

ITEM NO.36+9+11

Court 4 (Video Conferencing)

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).961/2021

NEIL AURELIO NUNES & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.107531/2021-EX-PARTE AD-INTERIM RELIEF and IA No.107530/2021-EXEMPTION FROM FILING AFFIDAVIT, IA No. 110006/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P.(C) No. 967/2021 (X)

(WITH IA No. 107614/2021 - EX-PARTE AD-INTERIM RELIEF, IA No. 107613/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 110016/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Diary No(s). 20808/2021 (XII)

(WITH IA No.111615/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.111613/2021-PERMISSION TO FILE SLP and IA No.111614/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 1002/2021 (X)

(WITH IA No.111778/2021-STAY APPLICATION)

W.P.(C) No. 1021/2021(X)

(FOR ADMISSION)

Date : 24-09-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s)

Mr. K.M. Nataraj, ASG
Mr. Gurmeet Singh Makker, AOR
Mr. Apoorv Kurup, Adv.
Mr. Vatsal Joshi, Adv.
Mr. Shailesh Madiyal, Adv.

Mr. Arvind Datar, Sr Adv.
Dr. Charu Mathur, AOR
Mr. Sanjay Kumar Dubey, Adv.
Mr. Rahul Unnikrishnan, Adv.

Mr. Malak Bhatt, Adv.

Mr. Shyam Divan, Sr. Adv.
Mr. Vivek Singh, AOR

Mr. Subodh S. Patil, AOR
Mr. Shrirang Choudhari, Adv.
Ms. Supriya Deshpande, Adv.

For Respondent(s) Mr. Kapil Sibal, Sr. Adv.
Mr. A. Mariarputham, Sr. Adv.
Mr. V. Krishnamurthy, Sr. Adv./AAG
Dr. Joseph Aristotle S., AOR.

Mr. P. Wilson, Sr. Adv.
Mr. R. Nedumaran, AOR
Ms. Chandra Priya C, Adv.

Mr. Maninder Singh, Sr. Adv.
Mr. Gaurav Sharma, AOR
Mr. Waize Ali Noor, Adv.
Mr. Dhawal Mohan, Adv
Mr. Prateek Bhatia, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Special Leave Petition (Civil) Diary No(s). 20808/2021

- 1 Permission to file the Special Leave Petition is granted.
- 2 The Special Leave Petition under Article 136 of the Constitution has been instituted by the Union of India, aggrieved by specific aspects of the order of the Division Bench of the High Court of Judicature at Madras dated 25 August 2021. The High Court was moved in the exercise of its contempt jurisdiction in Contempt Petition 181 of 2021 filed by the Dravida Munnetra Kazhagam, first respondent. The grievance of the first respondent was that the order of the High Court dated 27 July 2020 had not been complied with by the Union Government. The High Court, by its judgment which is impugned by the Union Government in these proceedings, held that there was no breach of the order dated 27 July

2020. In that context, the High Court noted that:

“55....once there is substantial compliance and a possible interpretation of the order, there would be no willful or deliberate violation of the order for contempt proceedings to be pursued.”

While concluding, the High Court in paragraph 66 of its judgment has held that no case was made out for invoking the contempt jurisdiction. The conclusion of the High Court in that regard is 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 willful or deliberate violation of the said order can be said to have been made out.”

3 Nonetheless, the High Court observed that as a constitutional court vested with jurisdiction under Article 226 and entrusted with the jurisdiction to entertain PILs, it was open to it to scrutinize the notification dated 29 July 2021 through which a reservation of 27% for the OBC category and 10% for Economically Weaker Sections in the All India Quota seats for undergraduate and postgraduate medical and dental seats has been created. The Union of India is in appeal on the ground that the High Court has, in the course of its judgment, dealt with issues which did not arise for adjudication in the contempt jurisdiction, especially after it found that there was no breach of its judgment dated 27 July 2020. In operative direction (II) the High Court held that there is no infirmity in the reservation for the SC, ST and OBC categories and the horizontal reservation for the disabled. The Union of India has challenged the following directions in Para 66 (III):

“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.”

- 4 Mr K M Nataraj, Additional Solicitor General, submits that the High Court having come to the conclusion that there was no breach of the order dated 27 July 2020, it was unnecessary and inappropriate for the High Court to evaluate the validity of the notification dated 29 July 2021. It has been urged that this was unnecessary for determining whether there was compliance with its judgment dated 27 July 2020. Hence, the submission is that the High Court has transgressed its jurisdiction in a contempt petition by entering upon an area which did not arise before it.
- 5 Mr Kabil Sibal and Mr P Wilson, Senior Counsel, appeared on behalf of the first respondent which had instituted the contempt petition before the High Court. No grievance has been raised in regard to the judgment of the High Court by the first respondent insofar as it holds that there is no breach of the directions contained in the order dated 27 July 2020 since the Special Leave Petition before this Court is by the Union of India.
- 6 The High Court has transgressed the limits of the contempt jurisdiction by entering into areas which were alien to the issue as to whether the judgment dated 27 July 2020 was complied with. Having come to the conclusion that there was no disobedience of the judgment, the rest of the discussion in the order of the High Court commencing from paragraph 56 was unnecessary for the purpose of the contempt petition. Though the validity of the notification dated 29 July 2021 was not challenged before it, as it could not, in the contempt jurisdiction, there was no occasion for the High court to enter upon the validity of the notification. Once, it came to the conclusion that there was no contempt of its order, the High Court ought to have disposed of the contempt petition. The

rumination in the concluding para of the judgment was unnecessary for the resolution of the contempt petition. We, therefore, dispose of the appeal by holding hold that since no case for invoking the contempt jurisdiction was found to exist by the High Court, it was unnecessary and inappropriate for it to enter upon the validity of the notification dated 29 July 2021 which was not under challenge. In the context of the challenge by the appellant, we hold that the direction that has been issued by the High Court in paragraph 66(III) is alien to the exercise of the contempt jurisdiction and shall accordingly be set aside. We clarify that the direction of the High Court in paragraph 66(III) is being set aside by this Court on the sole ground that such a direction could not have been issued in the exercise of the contempt jurisdiction.

7 Since substantive petitions have been filed before this Court challenging the notification dated 29 July 2021, we clarify that we are not expressing any opinion on the validity of the notification which will arise for determination in the group of petitions which are pending before this Court for adjudication. Nor will the impugned decision of the High Court be construed as any adjudication on the validity of the notification. We clarify likewise, in view of the pendency of the petitions before this Court challenging the notification dated 29 July 2021, that the finding of the High Court in paragraph 66(II) was unnecessary for its decision on the contempt petition.

8 Subject to the aforesaid clarifications, the Special Leave Petition is disposed of.

9 Pending application, if any, stands disposed of.

W.P.(C) No. 1021/2021

- 1 Issue notice.
- 2 Mr K M Nataraj, Additional Solicitor General, with Mr Gurmeet Singh Makker, Advocate-on-Record, accepts notice.
- 3 Tag with Writ Petition (Civil) No 961 of 2021.

W.P. (C) No.961/2021, W.P.(C) No. 967/2021, W.P.(C) No. 1002/2021, W.P.(C) No. 1021/2021

- 1 The Union of India shall file its counter affidavit on or before 6 October 2021 with an advance copy to the petitioners.
- 2 Both Mr Arvind Datar and Mr Shyam Divan, Senior Counsel, have fairly stated that they will file a brief note of submissions on or before 6 October 2021 which shall be shared with Mr K M Nataraj, Additional Solicitor General in advance. The submissions shall also be emailed to cmvc.dyc@gmail.com.
- 2 List the petitions on 7 October 2021 on the top of the Board.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER