

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW.

Writ Petition No. *2654*

(M/B) Of 2009



College of Professional Education, Sisoli, Garh Road, Meerut, through its Secretary Dr. V.M. Saxena, Son of Late Dr. L.D. Saxena, aged about 50 years, resident of 9 - Meera Enclave Garh Road Meerut.

Petitioner.

Versus

1. State of U.P. through its Principal Secretary, Higher Education, Civil Secretariat, Lucknow.
2. Chancellor, Dr. B.R. Ambedkar University, Agra.
3. Dr. B.R. Ambedkar University, Agra through its Vice Chancellor.
4. Dr. B.R. Ambedkar University, Agra. through its officer on Special Duty B Ed Central Entrance Test 2008-2009
5. Dr. B.R. Ambedkar University, Agra through its Coordinator, B Ed. Counseling 2008-2009,
6. Union of India, through ^{The Secretary} Ministry of Human Resources and Development, New Delhi.

Opposite Parties.

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

Notice No. *2649/09*

10/6

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The petitioner named above most respectfully sheweth

That this is the first Writ Petition challenging the Act orders passed by the opposite parties for academic session 2008-09 and no other writ petition has been



Writ Petition No. 2654 (M/B) of 2009
College of Professional Education, Sisoli, Garh Road, Meerut
Vs.
State of U.P. and others

Hon'ble Pradeep Kant, J.
Hon'ble Shabihul Hasnain, J.

Notice on behalf of respondent no. 1 has been accepted by learned by Chief Standing Counsel and 2 to 5 by Sri D.K. Arora

Sri Ravi Nath Tilhari has put in appearance on behalf of respondent no. 6. The petitioner by means of this writ petition challenges the constitutional validity of the 93rd constitutional amendment of Article 15 (5) introduced in regard to private unaided institutions stressing that in the judgment in the case of *Ashok Kumar Thakur* reported in (2008) 6 SCC, the Apex Court has left the question open though Hon'ble Mr. Justice Dalveer Bhandari has declared the amendment as invalid.

Further challenge has been made to the State Act No. 23/2006, namely, U.P. Admission to Educational Institutions (Reservation for Scheduled Caste Scheduled Tribes and Other Backward Classes) Act, 2006 wherein under Section 4 reservation has been provided at the stage of admission of the given percentage for selection in favour of persons belonging to scheduled caste and scheduled tribes and other backward classes. The argument is that the State Government does not have the legislative competence to enact the aforesaid law with respect to private unaided institutions and that entry no. 25 of list III is subject to entry 66 of list I. Further submission is that this legislative incompetence also flows from the case of *P.A. Inamdar* (2005) 6 SCC 537.

Learned counsel for the petitioner also seeks parity of the interim order passed in Writ Petition No. 8265 (M/B) / 2007 where a similar controversy was raised with respect to the challenge to the State Act providing reservation in which an interim order has been passed by a Division Bench of this court on 2nd November 2007 providing that for the academic session 2007-08 the provisions of the aforesaid Act of 2006 shall not be implemented with respect to petitioner institution.

The aforesaid interim order was challenged before the Apex Court in Special Leave Petition which was converted into Civil Appeal No. 476 of 2008 and was disposed of vide order dated 21.1.2008. The Apex Court did not interfere with the interim order and directed the High Court to dispose of the controversy preferably within a period of two months from the date of receipt of a certified copy of the order.

Learned counsel for the petitioner submitted that this order was not brought to the notice of this Court by the State nor any counter affidavit has been filed by the State in that writ petition till date and, therefore, the writ petition has not been decided.

We are not on the reasons for which the Writ Petition No. 8265 (M/B) of could not be decided but we take note of the fact that similar controversy is engaging

W.P. No. 2654 of 2009

attention of the Court in which the interim order is subsisting.

Learned counsel for the State, however, in response submitted that the State was fully authorized and competent to legislate not only in terms of entry no. 25 of list III but also because the subject of reservation is not governed by any Central Act or regulation and, therefore, the restriction as imposed under entry 66 List I would not be attracted, in so far legislation or reservation is concerned.

Considering the issues raised coupled with the fact that there is also an interim order in existence and that the matter requires consideration by the Court at an early date, we provide as an interim measure that the provisions of reservation with respect to the admission in private unaided colleges as given in Section 4 of the Act 2006 shall not be implemented till the next date of listing.

Since the constitutional amendment is under challenge, issue notice to the Attorney General of India and to the Advocate General State of U.P. List this matter on 7th April 2009 as prayed by the parties counsel, for hearing.

The parties may exchange affidavits in the meantime.

18.3.2009
LN/-

SAL Pradeep Kant
SAL Shobikul
Hasnain
18/3/09

19/3/09
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(Per...)

TRUE COPY

Section Officer
Copying Department
(Pending)
High Court Lucknow Bench
Lucknow