

**TAMIL NADU ARUNTHATHIYARS (SPECIAL RESERVATION OF SEATS IN
EDUCATIONAL INSTITUTIONS INCLUDING PRIVATE EDUCATIONAL INSTITUTIONS
AND OF APPOINTMENTS OR POSTS IN THE SERVICES UNDER THE STATE WITHIN
THE RESERVATION FOR THE SCHEDULED CASTES) ACT, 2009
(ACT NO. 4 OF 2009)**

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[9th march 2009]

An Act to provide for reservation of seats in educational institutions including private educational institutions in the State and of appointments or posts in the services under the State to Arunthathiyars in the State of Tamil Nadu within the eighteen per cent reservation for Scheduled Castes.

WHEREAS the policy of reservation for the social and educational advancement of the people belonging to the Backward Classes of citizens in admissions to educational institutions in the State and for appointments in the services under the State has been under implementation in the State of Tamil Nadu for a long time;

AND WHEREAS the State of Tamil Nadu is a pioneer State in providing reservation for the underprivileged and the first communal Government Order was passed in the year 1921 and the proportional representation for communities was made in the year 1927 in the State of Tamil Nadu;

AND WHEREAS a large percentage of population of Tamil Nadu suffering from social and educational backwardness for many years have started enjoying the fruits of the reservation policy and have been able to improve their lot and attain a higher standard of living;

AND WHEREAS the Tamil Nadu Legislature passed 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 (Tamil Nadu Act 45 of 1994);

AND WHEREAS the Constitution (Seventy-sixth Amendment) Act, 1994, added 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 (Tamil Nadu Act 45 of 1994), enacted by the Tamil Nadu Legislature, to the IX Schedule so as to give protection to the State Act, under Article 31-B of the Constitution;

AND WHEREAS under Article 14 of the Constitution, equals and unequals cannot be treated equally and a differential treatment, if made, cannot at all be stated to be discriminatory, if it is having a rational nexus to the object sought to be achieved;

AND WHEREAS the Constitution (First Amendment) Act, 1951 incorporating clause (4) of Article 15 of the Constitution enables the making of special provisions for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and the Scheduled Tribes;

AND WHEREAS the Constitution (Ninety-third Amendment) Act, 2005 incorporating clause (5) of Article 15 of the Constitution enables the making of any special provisions, by law, for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes or Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions whether, aided or unaided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution;

AND WHEREAS by virtue of clause (5) of Article 15 of the Constitution and also after taking a policy decision that the existing level of sixty-nine per cent reservation, in admission to educational institutions other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution in the State for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and Scheduled Tribes, should be continued for ensuring the advancement of the majority of the people of the State of Tamil Nadu, the Tamil Nadu Legislature passed the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Private Educational Institutions) Act, 2006 (Tamil Nadu Act 12 of 2006):

AND WHEREAS clause (4) of Article 16 of the Constitution enables the making of reservation to those Backward Classes of citizens which are not adequately represented in the services under the State;

AND WHEREAS clause (4-A) of Article 16 of the Constitution enables the making of any provision for reservation in the matter of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of Scheduled Castes

which in the opinion of the State are not adequately represented in the services under the State;

AND WHEREAS under clause (1) of Article 38 of the Constitution, the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life;

AND WHEREAS under clause (2) of Article 38 of the Constitution, the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations;

AND WHEREAS under clause (b) of Article 39 of the Constitution, the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

AND WHEREAS under clause (c) of Article 39 of the Constitution, the State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

AND WHEREAS the view of the Supreme Court is, that Article 335 which prescribes that the "claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State" - should be read with Article 46 which provides (as a directive principle) that the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation;

AND WHEREAS Article 341 of the Constitution empowers the President to enumerate the Scheduled Castes with reference to the State, Union Territory and make a notification of such castes;

AND WHEREAS the representatives of the various political parties and social forums representing the Scheduled Castes have requested the State Government to consider providing a special provision for reservation for the group of Arunthathiyars within the

reservation provided for the Scheduled Castes as they are in the lowest rung in the social and educational fronts in the society regarding reservations under clauses (4) and (5) of Article 15 and clauses (4) and (4-A) of Article 16 of the Constitution and take steps to protect their interests adequately;

AND WHEREAS the One Man Committee appointed to inquire comprehensively and to recommend to the Government the list of communities coming under Arunthathiyar and the percentage of reservation to be provided for them based on their population within the reservation provided for Scheduled Castes, has recommended to the State Government that Arunthathiyars are in the last rung of the Scheduled Castes, who constituted nearly sixteen per cent of the total population of Scheduled Castes in the State and are socially and educationally backward and also not adequately represented in the services under the State in proportion to their population in the State of Tamil Nadu;

AND WHEREAS the said One Man Committee has recommended that preferential allotment of seats for admission into educational institutions or appointment or posts in the services under the State within the reservation for Scheduled Castes be provided for Arunthathiyars and also recommended that the term "Arunthathiyar" includes in its fold not only Arunthathiyar, but also Chakkiliyan, Madari, Madiga, Pagadai, Thoti and Adi Andhra;

AND WHEREAS the State Government have, after careful consideration, taken a policy decision to accept the recommendations of the said One Man Committee to provide for preferential allotment, of seats for admission in educational institutions or appointments or posts in the services under the State within the reservation for Scheduled Castes, be provided for the group of Arunthathiyars and also to classify the castes comprising of Arunthathiyar, Chakkiliyan, Madari, Madiga, Pagadai, Thoti and Adi Andhra in the group of Arunthathiyars;

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixtieth Year of the Republic of India as follows:-

1. Short title, extent and commencement. - (1) This Act may be called the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Scheduled Castes) Act, 2009.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions. - In this Act, unless the context otherwise requires,-

- (a) "Arunthathiyars" means the castes, Arunthathiyar, Chakkiliyan, Madari, Madiga, Pagadai, Thoti and Adi Andhra within the list of 76 Scheduled Castes notified by the President of India under Article 341 of the Constitution of India by the Constitution (Scheduled Castes) Order, 1950 as amended from time to time;
- (b) "Competent authority" means the competent authority appointed under section 9;
- (c) "educational institutions" shall have the same meaning as defined in 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 (Tamil Nadu Act 45 of 1994) (hereinafter referred to as the 1994 Act);
- (d) "Government" means the State Government;
- (e) "private educational institution" shall have the same meaning as defined in the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Private Educational Institutions) Act, 2006 (Tamil Nadu Act 12 of 2006) (hereinafter referred to as the 2006 Act);
- (f) "Scheduled Castes" shall have the same meaning as in Article 366 (24) read with Article 341 of the Constitution of India.

3. Reservation of Seats in Educational Institutions including Private Educational Institutions. - Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars included in the Scheduled Castes, sixteen per cent of seats reserved for the Scheduled Castes shall be offered to Arunthathiyars, if available, in respect of annual permitted strength in each branch or faculty for admission into educational institutions including private educational institutions, on preferential basis amongst Scheduled Castes, in such manner, as may be prescribed.

4. Reservation in appointments or posts in the services under the State. - Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any Court or other authority, having regard to the social and educational backwardness of Arunthathiyars included in the

Scheduled Castes, sixteen per cent of the appointments or posts reserved for the Scheduled Castes shall be offered to Arunthathiyars, if available, in appointments or posts in the services under the State, on preferential basis amongst the Scheduled Castes, in such manner as may be prescribed.

Explanation. - For the purposes of this Act, "service under the State" includes the services under -

- (i) the Government;
- (ii) the Legislature of the State;
- (iii) any local authority;
- (iv) any Corporation or Company owned or controlled by the Government; or
- (v) any other authority in respect of which the State Legislature has power to make laws.

5. Right to compete for non- preferential seats, appointments or posts not to be affected. - Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where more number of qualified Arunthathiyars are available, even after filling up of the required percentage of reservation for Arunthathiyars on preferential basis, such excess number of candidates of Arunthathiyars shall be entitled to compete with Scheduled Castes other than Arunthathiyars in the inter-se merit among them in the case of appointments or posts in the services under the State or admission into educational institutions including private educational institutions.

6. Right to carry forward of vacancies for Scheduled Castes not to be affected. - Notwithstanding anything contained in the provisions of this Act or in the 1994 Act or the 2006 Act or in any other law for the time being in force, or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where seats, appointments or posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars with no carry forward of vacancies for Arunthathiyars and the entire reservation of eighteen per cent for Scheduled Castes shall be filled up in the year of actual vacancy subject to the availability of Scheduled Castes candidates and the preference given to Arunthathiyars shall not, in any way, affect the existing principle of carry forward of vacancies for Scheduled Castes in general.

7. Certificate of identification. - A candidate who claims to be a member of the Arunthathiyars as defined under this Act shall support his candidature as such by a certificate of caste identification issued under the Constitution (Scheduled Castes) Order, 1950 notified by the President of India for the State of Tamil Nadu, from time to time.

8. Reservation not to be affected. - Notwithstanding anything contained in sections 3, 4, 5 and 6 of this Act, the claims of the students or members belonging to Arunthathiyars shall be considered for the unreserved seats, appointments, or posts which shall be filled up on the basis of merit and where a student or member belonging to Arunthathiyars, if selected on the basis of merit, the number of seats, appointments or posts reserved for the Arunthathiyars shall not, in any way, be affected.

9. Competent authority. - (1) The Government may, by notification, appoint any officer not below the rank of District Adi Dravidar Welfare Officer to be the competent authority for the purpose of carrying out the provisions of this Act and the rules made thereunder in respect of private educational institutions.

(2) The competent authority shall exercise such powers and perform such functions as may be prescribed.

10. Power of Government to give direction. - (1) The Government may, in the public interest, by order, direct the competent authority to make an enquiry or to take appropriate proceedings under this Act in any case specified in the order, and the competent authority shall report to the Government the result of the enquiry made or the proceedings taken by him within such period as may be prescribed.

(2) On receipt of the report from the competent authority under sub-section (1), the Government shall give such direction as they deem fit and such direction shall be final and binding.

11. Competent authority to be public servant. - The Competent authority appointed under section 9 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

12. Protection of action taken in good faith. - No suit, prosecution or other legal proceedings shall lie against the competent authority, Government or its Officers for anything, which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

13. Power to make rules. -(1) The Government may make rules for carrying out the purposes of this Act.

(2) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.

(3) Every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued, be placed on the Table of the Legislative Assembly, and if, before the expiry of the session in which it is so placed or the next session, the Assembly makes any modification in any such rule or notification or order, or the Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

14. Power to remove difficulties. - If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order, published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to them to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of the publication of the Act in the Tamil Nadu Government Gazette.