, it is most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to issue a declaration, writ, order or direction in the nature of mandamus or certiorari:

(1) Quash the 20.04.2008 Office Memorandum (O.M.) of Respondent No-1, MHRD as violative of Article-15(5) of the Constitution of India as interpreted by the Hon'ble Supreme Court in “*Ashok Kumar Thakur Vs. Union of India*” **[(2008) 6 SCC 1]** in so far as it directs 27% reservations to OBCs in post-graduate courses in Central Educational Institutions.

(2) Declare the provision of 27% reservations to OBCs in post-graduate courses in Respondent No-2, Jawaharlal Nehru University

(JNU) for the current year 2020-21, as unconstitutional and of no effect.

- (3) Pass any other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice and to meet the ends of justice.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE PETITIONER,
AS IN DUTY BOUND SHALL EVER PRAY.

Dated: 04.05.2020

Place: New Delhi

DRAFTED AND FILED BY:



DR. SUBHASH VIJAYRAN
(ADVOCATE FOR THE PETITIONER)
BCD ENROLLMENT NO:

