

(2025) 02 GAU CK 0820

In the Gauhati High Court

Case No : WP(C) Of 6812 Of 2024, Connected With WP(C) Of 6640 Of 2024

Dr Anushuya Sarmah And 2 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 07-02-2025

Acts Referred:

Constitution Of India, 1950 — Article 15, 16

Central Educational Institution (Reservation in Admission) Act, 2006 — Section 2(c)

Citation : (2025) 02 GAU CK 0820

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : K.N. Choudhury, J. Patowary, B. Gogoi, D.K. Baidya

Final Decision : Disposed Of

Judgement

Michael Zothankhuma, J

1. Heard Mr. K.N.Choudhury, learned Senior Counsel assisted by Mr. J.Patowary, learned counsel for the petitioners in WP(C) No.6640/2024. Also heard Mr. B.D.Konwar, learned Senior Counsel assisted by Ms. J.M.Konwar, learned counsel for the petitioners in WP(C) No. 6812/2024. Mr. B.Gogoi, learned Standing Counsel appears for the Health Department, Government of Assam, while Mr. D.K.Baidya, learned Standing Counsel appears for the National Medical Commission (NMC).

2. The grievance of the petitioners in WP(C) No.6640/2024, who are unreserved category MBBS degree holders is that the implementation of the 10% reservation quota for the Economically Weaker Section (EWS), required a corresponding 25% increase in the total seats for admission into the Post-Graduate courses in the Medical Colleges of Assam for the year 2024. However, the State respondents did not make any corresponding 25% increase in the Post-Graduate seats, while implementing 10% reservation for the EWS in the first round of counselling which was held on 18.11.2024.

3. The increase of seats by 25% was done only in the 2nd round of counselling, on the orders of this Court, that also by introducing an additional

51 seats only, instead of 83 seats. The prayer of the petitioners in WP(C) No. 6640/2024 is to direct the respondents to increase the seats for counselling from 51 additional PG seats to 83.

4. The petitioners in WP(C) No.6812/2024 are reserved category MBBS graduates, who do not belong to the EWS category. Their grievance is that the corresponding increase of 25% seats of the total Post-Graduate seats for implementation of the reservation of 10% quota seats for the EWS, numbering 51, which was introduced in the 2nd round of counselling, had not been allocated/distributed as per the Reservation Policy of the State of Assam. The State respondents had allocated all the 51 Post-Graduate seats solely for the unreserved quota candidates, without adding the 51 seats to the total State Medical Post-Graduate seats, which would have entailed a fresh calculation with regard to the number of seats to be allocated to the different reserved categories, thereby allowing for the petitioners to have a larger field of choice in the courses/subjects offered. The additional increase of 51 Post-Graduate seats, made in pursuance to the interim order dated 11.12.2024 passed in WP(C) 6640/2024, which had been put up in the 2nd round of counselling on 12.12.2024, had not been distributed/allocated in terms of the Reservation Policy of the State of Assam, but had been reserved exclusively for allocation to the unreserved category candidates by the State Government, in violation of the guidelines and parameters laid down by the Government of India in relation to the Constitution (One Hundred and Third Amendment) Act, 2019.

5. The issue pertains to whether the 51 Post-Graduate seats that had been offered in the 2nd round of counselling, for implementing the 10% reservation of seats for the EWS, could have been reserved exclusively for the unreserved category. The further question to be decided is whether the 25 % increase of seats out of the total Post-Graduate seats, for implementing the Constitution (One Hundred and Third Amendment) Act, 2019, in terms of the guidelines laid down by the Central Government and the NMC, should be 51 or 83 additional Post-Graduate seats.

6. The petitioners are all Post-Graduate medical aspirants who have obtained their MBBS degree from various recognized medical colleges within the State of Assam. Their aim is to pursue Post-Graduate medical degree courses. Admissions to Post-Graduate medical courses in India are regulated through the National Eligibility –cum- Entrance Test, (NEET-PG), conducted by the National Board of Examination. Out of all the total Post-Graduate medical seats available in various disciplines in the State of Assam, 50% are allocated under the All India Quota and the remaining 50% are earmarked for the State quota. In the State of Assam, the merit position of the candidates in the NEET-PG examination is the basis for determining their eligibility for allocating their State quota seats. The present case pertains to the State quota seats in relation to Post-Graduate

Medical seats.

7. By amending Article 15 and 16 of the Constitution of India by two new clauses, i.e. Clause 6 to Article 15 and Clause 6 to Article 16, the State has been empowered to provide for a maximum of 10% reservation for the EWS, of citizens other than the Scheduled Castes, Scheduled Tribes, Other Backward Classes, etc. The State of Assam has reserved 10 % quota for the EWS for the Post-Graduate Medical seats.

8. The issue raised by the petitioners in both the petitions being inter-related, the writ petitions are being decided by this common Judgment and Order.

9. The 10% reservation quota for the EWS had been put to challenge before the Hon'ble Supreme Court in the case of Janhit Abhiyan –vs-Union of India (EWS Reservation) reported in 2023 (5) SCC 1. The three issues that were required to be decided have been spelt out in paragraphs 37.1, 37.2 & 37.3, which are as follows :

“37.1. (a) As to whether reservation is an instrument for inclusion of socially and educationally backward classes to the mainstream of the society and, therefore, reservation structured singularly on economic criteria violates the basic structure of the Constitution of India?

37.2. (b) As to whether the exclusion of classes covered under Articles 15(4), 15(5) and 16(4) from getting benefit of reservation as economically weaker sections violates the Equality Code and thereby, the basic structure doctrine?

37.3.(c) As to whether reservation for economically weaker sections of citizens up to ten per cent. in addition to the existing reservations results in violation of basic structure on account of breaching the ceiling limit of fifty per cent.?”

10. The three issues were answered by the Constitution Bench of the Supreme Court in paragraphs 184.1, 184.2 & 184.3, which are as follows:

“184.1. Reservation is an instrument of affirmative action by the State so as to ensure all-inclusive march towards the goals of an egalitarian society while counteracting inequalities; it is an instrument not only for inclusion of socially and educationally backward classes to the mainstream of society but, also for inclusion of any class or section so disadvantaged as to be answering the description of a weaker section. In this background, reservation structured singularly on economic criteria does not violate any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India.

184.2. Exclusion of the classes covered by Articles 15(4), 15(5) and 16(4) from getting the benefit of reservation as economically weaker sections, being in the nature of balancing the requirements of non-discrimination and compensatory discrimination, does not violate Equality Code and does not in any manner cause damage to the basic structure of the Constitution of India.

184.3. Reservation for economically weaker sections of citizens up to ten per cent. in addition to the existing reservations does not result in violation of any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of fifty per cent. because, that ceiling limit itself is not inflexible and in any case, applies only to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India.”

11. To implement the provisions of 103rd Constitutional amendment, various guidelines and Notifications were issued by the Government of India and Medical Council of India, which was later rechristened as the National Medical Commission (NMC). In this regard, the Government of India, Ministry of Health and Family Welfare, Medical Education Policy issued letter F.NO.V-11025/10/2019-MEP dated 29.01.2019 to the Secretary General (Board of Governors), Medical Council of India, stating that at any stage of implementation of the EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced. The letter dated 29.01.2019 also stated in paragraph (b) that every Central Educational Institution should, with the prior approval of the authority defined in Section 2(c) of The Central Educational Institution (Reservation in Admission) Act, 2006, increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats available, excluding those reserved for the persons belonging to the EWSs, is not less than the number of such seats available, in each category for the academic session immediately preceding the date of coming into force of the guidelines.

12. As per the guidelines issued vide letter no. MCI-34(41)(EWS)/2019-Med/122349 dated 04/06-06-2019 by the BOARD OF GOVERNORS in supersession of the Medical Council of India, for implementing the 10% EWS reservation quota for MBBS seats, the increase in seats has to be effectively 25% of the current intake to ensure that the existing number of general and other quota seats were not affected. The guidelines provided an example to the effect that when a college had a current intake of 100 seats, the college would need to have 25% additional seats which would then altogether amount to 125 seats. The guidelines further stated that the calculation of seat increase has to be made, taking into consideration the total intake of students at the “State” level, considering all the seats/ institutions where Government reservation policy is applicable and is being implemented. The guidelines further stated that the overall increase is to be calculated on the basis of 2019-2020 approved/ permitted seats and the same was to be implemented over a two year period, i.e. 2019-2020 and 2020-2021. The above guidelines was also made applicable to Post-Graduate (PG) medical seats.

13. Mr. B.D.Konwar, the learned Senior Counsel for the reserved category candidates submits that there was a total number of 342 State quota seats for Post-Graduate courses, which included the State Health Quota (SHQ) seats

totalling 54. He submits that the said 54 SHQ seats is reserved for allotment to those in-service doctors of the State Government, who have completed 5 years of service in the rural areas. The 54 SHQ seats are kept out of the purview of the allocation of seats made under the Reservation Policy of the State. Thus, the remaining 288 seats was allocated as per the Reservation policy of the State. In view of the reservation of 10% seats for the EWS category, 59% of the 288 Post Graduate seats would have to be served for the reserved candidates including the EWS quota. Prior to the implementation of reservation for EWS, 49% of the seats were allocated to the various reserved category candidates.

14. Mr. B.D. Konwar, learned counsel for the reserved category candidates submits that he does not have any issue with the 288 seats, after deducting 54 SHQ seats from 342 seats, that had been put up in the first round of counselling. His grievance is with regard to the 51 additional Post Graduate seats which was not a part of the 288 seats, that had been kept exclusively for the unreserved category candidates in the second (2nd) round of counselling. He submits that these additional 51 seats have been put up in the 2nd round of counselling for the first time, in terms of the interim order dated 11.12.2024 passed by this Court in WP(C) 6640/2024, wherein this Court had held as follows :

"In the meantime, the authorities in the Directorate of Medical Education, Assam is permitted to increase 51 (fifty one) numbers of seats for the Unreserved category for the PG medical admission, 2024."

15. The petitioners' counsel submits that the 51 newly increased seats were to be made available in terms of the guidelines issued by the Central

Government and the Medical Council of India in the 1st round of counselling also, after allocation of the 51 seats were made in terms of the Reservation Policy of the State, as a 25% increase of the total seats of a college was to be made for implementation of the reservation of 10% for EWS. However, as the same was not being done, the 51 increased Post-Graduate seats were directed to be made, as per the interim order dated 11.12.2024 passed in WP(C) 6640/2024. These additional 51 Post-Graduate seats had to be distributed as per the Reservation Policy of the State Government and the same could not have been reserved only for the unreserved category. Further, the number of Post-Graduate seats that were to be allocated to the various reserved category candidates could not be reduced, when applying the Central Government guidelines. In view of the 103rd Constitutional Amendment, the decision of the Supreme Court in Janhit Abhiyan (supra), the various Notifications made by the Health Ministry and the Reservation Policy of the State, the 51 additional seats should have been distributed allocated for different categories/class of candidates, as per the Reservation Policy of the State.

16. Mr. K.N. Choudhury, learned Senior Counsel for the unreserved category candidates submits that the total number of Post Graduate seats that were to be allocated was 342. However, 54 seats were kept reserved under the State Health

quota, for in service Doctors, who had completed 5 years of rural service. As such, only 288 seats remained for allocation to various reserved/ unreserved candidates, as per the Reservation Policy of the State.

17. Mr. K.N. Choudhury, learned Senior Counsel submits that the additional 51 seats that were created in terms of the interim order passed by this Court does not amount to 25% increase of the total number of seats. In fact, 25% of the total number of seats would be 83. He submits that the 25% increase of the total seats, for implementation of the 10% reservation for EWS, would have to be distributed as per the Reservation Policy of the State, while ensuring that the unreserved category seats are not reduced. He thus submits that besides the increase of 51 seats, there has to be a further increase of Post-Graduate seats by 32, so as to ensure that there has been a 25% increase of the total seats, which can be allocated under the State quota.

18. Mr. B. Gogoi, learned counsel for the State Health Department submits that communications have been sent to the NMC, with the proposal for increasing the Post Graduate seats to 83 for the academic year 2020-2021. Though there is an increase of 51 seats out of the total 83 seats proposed by the State Government, approval for increase of the balance 32 Post-Graduate seats has not been given by the NMC till date.

19. Mr. D.K. Baidya, learned counsel for the NMC submits that with the implementation of reservation of 10% for the EWS, the State Government had asked for enhancement of the total seats by 25% for Post Graduate seats and the NMC had enhanced the seats to 83, vide letter dated 27.02.2020, after being approved by the Board of Governors. He submits that the letter dated 27.02.2020 allowed the States respondents to enhance the total Post-Graduate seats by 83 seats, though the required seats for implementation of reservation for the EWS was 51. This was to be acted upon from the assessment year 2020 – 2021 onwards.

20. Mr. D.K. Baidya, learned counsel for the NMC has submitted a letter dated 28.11.2024, which states that the increase of Post-Graduate seats to 83 is a onetime measure, which has already been approved by the NMC and Letter of Permission (LOP) for 83 seats had already been given to the State Government. He has also submitted a copy of the e-mail dated 11.12.2024 sent by Legal PGMEB to the learned Counsel in regard to WP(C) 6640/2024, which states that approval for increase of 83 Post-Graduate seats had been given as a onetime measure vide LOP dated 27.02.2024. The contents of the e-mail dated 11.12.2024 is reproduced herein below, as follows :

"Subject: W.P. (C) No. 6640/2024, Dr. Anushuya Sharmah & Ors. vs. State of Assam & Ors. before the Hon'ble high Court of Gauhati

Sir/Madam

The said matter W.P. (C) No. 6640/2024 had come up today on 10/12/2024 and

pertains to the issue of increase of 83 Nos of PG seats for implementation of the EWS reservations in the Medical Colleges in the State of Assam. The issue had been earlier addressed in WP(C) No. 4822/2024 which was disposed of vide Order dated 19/11/2024 by the Hon'ble Court and in that light.

However, the Director of Medical Education, Assam vide the communications dated 21/11/2024 and 30/11/2024 sought the addition of 83 seats and not implementation of those 83 seats which were given as a onetime increase vide the LOP dated 27/02/2020 being letter No.MCI-23(1)(EWS)/2019-Med/195914.

So, the NMC had given a onetime increase of 83 seats vide the aforesaid letter No.MCI-23(1) (EWS)/2019- Med/195914 dated 27/02/2024, as per direction of the Hon'ble Court the DME, Assam would send a rectified proposal for increase/ implementation of 83 number of seats which were already increased vide the letter No.MCI- 23(1) (EWS)/2019-Med/195914 dated 27.02.2020 to NMC as a onetime measure.

Kindly consider the same and provide necessary instructions in the matter. Further, please provide clear instructions that the permission for 83 seats vide the LOP dated 27/02/2024 was a onetime measure and for those 83 seats and separate permission need not be sought every year for the implementation of the 83 seats already increased as a onetime measure.

Copy of the petition, Order dated 10/12/2024 are annexed herewith for your perusal. Please provide the instructions by 12:00 pm tomorrow i.e., 11/12/2024 as the matter is fixed at 2:00 pm on 11/12/2024."

21. I have heard the learned counsels for the parties.

22. The two issues to be decided lies in a small compass. One of the issues to be decided, is as to whether the 51 additional Post Graduate seats that had been put up in the second round of counselling, could have been reserved exclusively for the unreserved category candidates or should have been distributed/allocated as per the Reservation Policy of the State. In terms of the interim order dated 11.12.2024 passed by this Court in WP(C) 6640/2024, the answer appears to be in the positive. However, there has been a further clarification by this Court, vide order dated 19.12.2024 passed in WP (C) No. 6812/2024, where it has been held as follows:

" The distribution of the 51(fifty one) seats in terms of the order dated 11.12.2024 in WP(C) No.6640/2024 shall be subject to the outcome of this writ petition."

23. The other issue is as to whether the 25 % increase of the total seats would require an increase of 51 Post-Graduate seats or 83.

24. The admitted facts of the case is that out of the initial 342 Post Graduate Medical seats under the State quota, 54 seats were reserved for in-service Doctors, who had completed 5 years of rural service. As such, 288 Post-Graduate

seats/ courses/ subjects remained for allocation to the Post-Graduate candidates. In terms of the Reservation Policy of the State of Assam, the percentage of reservation for the different categories of reserved category candidates, prior to the 103rd Constitutional Amendment, was as follows :

- 1) OBC - 27%
- 2) SC - 7%
- 3) ST(P) - 10%
- 4) ST(H) - 5%
- 5) UR -(unreserved category) – 51%.

25. In terms of the 103rd Constitutional Amendment, 10% posts were to be reserved for EWS and the same was to be carved out from the unreserved category quota, thereby leaving only 41% quota for the unreserved category. However, to offset the reduction of seats to the various categories of candidates, i.e. to safeguard the number of seats that were being enjoyed by the various categories of candidates, including the unreserved category candidates, various Notifications and Guidelines were issued by the Government of India and NMC. Thus, a 25% increase of the total medical seats was to be made in every Medical Institution. Accordingly, the total Post Graduate seats, which is to include the 25% increase of seats, due to the implementation of the 10% EWS reservation quota, required the Reservation Policy of the State to be applied to the total seats, including the 25% increased seats.

26. The first round of counselling was held on 18.11.2024, wherein only 288 seats were put up for allotment. The 25% increase of Post-Graduate seats was not put up for allotment in the 1st round of counselling. This Court, in it's interim order dated 11.12.2024 passed in WP(C) 6640/2024, however directed that there should be an increase of 51 Post-Graduate seats and the same should be reserved for the unreserved category candidates. This increase of 51 seats was not a part of the initial 342 seats which was reduced to 288 seats, after deducting the 54 seats reserved under the State Health quota for in-service Doctors. As such, the State respondents did not apply the Reservation Policy of the State to these 51 additional Post-Post Graduate seats, which were put up for consideration in the second round of counselling, which started on 12.12.2024. This anomaly has occurred due to the interim order passed in WP(C) 6640/2024. The order dated 19.12.2024 passed in WP(C)/6812/2024 has clarified the order dated 11.12.2014 passed in WP (C)/6640/2024 and held that the 51 additional seats would be subject to the outcome of the writ petition. This Court is of the view that the increased 51 seats would have to be allocated as per the Reservation Policy of the State Government, or else the unreserved category candidates would be eating into the reserved category seats.

27. The 25% increase of the total Post-Graduate seats, in terms of the guidelines issued vide the letter dated 29.01.2019 by the Government of India, Ministry of

Health and Family Welfare, Medical Education Policy and the various notifications/communications made by the Central and State respondents, show that the State Government had requested for an additional 83 Post-Graduate seats and the same had been approved. In that view of the matter, the said 83 Post-Graduate seats should be made available by the State respondents and be distributed/allocated, as per the reservation policy of the State. The same cannot be reserved exclusively for a particular category of class of persons.

28. The Letter No. MCI-23(1) (EWS)/2019-Med/195914 dated 27.02.2020 issued by the Board of Governors in supersession of the Medical Council of India, shows that for the State of Assam, the requirement of increased seats for implementation of reservation of 10% for EWS is 51 and the total seats enhanced for AY 2020-2021 is 83 Post-Graduate seats.

29. A perusal of the Chart provided by the counsel for the petitioners in WP(C) 6812/2024 shows that 288 seats were considered in the first round of counselling instead of $288+83=371$ seats.

30. A perusal of the Chart also shows that there is no anomaly in the allotment of seats, as 288 seats had been put out for allotment in terms of the Reservation Policy of the State, after including the 10% EWS quota. However, the additional 51 seats that were to be chosen in the 2nd round of counselling in pursuance to the 25% increase of the total Post-Graduate seats, to implement the 10% EWS reservation quota and which had been provided due to the interim order of this Court were not made a part of the 1st round of counselling. They were only included in the 2nd round of Counselling. The reservation of the 51 increased seats in the 2nd round of counselling exclusively for the unreserved category was illegal and arbitrary. Besides, the same had to be a part of the 1st round of counselling, so as to maintain fairness to those candidates who were a part of the 1st round of counselling. As the 25% increase of Post-Graduate seats was to be made a part of 1st round of counselling, the same required that 83 seats and not 51 seats should have been made available. Thus, the remaining $83-51=32$ seats, would also have to be made available by the State respondents for counselling, for the aspiring Post-Graduate candidates.

31. The letter dated 28.11.2024 issued by the NMC states that the increase of Post-Graduate seats to 83 is a onetime measure only, approved by the NMC and that a letter for permission for 83 Post-Graduate seats has been given to the State Government. In view of the letter dated 28.11.2024 issued by the NMC, which has been submitted by the learned counsel for the NMC, the State Government can and should put up $51 + 32=83$ Post-Graduate seats beyond and above the 288 Post-Graduate seats for counselling. Accordingly, in view of the 25 % increase of the total number of Post-Graduate seats under the State quota, the distribution of the additional $51 + 32=83$ Post-Graduate seats, would have to be made in terms of the reservation policy of the State. The same would ensure that the more meritorious candidates can have a wider range of subjects/seats to choose from during the first round of counselling. However, as the $51 +$

32= 83 seats, after allocation as per the reservation policy of the State, had not been made a part of the first and second round of counselling, this Court is of the view that the entire counselling process should be re-started with certain conditions, so that there is a level playing, which will address the concerns of all the stakeholders.

32. In view of the reasons stated above, the State Government is directed to put up the 288 original State quota Post-Graduate seats, along with the 25% increase of the State quota seats numbering 83 seats, i.e. 371 seats, for the 1st round of counselling. The said 371 seats should be allocated/ distributed in terms of the reservation policy of the State for due implementation of the 10% reservation for the EWS. Though this Court has directed that the first round of counselling should restart, to enable the most meritorious candidates to have the best choices of seats/ subjects, the choices already made by the Post-Graduate candidates in the 1st round of counselling held on 18.11.2024 and for which seats/ subjects/ courses have been allotted to the candidates, should not be disturbed. However, the Post-Graduate candidates who have already been allotted seat/course/subject in the 1st round of counselling shall be given an option to further choose and be allotted another seat/ course/ subject, which will be put up for the first time in the new 1st round of counselling to be held pursuant to this order, due to the increase of an additional 83 Post-Graduate seats. Only then, can the seat/ course/subject left behind by that candidate be allowed to be chosen by another candidate in the new 1st round of counselling. For example, if 'A' has already chosen and is allotted a seat/ course/ subject in the first round of counselling held on 18.11.2024, the said allotment will remain with 'A'. However, as the various rounds of counselling are to be restarted after allocating the additional 83 seats as per the reservation Policy of the State, 'A' can choose another seat/course/subject from the additional 83 Post-graduate seats as per merit in the subsequent 1st round of counselling. If 'A' chooses and is allotted a different seat/course/subject on merit, A's earlier seat/ course/ subject will be left open for the other candidates to choose and be allotted the same. However, if 'A' does not choose any new seat/course/subject, 'A's earlier allotment of the seat/ course/subject, in terms of the earlier 1st round of counselling held on 18.11.2024, shall remain with 'A'. Thereafter, the 2nd round of counselling will start afresh. However, the selection/ allotment of seats/ subject/ course to candidates in the second round of counselling held on 12.12.2024, onwards are hereby all set aside. The above direction has been passed due to the fact that it is not known what seat/subject/course will remain for the 2nd round of counselling, for the various categories of candidates. It has also been submitted by the State Government Counsel that the last date of joining in the college for the Post-Graduate courses is 28.02.2025. Accordingly, keeping in mind the paucity of time, the State respondents are directed to allocate/distribute the 371 Post-Graduate seats as per the Reservation Policy of the State and restart the counselling as per the directions and observations made in this judgment and order.

33. Both the writ petitions are disposed of accordingly.