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An Analysis of NEET Judgement

ROHIT RANJAN¹

ABSTRACT

Name of the Case: Neil Aurelio Nunes and Ors Vs. Union of India and Ors.

Court: Supreme Court of India

Judges of the case: Dr. D.Y. Chandrachud and A.S. Bopanna

Citation: MANU/SC/0076/2022

Date of Judgement: 20/01/2022

The case deals with the application of EWS reservation on the NEET examinations. It explores the contours of the authority to create exceptional provisions, including reservations for the EWS category, under Article 15(6). It reviews the Major Sinho Committee reports and the Pandey Committee report for the determination of EWS.

Keywords: EWS, Reservation, NEET, Equity, Equality.

I. FACTS OF THE CASE

1. Writ petitions contesting the notice issued by the Directorate General of Health Services, Ministry of Health and Family Welfare, dated July 29, 2021, were filed with the Hon'ble Supreme Court of India.
2. The notice detailed the Government of India's instruction to execute the reservation policy for the Economically Weaker Sections (EWS) and Other Backward Classes (OBC) for the All-India Quota (AIQ) in the National Eligibility Cumulation Entrance Test (NEET). In the petition, it was also disputed whether the standard used to assess EWS reservation was valid.
3. The 103rd Constitution Amendment Act of 2019 added articles 15(6) and 16 and revised articles 15 and 16 of the constitution (6). The state was given the authority to create exceptional provisions, including reservations for the EWS category, under Article 15(6). Instead of providing a criterion for determination, Article 15(6) of the Indian Constitution's explanation gave indicators for determination, and it was up to the executives to decide the criteria based on those signs.

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4. On January 17, 2019, the Indian government released the criteria for determining the EWS group, with the caveat that scientific and technical posts would be exempt, as defined by the relevant ministry.
5. The EWS category was defined as under two heads
 - a. **Income**
 - i. Persons excluded from the SC, ST, and OBC reservation programme.
 - ii. A family's annual gross income must be less than Rs. 8 lakhs.
 - iii. Income includes earnings from all sources, including wages, commissions from professional work, income from agriculture, etc.
 - b. **Assets**
 - i. 5 acres or more of agricultural land,
 - ii. A home with at least 1,000 square feet,
 - iii. Residential plots with at least 100 square yards in municipalities that have been notified.
 - iv. Residential properties in unnotified towns that are 200 square yards or larger.
6. The property owned by a “Family” would be combined when the land or property holding test was applied to determine an individual's EWS status. A family was defined as the person applying for the reservation, his or her parents, siblings, and children who are under the age of 18 as well as his or her spouse.
7. The petitioners contested the legality of the notice granting OBC and EWS category reservations.

II. ISSUES RAISED

1. Whether the Union government conducted an investigation before formulating the standards for determining the EWS category;
2. If the response to I above is “yes,” are the criteria based on the report that Major General Sinho submitted? (2010). A copy of the report should be included in the record of these proceedings if the criteria are based on Major General Sinho's findings;
3. Whether or not the EWS category is too broad;

4. Is the income threshold of 8 lakhs used to compare the EWS criteria to the OBC category arbitrary in nature?
5. Whether the Rs. 8 lakhs income restriction took into account the variations in the GDP and per capita income of the States;
6. Whether the income cap has taken into consideration the disparities in purchasing power between rural and urban areas; and
7. The following information regarding the government's standards for income and assets needs to be clarified:
 - i. The justification for choosing the asset exception and the method used to determine the limit.
 - ii. Whether the municipalities have received the necessary notification as per the exemption.
 - iii. The rationale for not distinguishing the residential house between metros and non-metros.

III. QUESTIONS OF LAW

The pertinent question of law raised in this case was the constitutional validity of the determination of the criteria for providing EWS reservation. The two committee reports were discussed to determine the existing criteria for EWS reservation:

The Major Sinho Commission Report on identification EWS: The committee laid down the following parameters to consider in the determination of EWS:

- a. Monthly Per Capita Expenditure;
- b. Below Poverty Line 10 Category;
- c. Occupational Pattern and Backwardness;
- d. Educational Backwardness;
- e. Status of Health and Nutrition;
- f. Housing Conditions

The Major Sinho Commission arrived at the conclusion that:

1. People from the general category can be differentiated into a class of poor along with poor of other social groups which is a result of lack of land ownership, high women illiteracy, nominal farm holdings, and minimal part-time work in the unorganized sector.

This class of population live in kutcha housing with poor hygiene condition and diminished purchasing power to meet basic needs.

2. The socio-economic condition of the general category is better off than other social groups but there are certain segments that are either equivalent or worse off than OBCs.
3. The general category has a deeper creamy layer than OBCs. The lower end of the spectrum of the general category and the OBCs are comparable.

The Major Sinho Commission made the following recommendations for the identification of the EWS:

1. The commission identified the family as a unit for the identification of EWS.
2. The families falling below the poverty line must be identified as EWS.
3. Creamy layer criteria should be used in the identification of EWS.
4. Families with income less than the current non-taxable limit of Rs. 1.60 Lakhs and the BPL families should be identified as EWS.

A committee was established by the Union Government on November 30, 2021 under the chairmanship Ajay Bhusan Pandey, to review the standards used to classify people as belonging to the EWS. To revisit the criteria listed in OM dated 17.01.2019 for defining the EWS category while taking into consideration the observations made by the Honourable Supreme Court in its ruling dated 21.10.2021, to look at the different methods that have been used in the nation to identify economically weaker parts so far, and to suggest criteria that could be used to determine the EWS group in the future.

The Findings of the Pandey Committee:

1. The income threshold is the best criterion for identifying EWS.
2. The Major Sinho Commission report's recommendations, which included using the OBC cut-off creamy layer to identify EWS, were the basis for the income cut-off of Rs. 8 Lakhs.
3. A lower ceiling on income would raise the possibility of disqualifying meritorious applicants. Instead of lowering the income threshold, it is preferable to adopt a set of straightforward asset requirements to sift out those who are not deserving of the benefits of reservation.
4. The adoption of a standard income cut-off to designate EWS. The committee explained that using criteria that take into account the purchasing capacity of people in rural and

urban areas would lead to unneeded complexities in policy implementation.

5. The Rs. 8 lakhs cut-off is not over-inclusive as the committee relied upon the household income distribution of qualified EWS candidates in UPSC, NEET, and JEE of 2020.
6. Even if a family's gross income is less than Rs. 8 lakhs, there should be no change to the present criteria that excludes households with agricultural land of at least 5 acres from the EWS group. The Pandey Committee noted that the marginal and small farmers, whose farm holdings are no larger than 5 acres, are those who earn an average of Rs 10,000 per month.
7. It is necessary to get rid of the home asset criteria for defining EWS.

IV. SUBMISSIONS OF COUNSEL

Petitioner:

1. Mr. Arvind Datar, the Senior Counsel representing the Petitioners, claimed that the standards established for identifying the EWS group are, at first glance, arbitrary.
2. The Pandey committee report simply provides justification for the criteria; it does not include the exercise that was used to determine the criteria.
3. The income threshold of Rs. 8 lakhs used to classify people as EWS is arbitrary because it is the same threshold used to classify people as part of the OBC, BC, or MBC “creamy layer.” Unlike the unreserved category, the OBC category experiences both social and economic backwardness. It is not permitted to utilise the criterion for exclusion as the inclusion criteria.
4. The upper limit of Rs. 8 lakhs do not apply to the section of people who are more economically vulnerable. All of the available reserved seats would be removed by the general category's effluent. Consequently, the Rs. 8 lakh ceiling is too broad;
5. Applying the Rs. 8 lakh income ceiling would be equivalent to treating equals equally. States' per capita incomes vary, for instance. Goa has a per capita income of Rs. 4 lakhs, compared to Rs. 40,000 for Bihar.
6. The common income ceiling of Rs. 8 lakhs does not take into account variables like income volatility, family size, and the high cost of living in some areas;
7. The non-taxable threshold now stands at Rs. 2.5 lakh. A person who saves Rs. 2-3 lakh annually in order to receive benefits of The Income Tax Act of 1961's Section 80C prohibits the designation of someone as “*economically weak*”;

8. Unlike the Major Sinho Commission report, which was submitted after four years of in-depth research relying on data, survey reports, and feedback, the Pandey Committee report was submitted in three weeks without any study;
9. The Pandey Committee did not consult with the State Governments/Union Territories while framing the report. It is advised against setting different income thresholds for various States or regions based on purchasing power without consulting anyone.
10. According to the explanation of Article 15, the State shall periodically notify “economically weaker portions” of Articles 15 and 16 based on family income and other indicators of economic disadvantage.
11. The EWS may be decided upon by both the Union and State Governments. Before deciding on the parameters, the Pandey committee did not even contact the States.
12. The Keralan government established a commission to establish the standards for classifying EWS. On November 29, 2019, the Commission, headed by Mr. K Sasidharan Nair, released its final report, which recommended that Kerala's EWS group be defined as having a gross family income of Rs. 4 lakhs;

Union of India:

1. Since the reservation was made through the contested notice provided on July 29, 2021, much before the day on which the examinations were administered and before the start of the counselling procedure, the game's rules were not amended after the game had started.
2. To comply with the ruling of this Court dated 11 August 2021 in *Debraj Samanta and Ors. v. Medical Counseling Committee*, the reservation of AIQ seats in accordance with the notice dated 29 July 2021 has already been applied in MDS admissions for the present academic year 2021–2022.
3. For UG/PG admission in medical and dentistry programmes, the EWS reservation already exists and is currently being expanded to AIQ seats. In addition to in the, and the reservation complies with The Constitution (One Hundred and Third Amendment) Act 2019 and is made in accordance with the specified qualifying requirements, which, among other things, include gross income.
4. By the order dated August 2020 in *Janhit Abhiyan v. Union of India and Ors*, the constitutional validity of the Constitution (One Hundred and Third Amendment) Act

2019 has been challenged, and it has been submitted to a Constitution Bench. This Court did not halt the implementation of the constitutional amendment while submitting the challenge to the Constitution Bench. Therefore, the current writ petitions cannot contest the application of the constitutional amendment by the notification of July 29, 2021.

5. The Union Government has the authority to determine the criteria for reserving for admission in the AIQ seats as a matter of policy. The criteria are based on an overall evaluation and survey of the needs of different types of people for whom access to higher education is crucial. The “Barium Chemicals Test” case, *B.K. Pavithra v. Union of India MANU/SC/0738/2019: (2019) 16 SCC 129*, established the parameters of judicial review. Therefore, there is no need for court intervention unless the EWS criteria are so egregiously unfair that no reasonable person could come to them;
6. There is always a chance of developing a different standard. But the judiciary's only job is to judge whether the Government used its wits, took only germane factors into account, and avoided adopting an irrational viewpoint that anyone with common sense would reject;
7. The Pandey Committee just made minor adjustments to the Major Sinho Commission's report. Additionally, important data has been taken into account, such as the 2011 Socio-Economic and Caste Census. Based on the information, it came to the conclusion that economic weakness is a complicated issue and that there is no one measure that can accurately depict the extent of poverty. The Pandey Committee noted that multifaceted criteria call for intricate and comprehensive surveys. It makes sense to establish an income criterion for EWS because it is a dynamic and ever-evolving notion. If there were a consumption-based criterion, people might shun particular items and services in order to receive the reservation.
8. Using the income tax exemption ceiling was advised by the Major Sinho Commission report. Although the current income tax exemption threshold is Rs. 2.5 lakhs, the income of Rs. 8 lakhs effectively fall under this threshold because a tax rebate is offered for income up to Rs. 5 lakhs, and this tax rebate can be acquired with enough savings and investments. In addition, while families are subject to the 8 lakhs income limit, individuals are subject to the income tax exemption limit. If a family of three earns Rs. 3 lakhs annually, they may not be considered EWS;
9. If a family of three earns Rs. 3 lakhs annually, they may not be considered EWS; It is significant to highlight that the state classifies people who fall into the category of being

economically weaker rather than those who are poverty stricken.

V. ANALYSIS OF THE COURT

The Union of India in view of Article 15(5) and Article 15(6) of the Constitution has the power to provide reservations in AIQ seats since these seats have been surrendered to the Centre. In this case, the parameters to determine the EWS criteria were challenged. The court in this case allowed the counseling and implementation of the policy for the admission cycle.

(A) Whether New Law Created:

Yes, in terms of the applicability of OBC's reservation over NEET-PG and UG, the court upheld the government order and termed it in contract with Article 15 of the constitution. The validity of the EWS reservation was still under consideration however the interim order has allowed the government to maintain the status quo.

(B) Analysis:

This case deals with one of the significant events in our nation's affirmative action jurisprudence and helps define the criteria used to identify the socially, educationally, and economically disadvantaged groups. Income wasn't ever thought to be a factor in giving affirmative action, but thanks to the 103rd constitutional amendment, it is now included. Not only does it create a new class, but it also sparks a discussion about whether sub-classification is a possibility and leads to a bigger query about whether the equity and equality jurisprudence with positive discrimination requires a new viewpoint. Whether the dynamic of society has changed drastically and new parameters for determining affirmative action may be explored along with the existing ones. It also explores the extent of judicial review in providing affirmative action under article 15 of the constitution. This case does answer a few questions but raises more questions about the future of equality jurisprudence in the country. It does address the question that an entrance examination is not the parameter of merit and a more comprehensive outlook must be brought in to understand it in an ever-dynamic society.
