

**HIGH COURT OF DELHI****Bench: Hon'ble Mr. Justice Purushendra Kumar Kaurav****Date of Decision: 2nd February 2024**

Case No: W.P.(C) 15514/2023 &amp; CM APPL. 62139/2023

**Ravi Kumar****...Petitioner****Versus****All India Institute Of Medical Sciences****...Respondent****Legislation and Rules:**

Articles 15(4) and 16(4) of the Constitution of India

OBC-NCL certificate norms

Reservation policies in education (Government of India guidelines)

**Subject:** The case involves the challenge against the cancellation of the petitioner's admission under the OBC-NCL category due to his failure to submit the OBC-NCL certificate within the stipulated timeframe as per the AIIMS prospectus.

**Headnotes:**

**Cancellation of Candidature - OBC-NCL Certificate Deadline - Petitioner's Challenge:** The petitioner's candidature for a postgraduate medical course was cancelled by AIIMS due to the late submission of the OBC-NCL certificate, despite meeting all other eligibility criteria. The petitioner challenged this cancellation as arbitrary and lacking rational nexus with the objective of reservation [Paras 1-2, 15-17, 90].

**Important Dates and Prospectus Guidelines - AIIMS Admission Process:** The AIIMS prospectus specified a timeframe for the submission of valid OBC-NCL certificates (06.11.2022 to 05.11.2023). The petitioner, initially submitting an OBC-NCL certificate dated 02.10.2022, later uploaded a fresh certificate dated 23.11.2023 upon request [Paras 6-8, 11, 15, 58].

**Judicial Scrutiny of Eligibility Criteria - Fundamental Rights Consideration:** The court scrutinized the eligibility criteria set by AIIMS, especially the stipulated timeframe for OBC-NCL certificates. It emphasized that the OBC-NCL certificate is a mere proof of an existing fact, and its submission deadline should not nullify a candidate's fundamental right to fair consideration under the reservation policy [Paras 40-42, 56-57, 90].

**Arbitrariness in Timeframe for OBC-NCL Certificate:** The court found AIIMS's timeframe for the OBC-NCL certificate arbitrary,

lacking a rational nexus with the reservation objective, and creating unnecessary confusion and hurdles for deserving candidates [Paras 76-78, 90].

**Distinction between Technical/Academic Qualifications and OBC-NCL Certificate:** The court distinguished the nature of an OBC-NCL certificate from regular qualifications, holding that while the former confirms an existing status, the latter refers to the acquisition of a new skill or knowledge [Paras 81-82, 90].

**Direction to AIIMS - Acceptance of Petitioner's OBC-NCL Certificate:** The court directed AIIMS to accept the petitioner's OBC-NCL certificate dated 23.11.2023 and confirmed his admission granted earlier under an interim order [Paras 90-91].

#### Referred Cases:

- Pushpa v. Government, NCT of Delhi 1 2009 SCC OnLine Del 281
- Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board 2010 SCC OnLine Del 4780
- Delhi Subordinate Services Selection Board & Anr. v. Ram Kumar Gijroya & Ors. 2012 SCC OnLine Del 472
- Anil Kumar & Anr. v. Union of India 2013 SCC OnLine Del 1401
- Indra Sawhney v. Union of India 2016 SCC OnLine SC 184
- Valsamma Paul v. Cochin University 1992 Supp (3) SCC 217
- Karn Singh Yadav v. Govt. of NCT of Delhi & Ors. (1996) 3 SCC 545
- Bhumika Choudhary v. All India Institute of Medical Sciences 2020 SCC OnLine SC 1472
- Anil Kumar & Anr. v. Union of India 2019 SCC OnLine Del 10483
- Sakshi Arha v. Rajasthan High Court 2023 SCC OnLine SC 662
- Union Public Service Commission v. Gaurav Singh & Ors. 2022 SCC OnLine SC 2116
- Pichra Warg Kalyan Mahasabha Haryana v. State of Haryana 2021 SCC OnLine SC 635
- Rekha Chaturvedi v. University of Rajasthan 1993 Supp (3) SCC 168
- Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18
- Divya v. Union of India 2023 SCC OnLine SC 1305
- Mohit Sharma v. All India Institute of Medical Sciences 2019 SCC OnLine Del 9556
- Harshul Saini v. Indian Institute of Technology 2023 SCC OnLine Del 749
- Union of India v. Mahendra Singh 2022 SCC OnLine SC 909
- Bedanga Talukdar v. Saifudaullah Khan 2011 SCC OnLine SC 1325
- Gaurav Sharma v. State of U.P. 2017 SCC OnLine All 1286
- Hari Singh v. Staff Selection Commission 2010 (114) DRJ 323
- Mukesh Kumar Yadav & Anr. v. Govt. of NCT of Delhi & Ors 2013 SCC OnLine Del 82

- Karn Singh Yadav v. Govt. of NCT of Delhi & Ors. 2022 SCC OnLine SC 1341
- State of Kerala v. NM Thomas (1976) 2 SCC 310
- Secy. (Health) Deptt. of Health & F.W. v. Anita Puri (Dr) (1996) 6 SCC 282
- State of Rajasthan v. Lata Arun (2002) 6 SCC 252
- Anand Yadav & Ors. v. State of U.P. & Ors (2021) 12 SCC 390
- Zahoor Ahmad Rather v. Imtiyaz Ahmad (2019) 2 SCC 404
- Punjab National Bank v. Anit Kumar Das (2021) 12 SCC 80
- Basheshar Nath v. CIT 1958 SCC OnLine SC 7

Representing Advocates:

For Petitioner: Mr. Amitesh Kumar, Ms. Priti Kumari, Mr. Mrinal Kishor

For Respondent: Mr. Anand Varma, Ms. Apoorva Pandey, Mr. Ayush Gupta

## **J U D G M E N T**

1. A candidate is allowed to sit in an examination under the Other Backward Classes (Non-Creamy Layer) [hereinafter 'OBC-NCL'] category without any demur and qualifies in the merit list associated with the said category. He successfully submits his OBC-NCL certificate well within the time and date stipulated for submission of certificates. Nevertheless, his candidature gets cancelled on account of his failure to submit the OBCNCL certificate issued within a particular timeframe or cut-off date stipulated in the prospectus of the said examination. The legality of cancellation of admission and the constitutional validity of such timeframe or cut-off for submission of OBC-NCL category certificates are the core issues that arise in this petition.

2. The instant petition has been filed assailing two e-mail communications dated 27.11.2023 and 29.11.2023. *Vide* e-mail dated 27.11.2023, the candidature of the petitioner has been assigned to unreserved category; and *vide* another e-mail dated 29.11.2023, the petitioner's OBC-NCL category certificate has been considered as invalid and not been considered for admission through Institution of National Importance Combined Entrance Test (INI-CET) January, 2024 session conducted by the respondent-All India Institute of Medical Sciences (hereinafter 'AIIMS').

3. The facts of the case would show that the respondent conducted the January, 2024 session of INI-CET for admissions into the Institutes of National Importance for Medical Education such as AIIMS, New Delhi, the new AIIMS centres located in different parts of the country, JIPMER Puducherry, NIMHANS-Bengaluru, PGIMER-Chandigarh and SCTIMST Trivandrum etc., for the post graduate courses i.e., MD, MS, DM (6 Yrs), M.Ch. (6 Yrs) and MDS.

4. The prospectus for the said examination was issued on 15.09.2023 and the applications from the eligible candidates were invited from 15.09.2023 to 05.10.2023.

5. Clause 2 of the prospectus (Part-B) prescribes for reservation of seats as per Government of India ('GoI') guidelines—15% for SC, 7.5% for ST, 27% for OBC and 10% for EWS, excluding sponsored/foreign national candidates. That apart, reservation for persons with benchmark disability was also stipulated besides the provision for institute preferences etc.

6. The prospectus provided for the date for uploading the valid certificate/card, such as SC/ST/OBC(NCL)/EWS/PwBD, OCI Card etc., to be from 27.09.2023 (05:00 pm onwards) to 05.11.2023 (till 05:00 pm).

7. Note-2 of the prospectus required that the applicants seeking reservation/relaxation benefit available for SC/ST/OBC(NCL)/EWS/PwBD must ensure possession of the requisite valid certificate in the prescribed format in support of their claim. The OBC-NCL certificate was required to have been issued during the period envisaged in the 'Important Dates' column, it being from 06.11.2022 to 05.11.2023, both dates inclusive. For the sake of clarity, Note-2 of the prospectus is extracted below:-

*"Note 2. Applicants seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/PwBD must ensure that they are entitled to such reservation/relaxation. They should be in possession of all the requisite valid certificates in the prescribed format in support of their claim. The OBC(-NCL) certificates should have been issued between period as mentioned in Important Dates. The EWS certificate must be valid as mentioned in Important Dates The SC/ST/OBC(NCL)/EWS/PwBD certificates must be uploaded with online registration on or before date of examination as mentioned in the Important dates/Notice published. The applicants will be required to upload appropriate valid certificates and, therefore must take utmost care to ensure*

*that required valid certificates are uploaded. These uploaded certificates may be preliminarily scrutinized during the process of seat allocation for postgraduate courses, for determination of veracity of claim by the candidates for reservation/relaxation as applicable, however this preliminary scrutiny shall be subject to production and verification of original documents at the time of reporting/joining for allocated postgraduate seat and candidature is liable to be cancelled in case of discrepancies of any kind detected. Allocation of seat doesn't guarantee acceptance of eligibility which is always provisional."*

8. Further, at page no.26 of the prospectus (Part-A), under the heading 'Important Dates', the following dates were stipulated:-

<i>Description</i>	<i>Start date</i>	<i>Close date</i>
<p><i>Uploading of valid Certificate/Card: SC/ST/OBC(NCL)/EWS/PwBD certificate and OCI Card.</i></p> <p><i>a) Date(s) of valid OBC(NCL) certificate: The OBC(-NCL) certificates should have been issued between 06.11.2022 to 05.11.2023 (date of Exam) both dates inclusive.</i></p> <p><i>b) Date(s) of valid EWS certificate: The EWS certificate must be valid for financial year 2023-2024 and issued between 01.04.2023 to 05.11.2023 (on or before date of Exam), both date inclusive based on income of year 2022-2023.</i></p>	<p><i>27.09.2023 ( 05:00 pm)</i></p>	<p><i>05.11.2023 (05:00 pm)</i></p>
<p><i>Details filled in Registration and Basic Candidate Information &amp; Completion of Application cannot be edited after closing date of application. Change of category will not be allowed after payment of registered fee in any circumstance</i></p>		

9. The status of completion of applications was required to be displayed after 17.10.2023 and the date for uploading the admit card was shown to be 30.10.2023. The examination was scheduled for 05.11.2023, with the expected date for the declaration of result being 11.11.2023 and the last date of admission was shown to be 29.02.2024.

10. As per Section XI (Part-A) of the prospectus, the declaration of the results shall be followed by the allocation of seats through the online mode. The said allocation of seats to eligible candidates is contemplated

in two rounds. The seat is allocated according to—the order of merit; choices made by the candidates; and as per the reservation policies of individual INIs with regards to institutional preference, community reservation (OBC, SC, ST, EWS etc.) and PwBD status, as applicable.

11. The petitioner had submitted his application for INI-CET examination enclosing an OBC-NCL certificate dated 02.10.2022 issued by the competent authority, whereby, he was certified to be belonging to the OBC-NCL category.

12. Within the time stipulated in the prospectus, the admit card of the petitioner, on preliminary scrutiny, was uploaded by the respondent on the concerned website, on the basis of which, the petitioner then appeared for the examination on 05.11.2023.

13. On 11.11.2023, the respondent issued the notification no. 213/2023, whereby, the list of provisionally qualified candidates was notified. The name of the petitioner was reflected under the OBC-NCL category as having secured 89.037 percentile and an overall rank of 6399.

14. Thereafter, the respondent issued notice no. 242/2023 dated 20.11.2023, whereby, the schedule of online seat allocation was released. As per the aforesaid notice, the first round of online seat allocation was proposed to commence from 28.11.2023 and the second round of online seat allocation was scheduled to commence from 19.12.2023.

15. Subsequently, on 22.11.2023, the petitioner received an e-mail from the respondent, at around 05:18 pm, seeking an explanation about the OBC-NCL certificate submitted by him and further requiring the petitioner to re-upload the valid certificate by 23.11.2023 (till 05:00 pm). The petitioner then uploaded a fresh OBC-NCL certificate, issued by the competent authority on 23.11.2023 itself, within the timeframe prescribed by the respondent.

16. However, to his surprise, on 27.11.2023, he was served with an email from the respondent, notifying him about the said certificate not being in order as the same was issued after 05.11.2023. Accordingly, the petitioner was informed that his candidature would be considered only in the unreserved category as his cut off rank is under the unreserved merit



list. *Vide* another e-mail dated 29.11.2023, the respondent informed the petitioner that since the OBC-NCL certificates submitted by the petitioner were not issued within the timeline stipulated in the prospectus, the petitioner is not being considered under the OBC-NCL category for the purpose of the said examination and admission.

17. The petitioner being aggrieved by both the communications filed the instant writ petition on 01.12.2023. The petition was taken up for hearing on the same date. The respondent entered appearance on advance notice.

The parties were heard and subject to further hearing, this court directed the respondent to consider the petitioner's candidature and allow him to participate in the counselling process under the OBC-NCL category.

18. On 07.12.2023, the first round of seat allocation was announced, and on the same day, the petitioner was allocated a seat at AIIMS, Guwahati, in the Physical Medicine and Rehabilitation course under the OBC-NCL category. Accordingly, on 11.12.2023, the petitioner joined the said institute as a Junior Resident (Academic) in the above mentioned course. During the pendency of this petition, the second round of counselling was also conducted and the admission process came to an end.

19. The respondent has filed its counter-affidavit and has opposed the prayer made in the instant writ petition. The petitioner was granted liberty to file the rejoinder and thereafter, the matter was heard on its merits.

### **SUBMISSIONS**

20. Mr. Amitesh Kumar, learned counsel appearing on behalf of the petitioner submits that there is no rationale behind requiring the candidates to furnish an OBC-NCL certificate issued between 06.11.2022 to 05.11.2023. He submits that at the time of submission of his candidature, the petitioner furnished the OBC-NCL certificate dated 02.10.2022. Thereafter, in order to ensure the furnishing of the latest certificate, he applied for the income certificate on 25.10.2023 and on the issuance of the income certificate on 06.11.2023, he applied with the competent authority for the issuance of a fresh OBC-NCL certificate on 17.11.2023, which was issued to the petitioner on 23.11.2023.

21. He further submitted that incidentally, the last date of the prescribed timeframe within which the latest OBC-NCL certificate was required to be submitted was also 23.11.2023 and therefore, the petitioner was able to upload the latest certificate issued on 23.11.2023.

22. He, therefore, explains that the petitioner in the instant case, is admittedly an OBC-NCL candidate and on account of his merit position in the said category, he has already been allocated a PG seat and merely on a technical ground of not submitting a certificate issued between 06.11.2022 to 05.11.2023, his candidature ought not to have been rejected.

23. He has taken this court through various office memorandums issued by the Government of India, Ministry of Personnel, Public Grievance & Pensions (Department of Personnel & Training) to indicate that the basis for issuance of the OBC-NCL certificate is the assessment of the annual income/wealth of the respective candidates for a period of three consecutive years, preceding the year of issuance of the OBC-NCL certificate.

24. Learned counsel, particularly, emphasizes on an office memorandum dated 31.03.2016 to indicate that the said Ministry invited comments of all concerned on the NCL format which was proposed by the National Commission for Backward Classes (NCBC). According to him, the office memorandum clearly illustrates that for issuance of a valid OBC-NCL certificate, the income of the three preceding financial years, prior to the issuance of the certificate, is to be considered. He then submits that once the certificate is issued on the basis of income/wealth of three preceding years, the same remains valid for the year for which the certificate is issued.

25. Learned counsel has placed reliance on the decision of the Coordinate Bench of this court in the case of ***Pushpa v. Government, NCT of Delhi and Ors. 2009 SCC OnLine Del 281***, wherein, this court has considered the OBC certificate issued by the competent authority after expiry of the last date of submission of application for the employment. He, therefore, submits that the principle laid down in the case of ***Pushpa (supra)*** was reiterated by another Coordinate Bench of this court in the case of ***Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and Anr. 2010 SCC OnLine Del 4780*** (hereinafter '***Ram Kumar Gijroya***'). Against the



order passed in the case of **Ram Kumar Gijroya**, Delhi Subordinate Services Selection Board filed an LPA 562/2011 and the Division Bench of this court set aside the decision passed by the learned Single Judge, through the judgement and order reported as **Delhi Subordinate Services Selection Board & Anr. v. Ram Kumar Gijroya & Ors. 2012 SCC OnLine Del 472** [hereinafter '**Ram Kumar Gijroya (DB)**'].

26. Thereafter, **Ram Kumar Gijroya (DB)** was challenged before the Hon'ble Supreme Court by way of a Special Leave Petition. However, prior to the decision of the Hon'ble Supreme Court, another decision was given by the Division Bench of this court in the case of **Anil Kumar & Anr. v. Union of India. 2013 SCC OnLine Del 1401**, wherein, the principle laid down in the case of **Pushpa (supra)** was approved. Learned counsel then submits that the Hon'ble Supreme Court, even in **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & Anr.**<sup>5</sup> [hereinafter '**Ram Kumar Gijroya (SC)**'], approved the principle of law laid down in the case of **Pushpa (supra)** and the same has been found to be in accordance with the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of **Indra Sawhney and Ors. v. Union of India and Ors.**<sup>6</sup> and another decision of the Hon'ble Supreme Court in the case of **Valsamma Paul v. Cochin University.**<sup>7</sup> The Hon'ble Supreme Court further set aside the decision passed by the Division Bench of this court in **Ram Kumar Gijroya (DB)**, and restored the judgement of the learned Single Judge in **Ram Kumar Gijroya**.

27. He submits that in another decision in the case of **Karn Singh Yadav v. Govt. of NCT of Delhi & Ors.**<sup>8</sup>, the Hon'ble Supreme Court doubted the proposition laid down in the case of **Ram Kumar Gijroya (SC)** and referred the same to be considered by a larger Bench of three judges. When the matter was placed before the larger Bench, it has been found that the controversy was completely covered by the decision in the case of **Ram Kumar Gijroya (SC)**, however, in that case, it was also noted therein that the appellant was never appointed for the post in question and therefore, the Hon'ble Supreme Court found that no substantial relief could be granted.

28. Learned counsel has also placed reliance on the final decision in the case of **Bhumika Choudhary v. All India Institute of Medical Sciences**<sup>9</sup>, wherein, relief against the same respondent was granted on

similar parameters. It is further submitted that when the decision in the case of

29. \_\_\_\_\_

<sup>5</sup> 2016 SCC OnLine SC 184

<sup>6</sup> 1992 Supp (3) SCC 217

<sup>7</sup> (1996) 3 SCC 545

<sup>8</sup> 2020 SCC OnLine SC 1472

<sup>9</sup> 2019 SCC OnLine Del 10483

---

***Bhumika Choudhary (supra)*** was preferred in an appeal at the instance of the respondent therein, the Division Bench of this court on 08.11.2019, declined to grant interim relief and the order of declining the interim relief was challenged by the aggrieved party before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the SLP *vide* order dated 25.11.2019. He, therefore, submits that the Division Bench in LPA No. 700/2019 in its subsequent order dated 20.01.2020 noted that the *lis* pending before the said court had rendered infructuous; accordingly, the appeal was dismissed.

29. He has also placed reliance on an interim order passed by this court in ***Shivani Dhiman v. All India Institute of Medical Sciences*** in W.P.(C) 9808/2022 dated 27.09.2021 and the order dated 31.07.2023 in W.P.(C) 9958/2023 in ***J. Vinutha v. All India Institute of Medical Sciences- AIIMS & Anr.***
30. Mr. Anand Verma, learned counsel appearing on behalf of the respondent, while extensively relying on the counter affidavit, submitted that the instant writ petition is bereft of any merit, the same does not have any substance and is an abuse of the process of law. Learned counsel explains that the cut-off date mentioned in the prospectus is sacrosanct and the same has to be rigorously adhered to by all concerned. According to him, if the petitioner had any grievance with respect to the dates, he should have challenged the same before appearing in the examination. Once the petitioner appeared in the examination, at a belated stage, he cannot be allowed to challenge the terms of the prospectus. He submits that in the instant case, the opportunity was offered to the petitioner not to obtain a fresh certificate but only to re-upload the certificate he had, if any, between the dates mentioned in the prospectus i.e., 06.11.2022 to 05.11.2023. The aforesaid opportunity

could not have meant that the candidate was entitled to obtain a fresh OBC-NCL certificate and furnish the same to the respondent.

31. According to him, if such a process is resorted to, it would become impossible for the respondent to take the concerned examination to its logical end. He cites various practical difficulties in accepting such a belated certificate once the examination is over and the result is declared.
32. Learned counsel has further explained that in the instant case, the petitioner did not apply for fresh OBC-NCL certificate before the cut-off date i.e., 05.11.2023. He submits that the petitioner himself is responsible for the aforesaid situation when despite having sufficient time, he slept over the matter and had only applied when the final result was declared.
33. Learned counsel has also read over the relevant clauses, important dates in the prospectus and then explained the importance of their adherence by the respective candidates. According to him, there is no office memorandum issued by the Gol requiring the respondent to prescribe any particular cut-off date. Rather, taking a cue from various office memorandums, he submits that it would be up to the employer or an educational institution to prescribe any cut-off date for fulfilling eligibility criteria or accepting certificates seeking necessary reservations.
34. Learned counsel has attempted to distinguish the decisions relied upon by the petitioner. He has placed reliance on a decision of the Hon'ble Supreme Court in the case of **Sakshi Arha v. Rajasthan High Court**<sup>10</sup> to submit that there was divergence of the view by two different judges pertaining to whether view taken by the Hon'ble Supreme Court in the case of **Ram Kumar Gijroya (SC)** is to be accepted and therefore, the matter has been placed before Hon'ble the Chief Justice of India to list it before an appropriate Bench.
35. He has also placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **Union Public Service Commission v. Gaurav Singh & Ors.**<sup>11</sup>, **Pichra Warg Kalyan Mahasabha Haryana v. State of Haryana**<sup>12</sup>, **Rekha Chaturvedi v. University of Rajasthan**<sup>13</sup>, **Ashok Kumar Sharma v. Chander Shekhar**<sup>14</sup>, **Divya v. Union of India**<sup>15</sup>,

***Mohit Sharma v. All India Institute of Medical Sciences***<sup>16</sup>, ***Harshul Saini v. Indian Institute of Technology***<sup>17</sup>, ***Union of India v. Mahendra Singh***<sup>18</sup>, ***Bedanga Talukdar v. Saifudaullah Khan***<sup>19</sup> and ***Gaurav Sharma v. State of U.P.***<sup>20</sup>

36. I have heard the learned counsel appearing on behalf of the parties and have carefully examined the record and precedents.

### **ANALYSIS**

37. The primary grievance of the petitioner relates to the rejection of his candidature on the ground of non-submission of the requisite OBC-NCL \_\_\_\_\_

<sup>10</sup> 2023 SCC OnLine SC 662

<sup>11</sup> 2022 SCC OnLine SC 2116

<sup>12</sup> 2021 SCC OnLine SC 635

<sup>13</sup> 1993 Supp (3) SCC 168

<sup>14</sup> (1997) 4 SCC 18

<sup>15</sup> 2023 SCC OnLine SC 1305

<sup>16</sup> 2019 SCC OnLine Del 9556

<sup>17</sup> 2023 SCC OnLine Del 749

<sup>18</sup> 2022 SCC OnLine SC 909

<sup>19</sup> 2011 SCC OnLine SC 1325

<sup>20</sup> 2017 SCC OnLine All 1286

---

certificate issued within the timeframe stipulated in the prospectus of the respondent.

38. It is an admitted position that apart from the aforesaid deficiency indicated by the respondent, there existed no other shortcoming or ineligibility on the part of the petitioner for securing admission. Put otherwise, the petitioner duly fulfils all the other required eligibility criteria for securing admission in the concerned course through the INI-CET 2024 examination.

39. The sole issue that arises before this court is whether the candidature of the petitioner under OBC-NCL category is liable to be cancelled if the OBC-NCL category certificate was issued beyond the cut-off date and timeframe prescribed by the respondent for issuance of the said certificate.

40. To begin with, it is apposite to refer to ***Pushpa (supra)***, wherein, this court adjudicated upon the issue—whether the candidature of the

petitioner in the reserved OBC category could be denied on the ground that the OBC certificate was issued by the competent authority and submitted by the petitioner after the expiry of the prescribed cut-off date. The court answered in the negative on two independent grounds.

41. The court opined that the insistence upon an OBC category certificate issued prior to a particular date would be arbitrary, as the same has no rational nexus with the object of providing reservations. The court based this conclusion on two parameters. *Firstly*, the OBC certificate is only an affirmation of a fact that already exists and thus, the court, in paragraph no. 6, observed as follows:-

*“6. As per the advertisement published in the month of January, 2008 issued by the Delhi Subordinate Services Selection Board, vacancies were reserved for various categories including „OBC“ category. Thus in order to be considered for the post reserved for „OBC“ category, the requirement is that a person should belong to „OBC“ category. If a person is „OBC“, she is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that she belongs to „OBC“ category and act thereon by giving the benefit to such candidate for her belonging to „OBC“ category. It is not that petitioner did not belong to „OBC“ category prior to 21st January, 2008 or that acquired the status of being „OBC“ only on the date of issuance of the certificate. **In view of this position, insisting upon a certificate dated prior to 21st January, 2008 would be clearly arbitrary and has no rationale objective to be achieved.**”*

*[Emphasis supplied]*

42. *Secondly*, the court opined that Articles 15(4) and 16(4) of the Constitution of India are enabling provisions for providing reservations and are based on the principle of equality. The aim of the said provisions is to remedy the inequalities existing in the society, by providing equal opportunities. It was thus, the court held, the fundamental right of a person belonging to the OBC category, to seek reservation. The scales, therefore, tilt in favour of a person seeking enforcement of his/her fundamental rights rather than the organization insisting upon a cut-off date. In this regard, the court held as under:-

*“7. Caste is the only accepted criteria to identify under-represented groups. The underlying theory is that the under-representation of the identifiable groups is a legacy of the Indian caste system. After India gained independence, the Constitution*

of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST). The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities. Later, reservations were introduced for other sections as well.

8. *The principle of equality permeates the Constitution of India. All the citizens are entitled to be treated by the state equally, irrespective of their caste, race, religion, sex, descent, place of birth and residence. No citizen may be discriminated against by the state only on any of these grounds. The exceptions to this principle are made in favour of women and children, the backward classes, the Scheduled Castes and the Scheduled Tribes, and the weaker sections.*

9. *Referring to the reasons for reservation, the Hon'ble Apex Court in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217, observed as under:*

*“251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to „a minority of seats“, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:*

*“... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a „proper look-in“ so to say into the administration... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity...Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...”. Constituent Assembly Debates, Vol. 7, pp.701-702 (1948-49).*

*(emphasis supplied)*

*These words embody the raison d'etre of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant*



*to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.”*

\*\*\*

*11. The issue is also no more res integra as in the case of Tej Pal Singh v. Govt. of NCT of Delhi, (2005) 120 DLT 117 this Court has already taken a view that the candidates who belong to „SC“ and „ST“ categories but could not file certificate in proof of the same could not have been rejected simply on account of the late submission of the certificates and submission of such certificates cannot be made a precondition for accepting the application forms. The relevant para of the said judgment is reproduced as under:*

*“17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including „SC“ category. Thus in order to be considered for the post reserved for „SC“ category, the requirement is that a person should belong to „SC“ category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to „SC“ category and act thereon by giving the benefit to such candidate for his belonging to „SC“ category. It is not that petitioners did not belong to „SC“ category prior to 30th June, 1998 or that acquired the status of being „SC“ only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.*

*18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.*

19. One can usefully draw sustenance from the following words of wisdom spoken by the Apex Court in *Valsamma Paul (Mrs.)v. Cochin University*, (1996) 3 SCC 545:—

*“The Constitution through its Preamble, Fundamental Rights and Directive Principles created a Secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person with the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing.....”*

43. Further, in ***Pushpa (supra)***, the other independent ground upon which the court based its judgement was that the fault lied with the authorities and it was owing to their delay that the petitioner was unable to submit the certificate within the cut-off date.

44. Subsequently, three set of judgements and orders bear importance for the consideration of the present issue- *first*, by the learned Single Judge of this court in ***Ram Kumar Gijroya***; *second*, by the Division Bench of this court in ***Ram Kumar Gijroya (DB)*** reversing the decision of the learned Single Judge; and *third*, by the Hon'ble Supreme Court in ***Ram Kumar Gijroya (SC)*** reversing the decision of the Division Bench of this court and restoring the judgement of the learned Single Judge.

45. This court in ***Ram Kumar Gijroya*** found that the facts of the case therein were similar to that of ***Pushpa (supra)***, as according to the learned Single Judge, in both the cases, the only ground for declining the petitioner's application was the issuance of OBC certificate beyond the cutoff date. The court then, relying upon ***Pushpa (supra)***'s dicta of insisting upon a certificate prior to a cut-off date to be arbitrary, struck down the requirement in ***Ram Kumar Gijroya***. The material part of the judgement reads as under:-

*“7. Counsel for the petitioners relies on a decision of this Court in Ms. Pushpa v. Government, NCT of Delhi, CM No. 17504/2008 in WP(C) No. 9112/2008, decided on 11<sup>th</sup> February, 2009, with respect to the same Notification issued by the same respondents, as in the present case. In that case also, cut-off date was prescribed as 21<sup>st</sup> January, 2008 for the submission of the necessary OBC certificate. **In paragraph 6 of the aforesaid decision, it was categorically held that the certificate issued by a competent authority is only an affirmation of the fact which is already in existence. It is not as if the granting of such certification confers the status of OBC on a person for***

**the first time, or that, that person did not belong to the OBC category prior to 21st January, 2008. It was for this reason that, insisting upon a certificate, which carries a date prior to 21st January, 2008, would be arbitrary and deserves to be struck down.** It has also been brought to my notice that the same counsel appeared for the respondents in that matter also, and that no appeal has been preferred from that decision. In this matter also, the only ground for declining the petitioners' applications was that the OBC certificate had been issued after the „cut-off date“, and therefore, they were not eligible for consideration. Respondent has not cited any other authority to distinguish the decision in *Ms. Pushpa's case (supra)* or to persuade me to hold otherwise.

8. Consequently, the petition is disposed of for the reason as recorded in the aforesaid decision in the case of *Ms. Pushpa v. Government, NCT of Delhi (supra)* and the respondents are directed to re-consider the applications of the petitioners against the OBC category within a period of one month and to announce results taking in view the relaxation available to the OBC candidates.”

*[Emphasis supplied]*

46. Subsequently, the Division Bench of this court in ***Ram Kumar Gijroya (DB)*** laid stress on the fact that four out of the five respondents therein had applied for the OBC certificate after the cut-off date and the remaining sole respondent had applied only 10 days prior to the cut-off date. The decision in ***Pushpa (supra)*** came to be distinguished as according to the Division Bench, it was due to the delay on the part of the authorities that the breach of the cut-off date was condoned. It is noteworthy to mention that the Division Bench did not consider ***Pushpa (supra)***, to declare that the very insistence of a cut-off date is arbitrary, which was the interpretation of the learned Single Judge.

47. It is further important to mention a few observations and findings of the Division Bench, that would help appreciate the scope of the subsequent order of the Hon'ble Supreme Court. In paragraph no. 17, the Division Bench noted that the advertisement clearly provided that the certificates of belonging to the OBC category had to be filed along with the application by the cut-off date. The material part reads as under:-

*“17. On the contrary, the advertisement in the appeal as well as the writ petition clearly provided that the certificates of belonging to OBC category had to be filed along with the application by the cut off date...”*

48. Further, in paragraph no. 19, the Division Bench treated the requirement of OBC certificate akin to a qualification, meaning thereby that similar to a qualification, the OBC certificate is to be possessed as on the cut-off date. This finding of the Division Bench, as the Hon'ble Supreme Court also noted, was against **Pushpa (supra)**, in the sense that it implicitly created a distinction between qualification for examination (the requirement of a matriculation certificate, for instance) and that of an OBC certificate which is a mere proof of an eligibility already existing. Moreover, in paragraph no. 19, the Division Bench laid great stress on the argument presently being made by the respondent—that those who did not possess the certificate and did not apply would be discriminated against and unfair treatment would be meted out to them. Paragraph no. 19 is reproduced as under:-

*“19. Else, what has been observed by us qua qualification, equally applies to submission of OBC Certificate also. It is well-nigh possible that a number of other OBC candidates, though otherwise eligible but not in possession of the OBC Certificate by the cut off date, did not apply under the belief that being required to enclose the OBC Certificate along with the application and being not in possession thereof, their applications would be deficient and not entertainable. It is yet further possible that, had such others applied and competed, the respondents in appeal and/or the petitioner in the writ petition may not have been eligible. The respondents in appeal and the petitioner in the writ petition were clearly in the know that their applications were incomplete and took a chance. This Court cannot lay down a law which would encourage such practices. The terms and conditions mentioned in the advertisement were intended, to guide/instruct the prospective applicants and there is no reason to dilute the same. Even otherwise, this Court would be loathe to issue mandamus/directive contrary to the terms of selection/appointment (see Karnataka State Road Transport Corporation v. Ashrafulla Khan (2002) 2 SCC 560, FCI v. Ram Kesh Yadav (2007) 9 SCC 531, Maharishi Dayanand University v. Surjeet Kaur JT 2010 (7) SC 179 and State of West Bengal v. Subhas Kumar Chatterjee (2010) 11 SCC 694).”*

49. Before the Hon'ble Supreme Court in **Ram Kumar Gijroya (SC)**, the judgment of the Division Bench was set aside and the decision of the learned Single Judge was restored. The Hon'ble Supreme Court opined that the learned Single Judge had correctly appreciated the constitutional backdrop of reservations and the object for which they were introduced. The material part of the judgement reads as under:-



“18. In our considered view, the decision rendered in *Pushpa* [*Pushpa v. Govt. (NCT of Delhi)*, 2009 SCC OnLine Del 281] is in conformity with the position of law laid down by this Court, which have been referred to *supra*. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in *Indra Sawhney* [*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and *Valsamma Paul* [*Valsamma Paul v. Cochin University*, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] wherein this Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the directive principles of State policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench in Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in *Indra Sawhney* [*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and *Valsamma Paul* [*Valsamma Paul v. Cochin University*, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713]. Therefore, the impugned judgment and order [*Delhi Subordinate Services Selection Board v. Ram Kumar Gijroya*, 2012 SCC OnLine Del 472 : (2012) 128 DRJ 124] passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24-11-2010 passed by the learned Single Judge in *Ram Kumar Gijroya v. Govt. (NCT of Delhi)* [*Ram Kumar Gijroya v. Govt. (NCT of Delhi)*, WP (C) No. 382 of 2009, order dated 24-11-2010 (Del)] is hereby restored.”

50. It is, thus, discernible that the Hon'ble Supreme Court found ***Pushpa (supra)*** to be applicable to a case where— (1) the advertisement explicitly provides for the OBC certificate to be filed along with the application before the cut-off date; and (2) the OBC certificate is applied for after the cut-off date.

51. The judgement of ***Anil Kumar & Anr. (supra)*** is also of significance. The advertisement, which the Division Bench found was commonly worded in the cases of both the petitioners, under Clause 4(C) stipulated that the candidates claiming OBC must submit a certificate

duly issued within three years before 04.03.2011. The petitioners therein had originally, along with their applications, submitted OBC certificates that were dated prior to three years and thus, breached the requirement under the advertisement. However, subsequently, they submitted OBC certificates dated 02.12.2011 and 25.01.2011.

52. The Division Bench relied upon ***Hari Singh v. Staff Selection Commission***<sup>1</sup>, wherein, the candidate had initially produced a defective certificate but later, after the cut-off date, produced the correct certificate and the court had ruled that cut-off date must be interpreted and understood as benefitting an OBC category candidate as opposed to ousting him. The interpretation in ***Hari Singh (supra)*** was based upon the constitutional scheme and purpose of reservation and was in line with the pronouncement of the Hon'ble Supreme Court in ***Valsamma Paul (supra)***, which is reiterated in ***Anil Kumar (supra)***, wherein, it was held that — the cut-off date is meant to signify that the subsequent falling of an OBC candidate into the creamy layer beyond the cut-off date would not affect their OBC status for the purpose of exam/application. Meaning thereby, that there would be no difficulty in accepting an OBC certificate even beyond the cutoff date as it could not be the case that a candidate fell inside the creamy layer prior to such date. What is more probable is the candidate becoming a part of the creamy layer after the issuance of the certificate. The material part of ***Anil Kumar (supra)*** which relies upon ***Hari Singh (supra)*** reads as under:-

*“9. In Hari Singh (supra), the Division Bench had to deal with identical fact situation where the candidature had initially produced a defective certificate but later after the cut-off date indicated in a stipulation worded identically with Clause 4(B), as in the present case, produced the correct certificate. The Court noticed certain previous judgments, including the judgment of the Supreme Court in Mrs. Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : AIR 1996 SC 1011, where the Court had emphasized that the concerned citizen, to improve his excellence, equal status and dignity with the advancement of human rights is afforded the opportunity of a reservation, and held that the submission of a certificate within reasonable time even if it is not at the time of making of application for the job, would be in order and cannot be rejected. The Bench in Hari Singh (supra) also noted a ruling in Deepak v. Competent Authority for the Purpose of Admission to Engineering Course in Government Engineering College, Pune AIR 1997 (Bom) 1, where it was held that the requirement of caste verification*

---

<sup>1</sup> 2010 (114) DRJ 323



cannot be made a precondition for accepting the application of those candidates belonging to reserved categories. In *Hari Singh (supra)*, the Court finally held as follows:

“47. The prescription in the public notice in question that the closing date for receipt of application would be treated as the date of reckoning of OBC status of the candidate and also for ascertaining that the candidate does not fall in the creamy layer, in our view, is a prescription evolved for the benefit of the candidates belonging to OBC category and not for the purpose of ousting them from the benefit of reservation. What the NOTE under Clause 4(B) (set out in para 5 above) provides is that, if a candidate is certified as being an OBC category candidate not falling within the creamy layer prior to the close of the date of submission of applications (i.e. 14.09.2007 in this case) then the candidate would be treated as an OBC candidate not falling in the creamy layer for the purpose of the examination in question, and the issue that the candidate may have come into the creamy layer subsequently, i.e. after the date of closing, would not be relevant or gone into to deny the benefit of reservation to such a candidate.

48. The prescription in the NOTE appended to Clause 4(B) does not get whittled down merely by acceptance of an OBC certificate issued on a later date. A candidate who is certified as belonging to an OBC and as not belonging to the creamy layer on a later date than the one fixed by the public advertisement cannot be assumed to be as falling under the creamy layer on any date prior to the date of issuance of the certificate. There would be no basis for such an assumption. The possibility of such an eventuality is highly remote. In fact, the greater probability is that a candidate who may have been certified as an OBC candidate falling outside the creamy layer, may actually get covered by the creamy layer on a later date.

49. In any event, we are not suggesting that the respondents are precluded from examining the issue of eligibility of any candidate to claim the benefit of reservation. But, they cannot reject the candidature of such a candidate as a reserved category candidate and are bound to consider the candidature of the candidate concerned “provisionally” and, subject to the final determination, to even appoint the person concerned if found otherwise eligible and meritorious. Similar submissions have already been rejected by this Court in *Anu Devi (supra)* and in *Poonam Chauhan (supra)*.”

53. Furthermore, in *Anil Kumar (supra)*, the Division Bench of this court, prior to the decision by the Hon’ble Supreme Court in *Ram Kumar Gijroya (SC)*, doubted the correctness of *Ram Kumar Gijroya (DB)*. It did so on the following grounds—*firstly*, the judgment of *Hari Singh (supra)* was not noticed and the mandate laid down by the Hon’ble Supreme Court in *Valsamma Paul (supra)*, of adopting a liberal approach in such matters, was also ignored; *secondly*, the treatment of

the requirement of OBC certificate akin to a qualification was wrong, as the OBC certificate is a mere evidence of something that already exists; and *thirdly*, the logic of discriminatory treatment to those who did not apply owing to their certificates not being in order, did not apply to the case of certificates. The material part of the judgement relating to the above reads as under:-

*“10. So far as the judgments relied upon by the respondents are concerned, it is to be noticed that in Ram Kumar Gijroya (supra), the decision in Hari Singh (supra) was not noticed at all nor was the judgment of the Supreme Court in Mrs. Valsamma Paul (supra), highlighting the necessity for adopting a liberal approach in such matters, even noticed. The Court was persuaded to hold as it did on the reasoning that, “a number of other OBC candidates, though otherwise eligible but not in possession of the OBC Certificate by the cut off date, did not apply under the belief that being required to enclose the OBC Certificate along with the application and being not in possession thereof, their applications would be deficient and not entertainable.” Such reasoning, in this Court's opinion, would apply squarely in the case of candidates who are not qualified but subsequently acquire qualifications. It cannot have blanket application to those who possess the status but are caught in the cleft in the policy changes of the government in regard to the validity of their certificates. As noticed in Hari Singh (supra) and Ms. Anu Devi (supra), the certificate is only evidence of what always existed, i.e. the status of the candidates as belonging to the OBC category who are not from the creamy layer. It is not as if he acquires such status subsequent to the closing date or subsequent to the commencement of the recruitment process, as in the case of a candidate who fulfils the academic qualification later.”*

54. The decision in the case of **Mukesh Kumar Yadav & Anr. v. Govt. of NCT of Delhi & Ors. 2013 SCC OnLine Del 82**, was passed before the Hon'ble Supreme Court's decision in **Ram Kumar Gijroya (SC)** and in **Anil Kumar (supra)**. In **Mukesh Kumar Yadav (supra)**, the court interpreted the Division Bench order of this court in **Ram Kumar Gijroya (DB)** as creating a distinction between cases where cut-off dates are prescribed and those where they are not and confined the mandate of **Pushpa (supra)** to the latter category only. In the said case, the petitioners had submitted a defective OBC certificate alongwith their application, but later submitted a corrected OBC certificate after the cut-off date. In such factual matrix, the Division Bench found the subsequent submission to be invalid. The material part of the judgement reads as under:-

*“3. The issue is no longer res integra. In the decision reported as 2012 (128) DRJ 124 (DB) DSSB v. Ram Kumar Gijroya noting various authorities on the point a Division Bench of this Court held that a distinction needs to be drawn where no cut-off dates are prescribed and those where cut-off dates are prescribed. Whenever cut-off dates are prescribed and it specifies that not only the applications but annexures thereto have to be filed on or before cut-off date any corrective action after the cut-off date would be irrelevant.”*

55. The matter, thereafter, reached the Hon’ble Supreme Court where doubts were expressed over the correctness of **Ram Kumar Gijroya (SC)** and through an order reported in **Karn Singh Yadav (supra)**, the matter was referred to a larger Bench of three Hon’ble Judges. The Hon’ble three Judges Bench then decided the correctness with which this court is, needless to say, bound, through order and judgement reported in **Karn Singh Yadav v. Govt. of NCT of Delhi & Ors 2022 SCC OnLine SC 1341** .The Hon’ble three Judges Bench of the Supreme Court found the facts therein to be covered by the judgement of **Ram Kumar Gijroya (SC)**. The material part reads as under:-

*“3. We are presently concerned with the process of selection issued vide advertisement dated 30.08.2007 for the posts of “A” Grade Staff Nurse, Municipal Corporation of Delhi. The appellant had offered his candidature as a person belonging to Other Backward Class. His candidature was however rejected by the Authorities inter alia on the ground that the documents certifying him to be belonging to that community were not filed before the cut-off date.*

*4. The challenge raised by the appellant to such rejection did not meet with any success and the High Court by the order presently under challenge rejected the writ petition in limine.*

*5. It must be stated here that an identical fact situation came up for consideration before this Court in Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board, (2016) 4 SCC 754, wherein this Court ruled in favour of the concerned candidate. The instant matter is thus completely covered by said decision.”*

56. Thus, as per the law laid down by the Hon’ble Supreme Court, if a defective certificate is submitted by the candidate at an initial stage, submission of a corrected OBC-NCL certificate after the expiry of the cutoff date, where the advertisement explicitly provides for a cut-off date for such submission, shall not create a ground for disqualification by itself.

57. In the facts of the present case, it is not in dispute that the petitioner belonged to the OBC-NCL category between the material time

period. The petitioner also possessed OBC-NCL certificates dated 02.10.2022 and 23.11.2023, which cumulatively signify that his income during the Financial Years (F.Y.) 2019-20, 2020-21, 2021-22, 2022-23, were in compliance with the requirements of the GoI and made him eligible for getting OBC-NCL reservations.

58. The OBC-NCL certificate that the petitioner had submitted along with his application was dated 02.10.2022 and was valid till 31.03.2023. It signified that his income levels in the F.Y. 2019-20, 2020-21, 2021-22 were in compliance with the GoI requirements for availing OBC-NCL reservations. However, as the respondent discovered that the date of issuance of the OBC-NCL certificate submitted by the petitioner was not in consonance with the requirement of the prospectus, the petitioner was given another chance to submit a valid OBC-NCL certificate. The second OBC-NCL certificate dated 23.11.2023 submitted by the petitioner, indicated that the petitioner's income pertaining to F.Y. 2020-21, 2021-22 and 2022-23 was in compliance with the GoI requirements and made him eligible for the OBC-NCL reservation, atleast during the F.Y. 2023-24.

59. In terms of the authoritative pronouncements in ***Pushpa (supra)*** and ***Ram Kumar Gijroya (SC)***, it is clear that the insistence by the respondent on the OBC-NCL certificate issued during the given cut-off date does not have any rational nexus with the object of reservation of seats in educational institutions. Further, applying ***Anil Kumar (supra)***, ***Ram Kumar Gijroya (SC)*** read with the order of the Division Bench of this court in ***Ram Kumar Gijroya (DB)***, it is clear that the requirement of an OBC certificate cannot be equated with that of an academic/technical qualification and thus, should correspond to a reasonable basis. For, the caste certificate for reservation is merely a proof of an existing fact. The certificate merely certifies an existing fact. Thus, the petitioner's OBC-NCL certificate dated 23.11.2023, shall be considered by the respondent for the purpose of admission, subject to fulfilment of other conditions relating to the said category.

#### **CONSTITUTIONAL VALIDITY OF TIMEFRAME/CUT-OFF**

60. More often than not, the issues that fall at the steps of the court are reflection of the society at large and the issues plaguing it. The said observation assumes a greater relevance in writ jurisdiction wherein the

fundamental rights of the citizens are pitched against the State and its instrumentalities. In this regard, this court considers it fit and proper to examine the nature of qualification i.e., fixation of timeframe and cut-off in relation to the OBC-NCL certificate without considering the objective sought to be achieved, stipulated by the respondent in the prospectus and determine whether such a qualification is legally tenable.

61. As noted above, the prospectus dated 15.09.2023, requires that the OBC-NCL certificate should have been issued between 06.11.2022 to 05.11.2023. The impact of this requirement is not merely a technical one. Rather, such a qualification or pre-condition strikes at the very basis of a reservation policy which is nobly designed to achieve a sociological objective. The application of such a condition has the direct effect of deprivation of a legitimate constitutional right, that too for reasons of administrative exigency, at best.

62. No doubt, implementation of a reservation policy based on caste is not a straightforward task. The exercise of implementation necessarily involves a set of rules and regulations, which are meant for guiding the administration working at the grassroots level. Such a framework is necessitated in light of the fact that a reservation policy could be misused if left unregulated, which may have effect of depriving the deserving candidates. One such safeguard is the concept of creamy layer in OBC reservations.

63. One of the earlier references to the concept of creamy layer may be found in the decision of the Hon'ble Supreme Court in the case of **State of Kerala v. NM Thomas (1976) 2 SCC 310**, wherein, the term 'creamy layer' was introduced for the first time as a tool of caution against the cornering of weaker members of a category by the affluent individuals belonging to the same category. The relevant paragraph of the judgment reads as under:-

**"124. A word of sociological caution. In the light of experience, here and elsewhere, the danger of "reservation", it seems to me, is threefold. Its benefits, by and large, are snatched away by the top creamy layer of the "backward" caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is overplayed extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of**



**employment, but wish to wear the “weaker section” label as a means to score over their near-equals formally categorised as the upper brackets.** Lastly, a lasting solution to the problem comes only from improvement of social environment, added educational facilities and cross-fertilisation of castes by inter-caste and inter-class marriages sponsored as a massive State programme, and this solution is calculatedly hidden from view by the higher “backward” groups with a vested interest in the plums of backwardism. But social science research, not judicial impressionism, will alone tell the whole truth and a constant process of objective re-evaluation of progress registered by the “underdog” categories is essential lest a once deserving “reservation” should be degraded into “reverse discrimination”. Innovations in administrative strategy to help the really untouched, most backward classes also emerge from such socio-legal studies and audit exercises, if dispassionately made. In fact, research conducted by the A.N. Sinha Institute of Social Studies, Patna, has revealed a dual society among harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Articles 46 and 335 remain a “noble romance” [As Huxley called it in “Administrative Nihilism” (Methods and Results, Vol. 4 of Collected Essays).], the bonanza going to the “higher” harijans. I mention this in the present case because lower division clerks are likely to be drawn from the lowest levels of harijan humanity and promotion prospects being accelerated by withdrawing, for a time, “test” qualifications for this category may perhaps delve deeper. An equalitarian breakthrough in a hierarchical structure has to use many weapons and Rule 13-AA perhaps is one.”  
[Emphasis supplied]

64. In 1992, a nine Judges Bench of the Hon’ble Supreme Court in the case of **Indra Sawhney (supra)**, while upholding the 27% reservation for OBCs, held, by majority, that the Government must exclude creamy layer among the backward classes by fixation of proper income, property or status criteria and devised a ‘Means Test’ for fulfilling the said objective.

The relevant paragraphs of the said decision read as under:-

“790. „Means-test” in this discussion signifies imposition of an income limit, for the purpose of excluding persons (from the backward class) whose income is above the said limit. This submission is very often referred to as the “creamy layer” argument. Petitioners submit that some members of the designated backward classes are highly advanced socially as well as economically and educationally. It is submitted that they constitute the forward section of that particular backward class — as forward as any other forward class member — and that they are lapping up all the benefits of reservations meant for that class, without allowing the benefits to reach the truly backward members of that class. These persons are by no means backward and with them a class cannot be treated as backward.



*It is pointed out that since Jayasree [(1976) 3 SCC 730 : (1977) 1 SCR 194] almost every decision has accepted the validity of this submission.*

\*\*\*\*

792. *In our opinion, it is not a question of permissibility or desirability of such test but one of proper and more appropriate identification of a class — a backward class. The very concept of a class denotes a number of persons having certain common traits which distinguish them from the others. In a backward class under clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward. Difficulty, however, really lies in drawing the line — how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by the other. The basis of exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement. Let us illustrate the point. A member of backward class, say a member of carpenter caste, goes to Middle East and works there as a carpenter. If you take his annual income in rupees, it would be fairly high from the Indian standard. Is he to be excluded from the Backward Class? Are his children in India to be deprived of the benefit of Article 16(4)? Situation may, however, be different, if he rises so high economically as to become — say a factory owner himself. In such a situation, his social status also rises. He himself would be in a position to provide employment to others. In such a case, his income is merely a measure of his social status. Even otherwise there are several practical difficulties too in imposing an income ceiling. For example, annual income of Rs 36,000 may not count for much in a city like Bombay, Delhi or Calcutta whereas it may be a handsome income in rural India anywhere. The line to be drawn must be a realistic one. Another question would be, should such a line be uniform for the entire country or a given State or should it differ from rural to urban areas and so on. Further, income from agriculture may be difficult to assess and, therefore, in the case of agriculturists, the line may have to be drawn with reference to the extent of holding. **While the income of a person can be taken as a measure of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other. The income limit must be such as to mean and signify social advancement. At the same time, it must be recognised that there are certain positions, the occupants of which can be treated as socially advanced without any further enquiry. For example, if a member of a designated backward class becomes a member of IAS or IPS or any other All India Service, his status in society (social status) rises; he is no longer socially disadvantaged. His children get full***

**opportunity to realise their potential. They are in no way handicapped in the race of life. His salary is also such that he is above want. It is but logical that in such a situation, his children are not given the benefit of reservation. For by giving them the benefit of reservation, other disadvantaged members of that backward class may be deprived of that benefit. It is then argued for the respondents that „one swallow doesn't make the summer“, and that merely because a few members of a caste or class become socially advanced, the class/caste as such does not cease to be backward. It is pointed out that clause (4) of Article 16 aims at group backwardness and not individual backwardness. While we agree that clause (4) aims at group backwardness, we feel that exclusion of such socially advanced members will make the „class“ a truly backward class and would more appropriately serve the purpose and object of clause (4). (This discussion is confined to Other Backward Classes only and has no relevance in the case of Scheduled Tribes and Scheduled Castes).**

793. *Keeping in mind all these considerations, we direct the Government of India to specify the basis of exclusion — whether on the basis of income, extent of holding or otherwise — of „creamy layer“. This shall be done as early as possible, but not exceeding four months. On such specification persons falling within the net of exclusionary rule shall cease to be the members of the Other Backward Classes (covered by the expression „backward class of citizens“) for the purpose of Article 16(4). The impugned Office Memorandums dated August 13, 1990 and September 25, 1991 shall be implemented subject only to such specification and exclusion of socially advanced persons from the backward classes contemplated by the said O.M. In other words, after the expiry of four months from today, the implementation of the said O.M. shall be subject to the exclusion of the „creamy layer“ in accordance with the criteria to be specified by the Government of India and not otherwise.”*

*[Emphasis supplied]*

65. A conspectus of the aforementioned decisions would show that the need for exclusion of the creamy layer from the eligibility criterion for OBC reservation had arisen to bring a factual equality amongst the OBCs, rather than a superficial categorisation based solely on the caste. The decision in the case of **Indra Sawhney (supra)** recognises the fact that amongst the OBCs, there exists an opulent class which does not require any form of affirmative action. The underlying idea is to uplift a class and not just the selected individuals within a class.

66. Axiomatically, the OBC-NCL certificate is issued by the competent authority on the basis of the income of the applicant in the

preceding three financial years and is valid for a particular financial year. Therefore, undisputedly, the OBC-NCL certificate is substantially correlated with a financial year rather than a random timeframe. As a natural corollary, an authority asking for the OBC-NCL certificate should reasonably keep the cut-off date of issuance in line with a particular financial year. A deviation from the said position not only creates confusion and uncertainty but, at times, also deprives deserving candidates of the benefit of reservations. In the present case as well, it is the admitted position that the respondent was not obliged to follow a particular timeframe and thus, it went on to adopt its own timeframe, without any intelligible basis.

67. In fact, the mechanism for availing the benefit of reservation, which undeniably caters to the socially and educationally backward classes, should not only be easy and logical, but also non-cumbersome. If the process itself becomes an obstacle, it operates as an affront on the constitutional goal of ensuring equality of opportunity. The basic feature of equality operates in a layered manner and the understanding of equality is still evolving. The concepts of direct and indirect discrimination, substantial and non-substantial equality etc. are increasingly finding place in the judicial discourse. The concept of reservations is not secluded from the layers of inequality and is, in fact, placed at the heart of the equality discourse. For the longest time, this concept was understood as antithetical to the concept of equality of opportunity. It took us long, as a society, to accept the fact that the reservation policy is itself a dimension of the concept of equality of opportunity and is not antithetical to it. The issues with respect to implementation of the policy have emerged time and again. However, such issues, like the present one, are to be resolved keeping in view the ultimate goal of securing substantial equality.

### **SCOPE OF JUDICIAL REVIEW IN ACADEMIC MATTERS**

68. At this juncture, it is also significant to bear in mind the scope of judicial review in academic matters, particularly relating to the eligibility criteria. It is well settled by a series of judgments by the Hon'ble Supreme Court that the fixing of eligibility criteria is a policy decision, falling in the exclusive domain of the employer or other competent authority and the courts must keep their hands off in recasting such conditions. It is

pertinent to refer to the decision of the Hon'ble Supreme Court in the case of **Secy. (Health) Deptt. of Health & F.W. v. Anita Puri (Dr) (1996) 6 SCC 282**, wherein, it was held as under:-

“9. ...

*It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”*

69. In the case of **State of Rajasthan v. Lata Arun (2002) 6 SCC 252**, the Hon'ble Supreme Court was of the opinion that in an appropriate case, the court can exercise its power of judicial review to examine whether the policy decision is based upon relevant considerations or not. In terms of paragraph no. 10 of the said decision, it was held as under:-

*“10. The points involved in the case are twofold : one relating to prescription of minimum educational qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of TDC for the purpose of admission. Both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. **That is not to say that such matters are not justiciable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates.**”*

*[Emphasis supplied]*



70. In the case of **Anand Yadav & Ors. v. State of U.P. & Ors. (2021) 12 SCC 390** , the

Hon'ble Supreme Court while referring to the decision in the case of **Zahoor Ahmad Rather v. Imtiyaz Ahmad (2019) 2 SCC 404**

, has held as under:-

*“35. We say so in view of the fact that matters of education must be left to educationists, of course subject to being governed by the relevant statutes and regulations. It is not the function of this Court to sit as an expert body over the decision of the experts, especially when the experts are all eminent people as apparent from the names as set out. This aspect has received judicial imprimatur even earlier and it is not that we are saying something new. We may refer to the pronouncement in Zahoor Ahmad Rather [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404 : (2019) 1 SCC (L&S) 353] in this behalf which has dealt with the dual aspects : **(a) it is for the employer to consider what functionality of qualification and content of course of studies would lead to the acquisition of an eligible qualification;** and (b) such matters must be left to educationists.”*

*[Emphasis supplied]*

71. The decision of the Hon'ble Supreme Court in the case of **Punjab National Bank v. Anit Kumar Das (2021) 12 SCC 80** categorically held that though a greater latitude is permitted by the courts to the employer to set out eligibility, the same cannot be acted upon arbitrarily. Paragraph no. 17.3 of the said decision reads as under:-

*“17.3. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the courts to consider and assess. A greater latitude is permitted by the courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment as the case may be. The courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.”*



72. It is, thus, vividly seen that the employer or the competent authority in case of educational institutions, is saddled with the responsibility to fix the eligibility criteria while taking into consideration the expediency of such conditions. The rationale behind the said onus carries within itself a presumption that the authority would not act arbitrarily or in a *malafide* manner, rather it would strive towards striking a balance between the interests of the institutions and candidates. The above mentioned rulings do not put a complete ban on justiciability of the eligibility criteria and in appropriate cases, the same can be made subject to judicial scrutiny to weed out arbitrariness.

73. In the above context, the learned counsel for the respondent has argued that the cut-off date is the last date of the acceptance of applications when it is not explicitly provided for, however, it is up to the institution concerned, to provide for any deadline/timeframe that they deem fit.

74. The OBC-NCL certificate of the petitioner dated 02.10.2022 was rejected by the respondent contending that the same would expire by the time of the exam i.e., 05.11.2023, as the same is based on the incomes of the preceding three financial years. This court does not doubt this proposition, however, what seems erroneous is the respondent accepting OBC-NCL certificates that are issued before 31.03.2023, even though they would expire on 01.04.2023.

75. Thus, it seems that without any rationale or objectivity, the respondent has created two distinct classes of certificates within the same financial year. The first class contains certificates issued between 01.04.2022 to 05.11.2022, and the second class contains certificates issued between 06.11.2022 to 31.03.2023. The respondent has then chosen to consider as valid, all the certificates issued between 06.11.2022 to 31.03.2023, and consider as invalid, those issued between 01.04.2022 to 05.11.2022, despite certificates in both the classes expiring on 01.04.2023 and being based on incomes of the same set of financial years i.e., F.Y. 2019-20, 2020-21 and 2021-22.

76. It would have been understandable if the respondent had chosen to provide for conditions/qualifications relating to a particular financial year/set of financial years. However, the respondent has ingeniously provided for a timeframe for submission of OBC certificates, wherein, the

requirement is considered validly fulfilled when a person applies with a certificate valid for F.Y. 2022-23 or for F.Y. 2023-24. But equally and at the same time, both these certificates may be considered invalid, if they don't fall within the timeframe of the respondent. Importantly, this is despite the certificate itself having the same legal effect.

77. In the considered opinion of this court, the timeframe stipulated by the respondent for the OBC-NCL certificate requiring to have been issued between 06.11.2022 to 05.11.2023, is *ex-facie* arbitrary, without any application of mind and does not have any rational nexus with the object sought to be achieved through the reservation of seats.

78. This court shall now consider the judgements relied upon by the learned counsel for the respondent.

79. The case of **Ashok Kumar Sharma (supra)**, specifically paragraph no. 6, has been strongly relied upon. The material part of this judgement reads as under:-

*“6. ... So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr.T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis.....”*

80. Similarly, paragraph no. 10 of **Rekha Chaturvedi (supra)** is pressed into service. The material part of the same reads as under:-

*“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of*

*such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad & Anr. v. B. Sarat Chandra & Ors.*, (1990) 4 SLR 235 and *The District Collector & Chairman, Vizianagaram (Social Welfare Residential School Society) Vidanagaran & Anr. v. M. Tripura Sundari Devi*, (1990) 4 SLR 237.*

81. Both the cases i.e., **Ashok Kumar Sharma (supra)** and **Rekha Chaturvedi (supra)**, were concerned with technical qualifications. While in the former case, the appointment of the respondents therein as Assistant Professors (Lecturers) in the University of Rajasthan was challenged on the basis, *inter alia*, that they lacked a doctorate which was a mandatory eligibility criteria. On similar lines, **Ashok Kumar Sharma (supra)** was related to the appointment of persons as Junior Engineers in the service of the Jammu & Kashmir State, which required B.E. (Civil) as a minimum academic/technical qualification for the said post.

82. The dicta of **Ashok Kumar Sharma (supra)** and **Rekha Chaturvedi (supra)**, therefore, apply to technical/academic requirements for a particular post/seat. However, there is a fundamental distinction between having a technical/academic qualification and the

requirement of an OBCNCL certificate. As had been observed in ***Pushpa (supra)***, subsequently approved by the Hon'ble Supreme Court in ***Ram Kumar Gijroya (SC)***, the OBC-NCL certificate is a mere proof of what already exists. The acquisition of the certificate is not the acquisition of a new eligibility/qualification but a mere formal evidence of what already exists in fact. Moreover, it is pertinent to note that the conditions associated with the submission of an OBC-NCL certificate essentially have the effect of creating qualifications on a fundamental right, something which does not happen in the case of technical/academic qualifications. And therefore, the level of scrutiny is on the higher side, as a fundamental right reflects a constitutional promise, which cannot be curtailed in an ordinary manner, especially under the garb of administrative exigencies.

83. It is further noteworthy to mention that the argument of the respondent pertaining to the applicability of ***Ashok Kumar Sharma (supra)*** and ***Rekha Chaturvedi (supra)*** to the present case and requirement of an OBC-NCL certificate being the same as that of a regular qualification, was acceded to by the Division Bench of this court in ***Ram Kumar Gijroya (DB)***. However, as has been observed above, the Hon'ble Supreme Court reversed this decision and order in ***Ram Kumar Gijroya (SC)***. Furthermore, the decision of the Division Bench of this court in ***Anil Kumar (supra)***, specifically paragraph no. 10, also rejects the requirement of an OBC-NCL certificate to be considered as a regular qualification.

84. The reliance on ***Bedanga Talukdar (supra)*** is equally fallacious. The case was related to the non-submission of a PwBD certificate and the case did not have any discussion either relating to the OBC reservation or about the constitutional scheme of reservations in general. Next, the respondent's reliance on ***Mahendra Singh (supra)*** is also untenable. As paragraph no. 9 of the said case reveals, the Hon'ble Supreme Court was concerned with the effect of violating a condition provided in the advertisement therein that the application had to be in the language for which the candidate wanted to attempt the question paper. Needless to state, the said case has absolutely no relevance to the facts of the present case.

85. Furthermore, the decision of this court in the case of **Harshul Saini (supra)** was based on the entire different factual footing and hence, cannot come to rescue the case of the respondent. In the said case, unlike the factual matrix in hand, the relevant cut-off date for the submission of the OBC-NCL certificate was based upon the financial year only. Also, two rounds of counselling was already over in the said case and thus, the situation was irreversible and non-manageable, which is not the situation in the instant case.

86. Further, the argument raised by the respondent pertaining to the waiver of right to challenge the terms of the prospectus after participating in the entire process of the examination in question without any demur or protest, ostensibly lacks substance and merit. In the instant case, the petitioner is not essentially challenging the terms of the prospectus by asking for creation of an altogether separate reserved category, rather he is seeking a fair consideration of his candidature. The expectation of fair treatment or fair consideration is a fundamental right and flows from Article 14 of the Constitution of India. Even assuming that the petitioner has acquiesced the said conditions of the prospectus, the same would not preclude him to enforce his fundamental right as the fundamental rights cannot be waived of, as held by the Constitution Bench of the Hon'ble Supreme Court in the case of **Bheshar Nath v. CIT 1958 SCC OnLine SC 7** . Therefore, the petitioner is well within the contours of law to ventilate his grievance and the principle of waiver and acquiescence would not have any relevance at this stage.

87. The case of **Gaurav Singh (supra)** relates to EWS certificates, which this court does not find relevant. Similarly, the decision of **Divya (supra)** is based on its own peculiar facts and circumstances, which this court does not find to be applicable in the present case.

88. Further, reliance on any of the opinions in **Sakshi Arha (supra)** would be inappropriate as because of the split verdict, there was no real determination of the issues in the said case, and the matter was placed before Hon'ble the Chief Justice of India to place it before an appropriate Bench.

89. Thus, from the discussion above, it is clear that the petitioner's OBCNCL certificate dated 23.11.2023 ought to have been considered by the respondent and the requirement contained in the prospectus,



specifying the time-frame for the OBC-NCL certificate to be between 06.11.2022 to 05.11.2023, is arbitrary.

90. The conclusions reached by the court are thus summarised below:
- a. The insistence of the respondent upon the OBC-NCL certificate to have been issued between 06.11.2022 to 05.11.2023 is arbitrary and does not have any rational nexus with the object sought to be achieved through the reservation of seats.
  - b. The requirement of an OBC-NCL certificate is fundamentally different from a technical/academic qualification. While the former is mere evidence of what already exists, the latter refers to the acquisition of a qualification.
  - c. In terms of ***Pushpa (supra)***, read with ***Ram Kumar Gijroya (SC)***, ***Ram Kumar Gijroya (DB)***, ***Mukesh Kumar Yadav (supra)***, ***Karn Singh Yadav (supra)***, the insistence by the respondent on the submission of the OBC-NCL certificate issued during the given cut-off date, is arbitrary and has no rational nexus with the object of reservation. Also, the candidature may not be cancelled solely on account of submission of the OBC-NCL certificate issued beyond the cutoff date, but within the extended time provided by the respondent.
  - d. As per ***Anil Kumar (supra)***, the cut-off date is to be construed in a manner favourable to the candidate, and not to nullify a fundamental right merely because the OBC-NCL certificate is being submitted post the cut-off date.
  - e. On facts, the petitioner's OBC-NCL certificate dated 23.11.2023 ought to have been accepted by the respondent and it is directed accordingly.
91. Considering the foregoing discussion, the conclusions reached above, and also the fact that the seat would go vacant if withdrawn from the petitioner, who otherwise possesses the required merit, this court confirms the admission of the petitioner granted *vide* interim order dated 01.12.2023.

92. In view of the aforesaid terms, the communications dated 27.11.2023 and 29.11.2023 are, hereby, set aside. The petition stands disposed of alongwith the pending application.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.