



### Abstract

Welfare of Backward Classes – Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 [Tamil Nadu Act 45 of 1994] – Report of the Tamil Nadu Backward Classes Commission on quantum of reservation and exclusion of creamy layer – Accepted – Orders – Issued.

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### BACKWARD CLASSES, MOST BACKWARD CLASSES AND MINORITIES WELFARE DEPARTMENT

G.O.Ms.No.50

Date:11.7.2011

Read:

1. G.O.Ms.No.1565, Social Welfare Dept., dated 30.7.85.
2. G.O.Ms.No.242, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Dept., dated 28.3.1989.
3. G.O.Ms.No.1090, Adi Dravidar and Tribal Welfare Department, dated 22.6.1990.
4. Tamil Nadu Act 45 of 1994.

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The Writ Petitions filed before the Supreme Court of India challenging the Constitutional validity of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 [hereinafter referred to as 'Tamil Nadu Act 45 of 1994'] were closed in the year 2010 by two orders of the Supreme Court respectively passed on 13/7/2010 and 3/1/2011 keeping the Constitutional validity of the said Act open, with a direction to the State Government of Tamil Nadu to supply the Tamil Nadu Backward Classes Commission all quantifiable data so as to enable the Commission to find out as to whether the quantifiable data supplied are sufficient and adequate enough for the justification of the 69% reservation provided for under the Tamil Nadu Act 45 of 1994.

2. At the time when the full bench headed by the Chief Justice of India, Thiru S.H.Kapadia delivered the first order dated 13.7.2010 the Solicitor General informed the full bench that data in the form of reports were already available.

3. The Supreme Court, then, disposed of all the Writ Petitions pending before it challenging the Constitutional validity of the Tamil Nadu Act 45 of 1994 and sent back all the records and proceedings to the State Government, keeping the challenge to the Constitutional validity of the Act open. The further direction was that "the interim orders passed by the Supreme Court from time to time in relation to admissions to Educational Institutions shall continue to be in force and in operation for a period of one year from today" [13/7/2010]. Yet another direction of the Supreme Court was that the whole exercise must have to be completed within one year, that is to say, before 12/7/2011.

4. The Tamil Nadu Backward Classes Commission, in its Report submitted to the Government on 8/7/2011, considered in an elaborate fashion a topic under Chapter 12 "Reservation under the Tamil Nadu Act 45 of 1994 – Existence of Quantifiable Data – Justifiability or Otherwise thereof". The Commission undertook a thorough analysis of the quantifiable data in the shape of the Report of the Tamil Nadu Second Backward Classes Commission, 1985 – popularly known as "Ambasankar Commission report". The Tamil Nadu Second Backward Classes Commission – as pointed out by the Chairman of the Tamil Nadu Backward Classes Commission – was able to fix the socially and educationally backward classes population at 67% from among the total population of the State of 5 Crores enumerated by the said Commission. The statistical data provided by the said Commission is more or less equal to the statistical data furnished by the Census of population conducted by the Government of India in the year 1981. Therefore, the authenticity of the report of the Tamil Nadu Second Backward Classes Commission cannot at all be doubted. The data required by the Commission have also been collected from various Government Institutions, State Public Sector Undertakings and educational institutions. The Tamil Nadu Act 45 of 1994 provided for reservation to the Backward Classes at 50% [i.e., Backward Classes at 30% and Most Backward Classes at 20%]. Therefore, the quantum of reservation provided for under the said Act viz., 50% to Backward Classes is far below the percentage of Backward Classes population in the State as enumerated by the Tamil Nadu Second Backward Classes Commission. As such, the quantifiable data available on the date when the Tamil Nadu Act 45 of 1994 was passed, was sufficient and adequate enough to justify such percentage of reservation to the backward classes under the said Act.

5. The said Act also provided for reservation at 18% to Scheduled Castes [SC] and 1% to Scheduled Tribes [ST], all totaling to 19%. The Census conducted by the Union Government in 1991 was taken into consideration for fixing the percentage of reservation to Scheduled Castes and Scheduled Tribes, which is proportionate to their population. Therefore, there cannot at all be any doubt as regards the fixity of reservation of 50% to Backward Classes, 18% to Scheduled Castes and 1% to Scheduled Tribes.

6. The second order dated 3/1/2011 of the Supreme Court is relatable to exclusion of "creamy layer". The report of the Tamil Nadu Backward Classes Commission reveals that due reliance has been placed upon the nine-Judges Bench judgment of the Supreme Court in *Indra Sawhney supra*. The dictum laid down by the Supreme Court in the said case regarding "creamy layer" is that while applying the exclusion of creamy layer to the backward classes, none from the backward classes should be deprived of the reservation benefits made-available to them. Though the Tamil Nadu Act 45 of 1994 had been in existence for well over 17 years, the *lakshman rekha* line – as pointed out by the Tamil Nadu Backward Classes Commission in its Report submitted to Government on 8/7/2011 – has not been crossed warranting the application of "creamy layer" exclusion.

7. The report of the Tamil Nadu Backward Classes Commission was placed in the meeting of the Council of Ministers held on 11.7.2011 and there was a thorough discussion on it in the meeting. The Council of Ministers of the Cabinet headed by the Hon'ble Chief Minister accepted the report of the Tamil Nadu Backward Classes Commission regarding the justification of the 69% reservation providing 30% for Backward Classes, 20% for Most Backward Classes, 18% for Scheduled Castes and 1% for Scheduled Tribes, as had been provided under Tamil Nadu Act 45 of 1994, as well as on the exclusion of Creamy Layer from the Backward Classes. The Government of Tamil Nadu also decided to continue to implement the reservation of 69% as provided in the Tamil Nadu Act 45 of 1994.

(BY ORDER OF THE GOVERNOR)

**G.SANTHANAM,**  
**SECRETARY TO GOVERNMENT.**

To

The Director of Backward Classes Welfare, Chennai-5.  
The Commissioner of Most Backward Classes  
and Denotified Communities Welfare, Chennai-5.  
The Commissioner of Minorities Welfare, Chennai-5.  
The Commissioner of Adi Dravidar and Tribal Welfare, Chennai-5.  
The Director of School Education, Chennai-6.  
The Director of Collegiate Education, Chennai-6.  
The Director of Technical Education, Chennai-25  
The Director of Medical Education, Chennai-10.  
The Director of Legal Studies, Chennai-35.  
The Director of Veterinary Education, Chennai-7.  
The Director of Stationery and Printing, Chennai-1.  
All other Heads of Departments  
All District Collectors.  
All Public Sector Undertakings.

The Secretary, TamilNadu Public Service Commission, Chennai-2.  
(with covering letter)

The Registrar of High Court, Chennai-104. (wcl)

The Registrar, University of Madras/Annamalai University/Madurai

Kamaraj University, Madurai/TamilNadu Agricultural University,  
Coimbatore/ Bharathiyar University, Coimbatore/Bharathidasam

University, Tiruchirappalli/Tamil University, Thanjavur/Mother Theresa  
University, Kodaikanal, Madurai District/Alagappa University, Karaikudi.

The Registrar, Perarignar Anna University of Technology, Guindy,  
Chennai-25.

Copy to:

All Departments of Secretariat.

The Director of Information and Public Relations, I&T Department,  
Chennai-9.

The Publicity Officer, Public (I&TD), Department, Chennai-9.

The Personnel and Administrative Reforms (Per.R) Department,  
Chennai-9.

The Editor, Tamil Arasu, Chennai-2.

The Private Secretary to Chief Minister, Chennai-9.

/Forwarded/By Order/

P.N. Arachchi

Section Officer.