



## CASE COMMENTRY: NEIL AURELIO NUNES AND ORS. VERSUS UNION OF INDIA AND ORS

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### ABSTRACT

This case analysis examines the Supreme Court's judgement in Neil Aurelio Nunes and Ors. v. Union of India and Ors., where the constitutional validity of reservations for OBC and EWS candidates in the All-India Quota (AIQ) seats for medical courses was challenged. The Court reaffirmed the significance of substantive equality in India's reservation policy, ensuring equal opportunities for backward classes. It recognized the need to address structural barriers and historical disadvantages faced by these groups to promote a more inclusive and just society. The Court's decision reaffirms the importance of affirmative action measures to achieve real equality and social justice in the country's educational institutions.

**KEYWORDS:** Substantive, Equality, Reservation, Backward Classes, All-India Quota (AIQ), Constitutional Validity

CASE TITLE	Neil Aurelio Nunes and Ors. Versus Union of India and Ors.
CASE NO	Writ Petition (C) No. 961 of 2021
CITATION	(2022) 4 SCC 1
DATE OF ORDER	20.01.2022
JURISDICTION	THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION
CORAM	Hon'ble Justice Dr. Dhananjaya Y Chandrachud and Hon'ble Justice Mr. A S Bopanna
AUTHOR OF THE JUDGEMENT	Hon'ble Justice Dr. Dhananjaya Y Chandrachud
PETITIONER	Neil Aurelio Nunes
RESPONDENT	UNION OF INDIA
COUNCEL FOR PETITIONER	Mr Shyam Divan
COUNCEL FOR RESPONDENT	Mr. Tushar Mehta, Solicitor General
ACT & SECTIONS INVOLVED	Article 15(4) and 15(5) of Indian constitution

### I. INTRODUCTION

Substantive equality is a crucial aspect of India's reservation policy in educational institutions, especially concerning Article 14 of the Constitution, which guarantees the right to equality before the law. This principle

emphasizes the need to address structural barriers faced by backward classes, ensuring equal access to educational resources and opportunities. Reservations serve as a means to achieve substantive equality by providing preferential treatment to disadvantaged

groups, enabling them to compete on a more level playing field with other students. The implementation of reservations for Other Backward Classes and Economically Weaker Sections in the All-India Quota seats for medical post-graduate courses had sparked debates and legal challenges which was put to rest by the supreme case in this concerned case. This court examined the constitutional validity of such reservations and explored the concept of substantive equality in the context of affirmative action and social justice.

## II. FACTS OF THE CASE

A. The writ petitions challenged the reservation for Other Backward Classes (OBC) and Economically Weaker Section (EWS) in the All-India Quota (AIQ) seats for undergraduate and postgraduate medical courses.

B. The issue originated when the Directorate General of Health Services in the Union Ministry of Health and Family Welfare issued a notice on 29 July 2021, proposing to introduce 27 percent reservation for Other Backward Classes (Non-Creamy Layer) and 10 percent reservation for Economically Weaker Section in the 15 percent undergraduate and 50 percent postgraduate seats in the All-India Quota from the academic year 2021-2022.

C. Before that, the All-India Quota scheme filled 15 percent of undergraduate seats and 50 percent of postgraduate seats in state-run institutions based on merit through open competition. The remaining 85 percent of undergraduate seats and 50 percent of postgraduate seats are reserved for candidates domiciled in their respective states. Reservation for Scheduled Caste and Scheduled Tribe candidates in the All-India Quota seats had been deemed permissible as established in the case of *Abhay Nath v. University of Delhi*.

D. In 2006, the Central Educational Institutions (Reservation in Admissions) Act was enacted, which provided reservation up to 15 percent for Scheduled Castes, Scheduled Tribes, and Other Backward Classes in Central educational institutions. However, OBC

reservation was not extended to the state-contributed seats for the All-India Quota in state-run institutions.

E. Meanwhile, the state of Tamil Nadu implemented 50 percent reservation for OBCs in its state-run medical institutions. The present controversy arose due to the introduction of reservations for OBCs in the All-India Quota seats. Consequently, a writ petition was filed, seeking a mandate to provide OBC reservation in the All-India Quota.

F. In summary, the current writ petition challenged the implementation of reservations for Other Backward Classes and Economically Weaker Section in the All-India Quota seats of the National Eligibility cum Entrance Test examination (NEET).

## III. ISSUES

A. Does the inclusion of reservations for the OBC community in the All-India Quota for Postgraduate NEET compromise merit and pose a threat to national interest?

B. Is the provision of reservations for OBC candidates in State-run medical and dental colleges under the All-India Quota in accordance with the constitutional principles?

## IV. Petitioner's Argument

A. The petitioners argued that in *Pradeep Jain v. Union of India*<sup>680</sup>, serious concerns were raised about reservation in PG seats, arguing that once a person becomes a doctor, they should not be considered backward anymore, and PG admissions must be based solely on merit.

B. Reservation at the PG and super-speciality levels is detrimental to national interest since specialized skills cannot be acquired by everyone.

C. The AIQ scheme was created by this Court in *Pradeep Jain*, and only this Court can alter the reservation scheme in AIQ seats. The judgment in *Abhay Nath v. University of Delhi*<sup>681</sup> allowing reservations for SC and ST in AIQ seats is argued to be per incuriam.

<sup>680</sup> *Dr Pradeep Jain v. Union of India*, (1984) 3 SCC 654

<sup>681</sup> *Abhay Nath v. University of Delhi*, (2009) 17 SCC 705

D. Reservation in PG courses should be minimal as held in *Dr Preeti Srivastava v. State of Madhya Pradesh*<sup>682</sup> and other cases.

E. The introduction of OBC reservation for the academic year 2021-22, after the registration window was closed, goes against the principle that rules should not be changed after the game has begun.

#### V. Respondent's Contention (Union of India)

A. The reservation notice issued on 29th July 2021 was introduced before exams and counselling began, so it did not change the rules of the game after the process had started.

B. The AIQ scheme, introduced in 1986, initially had no reservation, but *Abhay Nath v. University of Delhi* allowed reservations for SC and ST categories in 2007.

C. The Act of 2006, providing 27 percent OBC reservation, was implemented in all Central educational institutions, including medical colleges run by the Central Government.

D. Reservation for AIQ seats in medical/dental courses is a matter of policy.

E. While observations have been made on the desirability of reservation in PG courses, it has never been held to be unconstitutional.

F. In *Pradeep Jain*<sup>683</sup> case it was held that there would be no domicile-based reservation in AIQ seats, but it did not bar other forms of reservation.

#### VI. JUDGEMENT OF THE COURT

A. The Supreme Court held that the reservation for OBC candidates in the AIQ seats for UG and PG medical and dental courses is constitutionally valid for the following reasons:

B. Articles 15(4) and 15(5) are not exceptions to Article 15(1), but rather a restatement of the principle of substantive equality, which recognizes existing inequalities and allows for group identification to achieve equality.

C. Merit cannot be solely based on narrow definitions of performance in competitive

exams, as they do not reflect an individual's full potential, capabilities, and life experiences.

D. High scores in exams are not always a true indicator of merit. Merit should be socially contextualized and seen as a means to advance social goods like equality.

E. Group identification through reservation is a method to achieve substantive equality, even though some individuals within a group may not be backward or certain characteristics may overlap with non-identified groups.

F. The court discussed in length the judgement of *Kerala v. NM Thomas*<sup>684</sup> where it was held that:

1. The Constitution aims at equality of status and opportunity for all citizens, including socially, economically, and educationally backward classes. Special provisions like reservations are made to ensure adequate representation and enforce equality. The concept of equality is based on providing equal opportunities for all citizens, and preferential treatment for backward classes, with consideration for administrative efficiency, falls within the concept of equality.

2. That Article 16(4) allows for reservations in promotions as well, and reservation is necessary to ensure equal opportunities for Scheduled Castes and tribes. Equality of opportunity should be gauged by the equality attained in the results, not just formal equality. Differential treatment in standards of selection is permissible to achieve substantive equality.

3. Reservations as a means to achieve equality and social justice. They emphasized the need to address structural barriers faced by backward classes and use affirmative action to promote real equality. The directive principles in the Constitution provide a mandate for achieving equality and social justice.

4. Despite differing opinions on whether Article 16(1) is individual-centric or group-centric, the judges agreed that Article 16(4) is crucial to achieve substantive equality. Articles 16(4), 15(4), and 15(5) employ group

<sup>682</sup> *Dr Preeti Srivastava v. State of Madhya Pradesh* (1999) 7 SCC 120

<sup>683</sup> *Dr Pradeep Jain v. Union of India*, (1984) 3 SCC 654

<sup>684</sup> *State of Kerala v. NM Thomas*, (1976) 2 SCC 310

identification to address inequalities and achieve real equality.

5. Reservations and preferential treatment for backward classes are considered constitutional and rational classifications recognized by the Constitution to address historical disadvantages and promote social justice. Differential treatment based on backwardness and administrative efficiency is viewed as an application of the principle of equality within a class.

6. The objective of the Constitution is to uplift backward classes through concessions, facilities, and reservations, enabling them to compete with the advanced sections and eliminate backwardness over time.

7. Harmonizing directive principles and fundamental rights to achieve socialistic ideals and equalize society through affirmative action. They highlighted the importance of considering de facto inequalities and promoting real equality, rather than mere formal equality.

G. The AIQ scheme was designed to allow students from across the country to compete for state-run medical and dental institutions. The observations in Pradeep Jain only applied to residence-based reservation, not reservation in AIQ seats as a whole.

H. The Union of India's decision to provide reservation in AIQ seats was a policy decision and subject to judicial review, similar to other reservation policies.

I. Clarifications in Dinesh Kumar (II) were misinterpreted in Buddhi Prakash Sharma, leading to confusion about reservation in AIQ seats. The order in Abhay Nath was only clarificatory and did not make reservation in AIQ seats impermissible.

J. The challenge to the constitutional validity of OBC reservation introduced through the notice dated 29th July 2021 was rejected, considering the above points.

## VII. CONCLUSION

In the case of Neil Aurelio Nunes and Ors. v. Union of India and Ors., the Supreme Court of India upheld the constitutional validity of reservations for Other Backward Classes (OBC)

and Economically Weaker Section (EWS) in the All-India Quota (AIQ) seats for medical courses. The Court emphasized the principle of substantive equality, recognizing the need to address structural barriers faced by backward classes to ensure equal access to educational resources and opportunities. Reservations were deemed as a means to achieve substantive equality by providing preferential treatment to disadvantaged groups, enabling them to compete on a more level playing field. The Court also highlighted the importance of considering de facto inequalities and promoting real equality, rather than mere formal equality, through affirmative action and social justice measures.

## VIII. RELATED CASES

- I. MR Balaji v. State of Mysore, 1963 Supp (1) SCR 439
- II. T. Devadasan v. Union of India, (1964) 4 SCR 680;
- III. CA Rajendran v. Union of India, (1968) 1 SCR 721
- IV. State of Kerala v. NM Thomas, (1976) 2 SCC 310
- V. Indira Sawhney v. Union of India, AIR 1993 SC 477
- VI. BK Pavithra v. Union of India, (2019) 16 SCC 129
- VII. Dr Pradeep Jain v. Union of India, (1984) 3 SCC 654
- VIII. Abhay Nath v. University of Delhi, (2009) 17 SCC 705