
(1998) 04 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 874 of 1998

Smt. Maitreyee Mahanta	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Constitution of India, 1950 — Article 123, 226, 342
General Clauses Act, 1897 — Section 24, 6

Citation : AIR 1999 Guw 32 : (1998) 1 GLT 504

Hon'ble Judges : M. Ramakrishna, C.J.; A.P. Singh, J

Bench : Division Bench

Advocate : A.K. Phookan, B.P. Kataky, M.R. Pathak, P. Sarma and D.K. Saikia, for the Appellant; H.N. Sarma and J. Ahmed, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna, C.J.—By virtue of an order made by a learned single Judge of this Court on 24th of February, 1998 in civil Rule No. 8,74/98, these petitions have been referred to a Division Bench for being heard and disposed of. This is how these matters have been set down for hearing before Division Bench today.

2. Since common questions of facts and law have arisen out of these writ petitions, we propose to dispose of these Civil Rules by the following common judgment and orders.

3. An application was filed seeking to implead respondent Nos. 6 to 37 as necessary parties in Civil Rule No. 874/98, that application having been allowed by order dated 3-3-1998, these respondents came to be added and accordingly the cause title of the writ petition came to be amended.

4. The writ petitioners claimed to be persons representing the community of Koch Rajbangshi in the State of Assam and that this community was declared as Other Backward Class community in the State of Assam vide Notification No. TAD/

BC/268/75/37 dated 27th of November, 1975. Thus the entire community people have been enjoying the benefit of the notification as the members of that community ever since the publication of that notification. Necessary documentary evidence is produced in that behalf.

5. There was an agitation asserted by the community for quite some time claiming that regard being had to the untouchability prevalent and the sufferings they have undergone for the last half a century and the society in which they have been living having realised the turmoil and pathetic condition these people had been undergoing for quite some time, the competent authority in the State recommended the ease of this community to the Government of India to declare them as Scheduled Tribe and Hill Tribe people, as the case may be, invoking the provision of Article 342 of the Constitution so that the benefit of this Article 342 of the Constitution of India could be conferred upon them for the purpose of obtaining employment, seats in the professional colleges and other facilities under the reservation required to be made under the relevant provisions of law in relation to Scheduled Tribes.

6. Accordingly, the matter went up to the Parliament. However, as at that point of time the Parliament was not in session, the Government of India recommended in the President of India to issue an Ordinance. Thus on 27th of January, 1996 the President of India in exercise of powers conferred on him under Article 123 of the Constitution of India issued an Ordinance by virtue of which this section of the people came to be declared as Scheduled Tribe and Hill Tribe people, as the case may be. By a second Ordinance dated 27th of March, 1996 this benefit was continued. Again by a third Ordinance dated 27th of June, 1996 this benefit was continued. On 2nd of April, 1997 the fourth Ordinance came to be issued continuing the benefit to be conferred upon these people.

7. However, it is stated that since the Ordinance conferred the benefit only to a limited period of 6 weeks, the Parliament referred this matter for being considered to a Joint Select Committee of Parliament. The matter was pending before that Committee when the Ordinance came to be lapsed by virtue of efflux of time.

8. In the meanwhile, however, by a Notification No. HLB 116/96/42 dated 16-8-96 issued by the Government of Assam in the Department of Health and Family Welfare the rules known as the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under-Graduate Students) Rules, 1996 came into force. They actually came into force on 1st of July, 1996. Pursuant to the said notification the Competent Authority issued a notification which was published in the newspaper dated 18th of March, 1997 calling for applications from the eligible candidates for selection and admission for MBBS/BDS courses 1997 in the State of Assam. Pursuant to the said notification these petitioners and others have applied fulfilling all the conditions of the notification seeking admission to Medical Colleges/Dental College along with others. Pursuant to the entrance examination and personality test, etc. the Competent Authority

made selection of candidates and prepared the list of eligible candidates for the purpose of filling the vacant seats for the above courses.

9. It is stated that as on the last date of application i.e. 19th of April, 1997, when the Competent Authority considered the eligibility criteria for the purpose of making selection applying the reservation policy, since the Ordinance had lapsed, the petitioners and others claiming benefit of Scheduled Tribe and Hill Tribe people, could not be considered with a view to enable them to seek for reservation inasmuch as on the date of selection the Ordinance was no longer in force and that there being no enactment of law made by the Competent Authority, these persons were considered as candidates representing General Class. Aggrieved by this action on the part of the respondents 1 to 5, the petitioners have come up before this Court making the following prayer:--

"It is therefore most respectfully prayed that your Lordships would be pleased to admit this petition by issuing a Rule calling upon the respondents to show cause as to why a writ in the nature of Mandamus should not be issued directing the respondents to forthwith include the name of the petitioner in Other Backward Classes category in addition to Schedule Tribes (Plains) category for admission into the 1st Year MBBS Course in the Medical Colleges of Assam for the Session 1997 at serial No. 1 in Schedule Tribe (Plains) Category and at Serial No. 3 in the Other Backward Classes Category and to show cause as to why a Writ in the nature of Certiorari should not be issued setting aside and/or quashing the impugned selection and admission Notice appearing in the local Daily on 14-11-1997 (Annexure-E) as well as the Admission Notice published in the local English daily "The Assam Tribune" dated 22-2-98 (Annexure-J) issued by the Member-Secretary, Selection Board, Respondent No. 3 in so far as the Other Backward Classes and Schedule Tribes (Plains) categories are concerned and/or to show cause as to why the respondents shall not be directed to give admission to the petitioner into the 1st Year MBBS Course for the Session 1997 in the Medical Colleges in Assam under the reserved seats under the said reserved categories and to show cause as to why the impugned Notification bearing No. TAD/ST/98/92/138 dated 28-1-1996 (Annexure-D) issued by the Deputy Secretary to the Government of Assam, Department for Welfare of Plains Tribes and Backward Classes (Respondent No. 5) should not be set aside and quashed, call for the records and on perusal of the same and upon hearing the parties be pleased to make the Rule absolute and/or be pleased to pass any such further or other order or orders as to Your Lordships may deem fit and proper so as to give full and complete relief to the petitioner."

The interim relief prayed, pending consideration of the main writ petitions, are as follows :

"Pending disposal of the Rule it is most respectfully prayed that Your Lordships would be pleased to direct the respondents to stay admission into the 1st year MBBS Course for the Session 1997 into the Medical Colleges in Assam pursuant to the Admission Notice dated 22-2-98 (Annexure-J) and to admit the petitioner

into the said course as reserved category candidate either both under Other Backward Classes category and Schedule Tribes (Plains) Category and/or alternatively be pleased to direct the respondents to keep a seat in the 1st Year MBBS Course for the Session 1997 in Guwahati Medical College vacant and/or be pleased to pass any such further or other order or orders as to Your Lordships may seem fit and proper so as to give full and complete interim relief to the petitioner."

10. These writ petitions have been opposed by the official respondents 1 to 5 by filing detailed statements of objection by way of counter.

11. Respondent Nos. 6 to 37 (impleaded parties) have also presented a separate statement of objection by way of counter.

12. We have heard learned counsel for both sides and perused the grounds of writ petitions, defence taken by the respondent Nos. 1 to 5 on one hand and the respondent Nos. 6 to 37 on the other opposing the contentions of the writ petitioners.

13. Mr. Phookan, learned senior counsel appearing for the petitioners in Civil Rule Nos. 874/98, 5397/97 and 5433/97 mainly contended in support of the writ petitions that (1) by virtue of issuance of the Ordinance by the President of India conferring certain rights on the class of persons representing the community of Scheduled Tribe/Hill Tribe in the State of Assam, as certain rights have already been vested in them and that regard being had to the provisions of Section 6 of the General Clauses Act, even after the lapse of the Ordinance, such rights could not be taken away without due process of law. (2) The alternative argument of Mr. Phookan, learned counsel is that regard being had to the provisions of Section 24 of the General Clauses Act, even after the lapse of such Ordinance, the rights accrued to the citizens must be given effect to.

14. To support this theory of Mr. Phookan he placed strong reliance upon a judgment of the Supreme Court in the State of Orissa v. Bhupendra Kumar Bose, AIR 1962 SC 945.

15. Another alternative submission of Mr. Phookan is that presuming for the purpose of argument that since the ordinance had lapsed by efflux of time and since no enactment has been made by the Parliament with a view to continue the rights conferred upon those sections of the people under the Ordinance, whatever the benefits that were available to those sections of the people enjoying the status of Other Backward Class and more Other Backward Class right from 1975, immediately before the issuance of ordinance, such benefits should have been restored to them by the competent authority. In the absence of such an action by the State of Assam, it resulted in serious injustice done to those sections of the people.

16. Therefore, the argument is that this is a fit case for issuance of a writ of Mandamus by way of direction to the respondents to take appropriate action to

restore the benefits enjoyed by the petitioners under the earlier notification, declaring them as other Backward Community and More Other Backward Community in the State of Assam since 1975 with a further direction to consider the cases of the petitioners for the purpose of distribution of seats in the medical colleges keeping in view the reservation policy as made applicable to those petitioners and to make selection afresh in accordance with law.

17. Mr. B.K. Sharma, learned counsel appearing for the petitioners in Civil Rule Nos. 5426/97, 5432/97 and 5593/97 and Mr. P. K. Tiwari, learned counsel appearing for the petitioner in Civil Rule No. 5425/97 adopted the arguments of Mr. Phookan.

18. Opposed to the submission of Mr. Phookan, learned Government Advocate argued that the writ petitioners are not entitled for any of the benefits in the light of the Ordinance having been lapsed and that no action whatsoever was taken by the competent authority to restore the status of OBC and MOBC in favour of these persons and that, therefore, the writ petitions are liable to be dismissed.

19. In view of the foregoing the following questions arise for our consideration in these writ petitions :

(1) Whether by virtue of the pleading, argument and submissions made for petitioners, a case is made out for continuing to treat the petitioners with a view to confer benefit upon them the status of Scheduled Caste/Hill Tribe, as the case may be.

(2) Whether a case is made out by the petitioners to enable this Court to issue a writ of Mandamus as prayed for.

20. We will have to consider the first point, to begin with.

At the out set it is seen on perusal of the provisions of Article 123 of the Constitution of India that Article 123 coming under Chapter III deals with the Legislative Powers of the President. By virtue of the powers conferred upon the President of India, the President can promulgate such Ordinance as the circumstances appear to him to "require, if he is satisfied that circumstances exist which render it necessary for him to take immediate action.

It is also not in dispute that the Ordinance promulgated under this provision of law shall have the same effect and force as an Act of Parliament, but every such Ordinance (a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of the period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions, (b) may be withdrawn at any time by the President. If and so far as ordinance under Article 123 makes any provision which Parliament would not under the Constitution be competent to enact, it shall be void.

21. Regard being had to the legislative intendment under this Article 123, it is

clear that we are concerned with the Clause (a) of Sub-article (2) of Article 123 under which the effect of the Ordinance will be there only for a period of six weeks to operate from the reassembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses. Thus, therefore, we are not concerned with the out come of the Ordinance after the expiry of the period of six weeks from the reassembly of Parliament. In the instant case, therefore, it is not in dispute that within a period of six weeks from the reassembly of the Parliament, after the issuance of the Ordinance, no action was taken by the Parliament to enact a law in tune with the Ordinance to continue to confer the benefits of the status of scheduled Tribe and Hill Tribe on those sections of the community as intended by the President while issuing the Ordinance invoking Article 123.

22. It is stated that with a view to enable the Parliament to make an Act in usual course of action this matter was referred to the Joint Select Committee of Parliament, Unfortunately, it is stated that the matter was delayed there and by efflux of time the Ordinance lapsed and no Act was passed.

23. In a case of this type the Court will have to examine as to whether the benefit that was conferred upon those sections of people in the State of Assam to enjoy the status of OBC or MOBC can be said to be continued. It is in this context Mr. Phookan waited to persuade the Court to hold that by virtue of the provisions of Section 6 of the General Clauses Act the benefits already accrued to those people will continue. His argument is that the rights arising out of the Ordinance having already been vested in the petitioners, until a notification is issued to do away with those benefits explicitly, the vested rights impliedly continued. To say so Mr. Phookan placed reliance upon a judgment of the Supreme Court in the State of Orissa v. Bhupendra Kumar Bose (supra). This is a case where under the Orissa Municipal Act election had to take place to certain offices. The judgment of the High Court set aside the election. With a view to overcome the difficulty with the judgment of the High Court, Ordinance was issued. Before the expiry of the period of Ordinance, action was taken to validate its action with a view to retain the benefit of Ordinance. When the matter came up before the Supreme Court at the instance of the State of Orissa, the Hon"ble Supreme Court while interpreting the provisions of the statute held as follows (at page 955):

".....Having regard to the object of the Ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired, the validity of the elections came to an end and their invalidity was revived. The rights created by this Ordinance are, in our opinion, very similar to the rights with which the Court was dealing in the case of Steavenson and they must be held to endure and last even after the expiry of the Ordinance. The Ordinance has in terms provided that the Order of the Court declaring the elections to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be

deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would not come to an end as soon as the ordinance expires.....

Again in paragraph 19, interpreting the provisions of Section 6 of the General Clauses Act (Act 10 of 1897) (Central), the Hon"ble Supreme Court held as follows :

"It is true that the provisions of Section 6 of the General Clauses Act in relation to the effect of repeal do not apply to a temporary Act. As observed by Patanjali Sastri, J., as he then was, in *S. Krishnan and Others Vs. The State of Madras*, the general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. That is why the Legislature can. and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of Section 6 of the General Clauses Act. Incidentally, we ought to add that it may not be open to the Ordinance making authority to adopt such a course because of the obvious limitation imposed on the said authority by Article 213(2)(a)."

24. Therefore, from the law laid down by the Supreme Court while dealing with the validating clause and the provisions of the General Clauses Act it is clear that Section 6 of the Act was made applicable only in a case where an enactment in a temporary statute was sought to be validated by invoking saving clause. In the instant case, neither we are dealing with a temporary enactment of similar provision nor are we called upon to deal with a validating clause with a view to save the rights accrued to citizens by virtue of a validating clause. In other words, neither we are concerned with a validating clause nor are we concerned with the saving clause in the instant case. In other words, Section 6 of the General Clauses Act can be applied in a case where such a situation arises and the Court is called upon to interpret such a situation.

25. Thus considering the argument of Mr. Phookan based upon the above rule of the Supreme Court in the *State of Orissa v. Bhupendra Kumar Bose* (supra) it is not possible for this Court to consider that there is a temporary statute and that by virtue of action taken to validate the rights accrued to certain citizens under the temporary statute, this Court can come to a conclusion that such rights already accrued to those citizens could be saved.

26. On the other hand, it is abundantly clear that the Ordinance in question was there only for a short period. As we have already mentioned earlier no action has been taken by the Parliament to make a law pursuant to the rights conferred on certain citizens under the Ordinance with a view to enable those citizens to continue to enjoy such rights. In other words, since the Parliament failed to make an Act on the lines of the Ordinance, on the expiry of the period of Ordinance, the Ordinance lapsed. Unless and until the competent authority

enacts such a law with a view to confer such benefits afresh on those sections of the people, it is not possible to hold that as a right has already accrued that right has to be saved.

27. We will now examine the second part of argument of Mr. Phookan that Section 24 of the General Clauses Act could be made applicable with a view to save such rights. On perusal of Section 24 of the General Clauses Act, 1897 it is seen that this provision is there only for the purpose of continuation of certain orders under enactment which are repealed and/or re-enacted. In the instant case we do not come across such a situation inasmuch as there is no question of enactment having been repealed or re-enacted. Again Mr. Phookan seeks to sustain this argument based upon the observation of the Supreme Court in the State of Orissa v. Bhupendra Kumar Bose's case. To reiterate in the given facts and situation, the question of application of Section 24 of the General Clauses Act would not arise. Therefore, this argument of the learned counsel is of no assistance. In that view of the matter we record the finding against the petitioners on this point. In addition to the ruling of the Supreme Court in the State of Orissa (supra), Mr. Phookan has also cited one more judgment of the Supreme Court in Trust Mai Lachmi Sialkoti Bradri Vs. The Chairman, Amritsar Improvement Trust, with a view to bring home this point. This is a case where there was a dispute about the scheme in respect of areas declared to be "damaged area" under the Punjab Damaged Areas Act (11 of 1947). In that case the question was whether the conclusiveness of the scheme u/s 5(4) of the Act of 1951 does not apply where there is total lack of jurisdiction. Interpreting the provisions of Section 22 of the Punjab General Clauses Act (Act I of 1898) (seeking to make out a case that there is implied repeal of the Act which lapsed) a Constitution Bench of the Supreme Court dealing with this question held as follows (at page 980) :

".....The foundation of the jurisdiction of the Improvement Trust to frame a scheme and for the government to approve of the same depends upon the scheme relating to a "damaged area" and if, as we have held, the property now sought to be acquired is within an area which does not fall within the definition of a "damaged area" u/s 2(d) of the Act, it follows that there was total lack of jurisdiction on the part of the Improvement Trust or the government to frame a scheme for this area. The position is not very different from what it would have been if the Act itself had not been Extended to an area in regard to which a scheme has been framed. The conclusive effect postulated by Section 5(4) can only be in regard to the formalities prescribed by Sections 3, 4 and 5 and does not touch a case where there is complete lack of jurisdiction in the authorities to frame a scheme.

In the reported judgment the specific question that arose was based upon different facts relating to jurisdiction and power of the State Government to approve a scheme. In the instant case, we are not concerned with any such situation inasmuch as there is no question of implied repeal of a temporary Act.

In the instant case, we are called upon to deal with the effect of the Ordinance which lapsed by efflux of time and that no law was enacted by the Parliament. Therefore, the question of law that arose in Trust Mai Lachhmi's case (supra) is entirely different from the question that has arisen in the instant case. In that way also the contention of Mr. Phookan, learned counsel for the petitioners, must fail.

28. We will now consider point No. 2. The Governor of Assam issued Notification No. TAD/ ST/98/92/138 dated 28-1-96 which reads as follows :

"Consequent upon inclusion of Koch Rajbongshi Community in the list of Scheduled Tribes of Assam (excluding Autonomous Districts) the Governor of Assam is pleased to order that Rajbongshi-Koch as appeared against serial No. 18 of Notification TAD/BC/268/75/37 dated 27-1-1975 shall cease to be a constituent of Other Backward Classes of Assam with immediate effect."

This notification intended to delist the community of Rajbongshi-Koch from serial No. 18 in the notification issued earlier on 27th November, 1975 from the constituent of Other Backward Classes in the State of Assam, inasmuch as since the Government of Assam recommended to the Government of India to include this community in the list of scheduled Tribe and Hill Tribe, as the case may be, and that the Government of India accordingly took action to do so resulting in issuance of the Ordinance by the President of India.

The Government of India also issued notification dated 27th of January, 1996 under the signature of the Joint Secretary to the Government of India. Ministry of Welfare by way of resolution as follows :

"Whereas by the Resolution of the Government of India. Ministry of Welfare bearing No. 12011/68/93-BCC(C) dated 10th September. 1993 published in Extraordinary issue of the Gazette of India Part I Section 1 No. 186. Monday. September 13, 1993 in the State : Assam : Common List, Rajbongshi Koch was included against Sl. No. 18 and whereas the said community has now been included in the list of Scheduled Tribe of Assam (excluding Autonomous Districts), therefore the following amendment is made in the said Resolution namely :--

"Sl. No. 18 and the entry namely "Rajbanshi Koch" shall be omitted"".

Therefore, the question remains as to whether on the lapse of the Ordinance and not making a law by the Parliament in terms with the Ordinance with a view to conferring the benefit of ST and HT on those sections of the people what would be the consequential result.

29. The argument of Mr. Phookan, learned counsel for the petitioners is that the Government of Assam had the knowledge that in the event of the Parliament failing to make any law pursuant to the Ordinance having been expired, it is the duty of the Government of Assam to have issued another notification to revive the status of that section of the people to enjoy the status of OBC which they

had been enjoying all through from 27th of November, 1975. The further argument of Mr. Phookan is that since the Government of Assam failed to take appropriate action in this behalf to revive this right in favour of that section of the people, it resulted in not only the miscarriage of justice but also injustice to this section of the people. Therefore, his argument is that the Government of Assam ought to have taken action to repeal the notification dated 28th of January, 1996 delisting this community of Rajbangshi-Koch from the Other Backward Class.

30. Opposing the submission of the learned counsel for the petitioners the submission of the learned Government Advocate is that a specific defence has been taken in the statement of objections by way of counter that until such action is taken to revive the rights enjoyed by this section of the people as OBC by issuing a proper notification, the notification dated 28th of January, 1996 delisting this section of the people from the constituent of OBC must be given effect to. We are not able to understand the argument of the learned Government Advocate inasmuch as there is no logic in this argument on behalf of the Government. The moment when the State of Assam have come to know that the Ordinance lapsed by efflux of time and no Act was made by the Parliament to continue to confer the benefit of ST/HT in favour of this community of the people, it was the bounden duty of the concerned Government to have taken appropriate action to revive at least those rights which were being enjoyed by this community under the OBC in Serial No. 18 of the earlier notification dated 27th of November, 1975. In other words, if a section of the people who had been enjoying certain rights which accrued to them by virtue of the action taken by the competent authority for a period of 25 years and that when the State of Assam have recommended this community to be included within the list ST/HT which were more beneficial than the benefit they had been enjoying as OBC and that since the Parliament could not make such law though the Ordinance was issued by the President at the instance of the Government of India, such Ordinance having been lapsed by efflux of time, is not it a duty of the Government to have taken action promptly to revive the earlier rights that were being enjoyed by this section of the people is a question.

31. Learned Government Advocate has not been able to persuade us to accept the submission on behalf of the State of Assam being contrary to the logical conclusion. Would not it be unfair to treat this section of people by not bringing them within the reservation either for ST or HT or OBC with a view to enable them to enjoy certain privileges conferred upon them for the purpose of employment and seeking seats in the educational institutions particularly professional colleges for no fault of them? Learned Government Advocate has not been able to answer this question convincingly.

32. Joining the hands with the Government Advocate, learned counsel appearing for respondent Nos. 6 to 37 also contended that by virtue of the advertisement issued by the competent authority calling for applications from the eligible

candidates to make selection for vacancies available in the MBBS/BDS colleges in Assam, the competent authority proceeded to make selection in compliance with the existing law inasmuch as there was no notification issued by the Government of Assam with a view to revive the rights of the petitioners to enjoy the benefits as OBC. On the other hand the notification dated 28th of January, 1996 referred to above remained and, therefore, the petitioners cannot agitate in the writ petitions under Article 226 of the Constitution of India seeking to confer upon them the rights of OBC which were taken away by the issuance of notification dated 28th of January, 1996. Therefore, the submission of the counsel for the respondent Nos. 6 to 37 is that the Court need not consider such submission in favour of the petitioners by the learned counsel. Again we fail to understand the logic or rationality of this argument opposing the writ petitions. As we have already observed, it is the bounden duty of the respondent Government to have seen that since 27th of November, 1975 the special rights conferring the status of OBC having been enjoyed by this section of the people and the Government of Assam having recommended their case to the Government of India with a view to enable the latter to consider this section of the people in the category of ST/HT and accordingly action was taken by the President to issue Ordinance at the instance of the Government of India, and the Ordinance having been lapsed for no fault of the petitioners could it be said that they are supposed to suffer for the inaction on the part of the Government ? As we have observed, if we allow the situation to continue without considering the legitimate rights of the petitioners and to give relief in their favour, it will result in serious injustice to them. The stand taken by the Government of Assam in their counter is contrary to the provisions of the Constitution particularly in the face of the fact that for the last 25 years this section of the people have been enjoying the privileges and the rights conferred upon them as constituent of OBC as per notification dated 27-11-75 and they are entitled to be considered as such and of special privilege of being considered as ST/HT as intended by the Government of India while issuing Ordinance.

33. Considering all these circumstances, we are clearly of the view that the stand taken by the State of Assam and by private respondents being untenable and against the spirit of the notification dated 28-1-96, we hold that the petitioners have made out a case for grant of their prayer for the issue of a Writ of Mandamus as sought for.

34. In the result and for the reasons stated above, these petitions stand allowed. The selection made by the competent authority for vacant seats of MBBS/BDS colleges in so far as the students claiming reservation of OBC and MOBC stands set aside. A direction shall issue to the respondents as follows :

(1) A writ of Mandamus shall issue to the respondents I to 5 that action shall be taken immediately to modify the notification dated 28-1-96 (Annexure D) with a view to revive the rights and privileges already accrued to this section of the people in Serial No. 18 of the notification dated 27th of November, 1975 issued

by the Governor of Assam earlier to treat them as Other Backward Class of Assam within a period of 4 weeks.

(2) The respondents 1 to 5 are further directed by issuance of a Writ of Mandamus that action must be taken to reconsider the entire selection in regard to the claims made by the students claiming OBC or MOBC is concerned and to make a fresh selection considering the writ petitioners and others who are not before this Court and who are entitled to claim the reservation as OBC and to seek for the seats in the above colleges subject to other conditions incorporated in the notification calling for application for making selection.

(3) The competent authority (respondent No. 3) shall make selection afresh to the 1st year MBBS/BDS courses treating the writ petitioners and others who are entitled to claim the benefit of OBC for the purpose of reservation to claim the seats in the MBBS/BDS courses, subject to other conditions being complied with in accordance with law. The selection shall be made within 4 weeks.

Ordered accordingly.

The petitions are allowed with costs, advocates fee Rs. 2,000/-.