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2022 SCC OnLine SC 1771

In the Supreme Court of India

(BEFORE UDAY U. LALIT, C.J. AND DINESH MAHESHWARI, S. RAVINDRA BHAT, BELA M. TRIVEDI AND J.B. PARDIWALA, JJ.)

Writ Petition(s) (Civil) No(s). 55/2019

Janhit Abhiyan ... Petitioner(s);

Versus

Union of India ... Respondent(s).

([For Directions])

With T.P.(C) No. 1245/2019 (XVI-A)

(For Admission and IA No. 97310/2019-Stay Application)

T.P.(C) No. 2715/2019 (XVI-A)

T.P.(C) No. 122/2020 (XVI-A)

(For Admission and IA No. 12236/2020-Stay Application)

T.C.(C) No. 8/2021 (XVI-A)

W.P.(C) No. 596/2019 (X)

(For impleading party on IA 87113/2019)

W.P.(C) No. 446/2019 (PIL-W)

(For Admission)

W.P.(C) No. 427/2019 (X)

(For Admission and IA No. 55546/2019-Ex-Parte Stay

IA No. 55546/2019 - Ex-Parte Stay)

W.P.(C) No. 343/2019 (PIL-W)

(For Admission and IA No. 45038/2019-Ex-Parte Stay)

W.P.(C) No. 331/2019 (X)

W.P.(C) No. 798/2019 (PIL-W)

(For Admission and IA No. 91170/2019-Ex-Parte Stay)

W.P.(C) No. 732/2019 (PIL-W)

W.P.(C) No. 73/2019 (PIL-W)

(IA No. 12600/2019 - Permission to File Additional Documents/Facts/Annexures IA No. 12602/2019 - Stay Application)

W.P.(C) No. 72/2019 (PIL-W)

(For Admission and IA No. 12370/2019-Stay Application)

W.P.(C) No. 76/2019 (PIL-W)

(For Admission and IA No. 13320/2019-Stay Application)

W.P.(C) No. 69/2019 (PIL-W)

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(For Admission and IA No. 11705/2019-Stay Application)
W.P.(C) No. 80/2019 (PIL-W)
(For Admission and IA No. 13950/2019-Permission to Appear and Argue in Person)
W.P.(C) No. 122/2019 (PIL-W)
(For Admission)
W.P.(C) No. 106/2019 (PIL-W)
(For Admission)
W.P.(C) No. 222/2019 (PIL-W)
(For Admission and IA No. 33408/2019-Stay Application)
W.P.(C) No. 133/2019 (PIL-W)
(For Admission and IA No. 21662/2019-Ex-Parte Stay)
W.P.(C) No. 249/2019 (PIL-W)
(For Admission and IA No. 35491/2019-Ex-Parte Stay and IA No. 35492/2019-Exemption From Filing O.T.)
W.P.(C) No. 212/2019 (PIL-W)
(For Admission and IA No. 32228/2019-Stay Application and IA No. 32231/2019-Exemption From Filing O.T.)
W.P.(C) No. 162/2019 (PIL-W)
(For Admission)
W.P.(C) No. 341/2019 (PIL-W)
(For Admission)
W.P.(C) No. 419/2019 (PIL-W)
(For Admission and IA No. 54583/2019-Ex-Parte Stay)
W.P.(C) No. 854/2019 (PIL-W)
(With IA No. 85373/2019 - Stay Application)
W.P.(C) No. 473/2020 (X)
SLP(C) No. 8699/2020 (XV)
(For Admission and I.R. and IA No. 65946/2020-Exemption From Filing C/C of the Impugned Judgment and IA No. 65948/2020-Exemption From Filing Affidavit and IA No. 65949/2020-Permission to File Additional Documents/Facts/Annexures)
T.C.(C) No. 10/2021 (XVI-A)
T.C.(C) No. 7/2021 (XVI-A)
T.C.(C) No. 9/2021 (XVI-A)
T.C.(C) No. 12/2021 (XVI-A)
T.C.(C) No. 11/2021 (XVI-A)
W.P.(C) No. 182/2019 (PIL-W)
(For Admission)
W.P.(C) No. 178/2019 (PIL-W)
(For Admission and IA No. 28123/2019-Ex-Parte Stay)

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W.P.(C) No. 168/2019 (PIL-W)

(For Admission and IA No. 26432/2019-Ex-Parte Stay)

W.P.(C) No. 95/2019 (PIL-W)

(For Admission and IA No. 15973/2019-Stay Application)

W.P.(C) No. 146/2019 (X)

(With IA No. 23606/2019 - Stay Application)

W.P.(C) No. 493/2019 (PIL-W)

(with IA No. 62215/2019 - Stay Application)

Writ Petition(s) (Civil) No(s). 55/2019, T.P.(C) No. 1245/2019 (XVI -A), IA No. 97310/2019, T.P.(C) No. 2715/2019 (XVI-A), T.P.(C) No. 122/2020 (XVI-A), IA No. 12236/2020, T.C.(C) No. 8/2021 (XVI-A), W.P.(C) No. 596/2019 (X), IA 87113/2019, W.P.(C) No. 446/2019 (PIL-W), W.P.(C) No. 427/2019 (X), IA No. 55546/2019, IA No. 55546/2019, W.P.(C) No. 343/2019 (PIL-W), IA No. 45038/2019, W.P.(C) No. 331/2019 (X), W.P.(C) No. 798/2019 (PIL-W), IA No. 91170/2019, W.P.(C) No. 732/2019 (PIL-W), W.P. (C) No. 73/2019 (PIL-W), (IA No. 12600/2019, IA No. 12602/2019, W.P.(C) No. 72/2019 (PIL-W), IA No. 12370/2019, W.P.(C) No. 76/2019 (PIL-W), IA No. 13320/2019, W.P.(C) No. 69/2019 (PIL-W), IA No. 11705/2019, W.P.(C) No. 80/2019 (PIL-W), IA No. 13950/2019, W.P.(C) No. 122/2019 (PIL-W), W.P.(C) No. 106/2019 (PIL-W), W.P.(C) No. 222/2019 (PIL-W), IA No. 33408/2019, W.P.(C) No. 133/2019 (PIL-W), IA No. 21662/2019, W.P.(C) No. 249/2019 (PIL-W), IA No. 35491/2019, IA No. 35492/2019, W.P.(C) No. 212/2019 (PIL-W), IA No. 32228/2019, IA No. 32231/2019, W.P.(C) No. 162/2019 (PIL-W), W.P.(C) No. 341/2019 (PIL-W), W.P.(C) No. 419/2019 (PIL-W), IA No. 54583/2019, W.P.(C) No. 854/2019 (PIL-W), IA No. 85373/2019, W.P.(C) No. 473/2020 (X), SLP(C) No. 8699/2020 (XV), IA No. 65946/2020, IA No. 65948/2020, IA No. 65949/2020, T.C.(C) No. 10/2021 (XVI-A), T.C.(C) No. 7/2021 (XVI-A), T.C.(C) No. 9/2021 (XVI-A), T.C.(C) No. 12/2021 (XVI-A), T.C.(C) No. 11/2021 (XVI-A), W.P.(C) No. 182/2019 (PIL-W), W.P.(C) No. 178/2019 (PIL-W), IA No. 28123/2019, W.P.(C) No. 168/2019 (PIL-W), IA No. 26432/2019, W.P.(C) No. 95/2019 (PIL-W), IA No. 15973/2019, W.P.(C) No. 146/2019 (X), IA No. 23606/2019 and W.P.(C) No. 493/2019 (PIL-W)

Decided on September 8, 2022

Advocates who appeared in this case :

Counsel for the parties Mr. Yadav Narender Singh, AOR

Mr. Ashutosh Yadav, Adv.

Mr. K.K. Venugopal, Ld. AG

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Mr. Raj Bahadur Yadav, AOR

ORDER

1. In keeping with the observations made on the last occasion, learned counsel appearing for parties have suggested certain issues which have been compiled by Mr. Gopal Sankaranarayanan, learned Senior Counsel. The issues suggested by Mr. K.K. Venugopal, learned Attorney General for India are as follows :

(1) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by permitting the State to make special provisions, including reservation, based on economic criteria?

(2) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by permitting the State to make special provisions in relation to admission to private unaided institutions?

(3) Whether the 103rd Constitution Amendment can be said to

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Page 11 Thursday, May 14, 2026
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breach the basic structure of the Constitution in excluding the SEBCs/OBCs/SCs/STs from the scope of EWS reservation?

(4) Whether the cap of 50% referred to in earlier decisions of the Supreme Court can be considered to be a part of the basic structure of the Constitution? If so, can the 103rd Constitution Amendment be said to breach the basic structure of the Constitution?

2. Some other facets of the matter are also touched upon and presented through additional issues by the other learned counsel. In an attempt to crystalize and capture every facet of the issues so suggested by the learned counsel, Mr. Gopal Sankaranarayanan, learned Senior Counsel, in turn, has proposed the following three issues :—

(1) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by permitting the State to make special provisions, including reservation, based on economic criteria?

(2) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by :

a) infringing the Equality Code by discriminating, and promoting the very classes which led to quotas in the first place?

b) excluding the SEBCs/OBCs/SCs/STs from the scope of EWS reservation?

c) crossing the 50% ceiling limit for reservations?

d) allowing unbridled power to the States to classify the EWS?

e) making special provisions in relation to admissions to private unaided institutions?

f) providing protection for a class other than the one referred to in Article 46 of the Constitution of India?

(3) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by not allowing for traditional reservation guardrails (exclusion of creamy layer, backwardness, quantifiable data on inadequacy of representation, effect on efficiency)?

3. Having considered the matter, in our view, first three issues suggested by Mr. K.K. Venugopal, learned Attorney General for India, are the main issues which arise in the matter. Whatever has been suggested through other issues by the learned counsel is in the nature of supplementing and substantiating the propositions emerging from said three issues suggested by the learned Attorney General.

4. We shall therefore be proceeding with the hearing with respect to first three issues suggested by the learned Attorney General. Learned counsel appearing for various parties are however welcome to advance

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Page 12 Thursday, May 14, 2026
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their submissions touching upon other facets in aid of said three issues.

5. We have been given to understand that written submissions filed by the learned counsel appearing for the parties have already been compiled and shared with all the learned counsel appearing for the parties.

6. The applicants who have moved intervention applications may also file their written submissions and learned counsel appearing for such parties may also address us orally. However, they shall not repeat any submissions advanced earlier.

7. Let the matters be listed for final hearing on 13.09.2022 at 10.30 A.M.

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