

GAHC010165112023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4321/2023

ANGSHUMAN GOGOI AND 2 ORS
C/O- UMA GOGOI,
R/O- BANIPUR LANE 08,
DIBRUGARH, ASSAM- 786003.

2: AMAN KUMAR GUPTA
C/O PAWAN KUMAR GUPTA

R/O- KHALIAMARI
DALBIR SINGH PATH

DIBRUGARH
ASSAM- 786001.

3: SUSHANTA KARMAKAR
C/O S.C. KARMAKAR

H/NO.- 74
11 NO. BYE LANE
NAMGHAR PATH
MILAN TIRTHA
BEHIND BSNL TELEPHONE TOWER

P.O- RUPAI SIDING
P.S. DOOMDOOMA

DISTRICT- TINSUKIA
ASSAM- 786153

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,

HEALTH AND FAMILY WELFARE DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
THE DIRECTORATE OF MEDICAL EDUCATION

GUWAHATI- 781022
ASSAM.

3:THE UNION OF INDIA
DIRECTORATE GENERAL OF HEALTH SERVICES

MINISTRY OF HEALTH AND FAMILY WELFARE

NIRMAN BHAWAN
NEW DELHI- 110011

For the petitioners : Mr. B.D. Konwar, Senior Advocate
Assisted by Ms. S. Jain, Advocate

For respondents : Mr. D. Saikia, Advocate General, Assam
Assisted by Mr. B. Gogoi,
Standing Counsel, Health
Mr. K. Gogoi, C.G.C.
For respondent No.3

– B E F O R E –

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

10-08-2023

S. Mehta, C.J.

Heard learned counsel representing the parties and perused the material available on record.

2. The petitioners herein are aspiring candidates, who seek admission in the Post Graduate courses and Diploma Courses in the Medical Colleges in the State

of Assam. The petitioners claim to be OBC (Non Creamy Layer) candidates and have approached this Court by way of this writ petition seeking to challenge the validity of Rule 7(i)(d) of Medical Colleges of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Rules, 2021, which provides 15% quota/reservation of seats to Other Backward Classes (OBC) and More Other Backward Classes (MOBC) in respect of admission into Post Graduate courses in the Medical Colleges under Health & Family Welfare Department, Government of Assam. The petitioners seek a direction upon the respondents to fix 27% quota/reservation to the OBC/MOBC (NCL) category candidates in regard to admission to Post Graduate courses in the Medical Colleges of Assam in terms of the Notification dated 29.07.2021 issued by the Central Government.

3. When the matter was taken up on 02.08.2023, this Court noted a serious flaw in the Notification dated 06.12.2021 issued by the State Government wherein the reservation/quota of 15% for admission in the Medical Colleges of Assam has been provided to OBC/MOBC candidates, without there being any sub-classification on the basis of economic status, i.e. Non Creamy Layer (NCL).

4. It may be stated here that the concept of economic status based reservation was discussed by Hon'ble the Supreme Court in the case of ***Indra Sawhney vs. Union of India***, reported in ***(1992) Suppl. 3 SCC 210*** wherein it was observed as follows:-

“629. *More backward and backward is an illusion. No constitutional exercise is called for it. What is required is practical approach to the problem. The collectivity or the group may be backward class but the individuals from that class may have achieved the social status or economic affluence. Disentitle them from claiming reservation. Therefore, while reserving posts for backward classes, the departments should make a condition precedent that every candidate must disclose the annual income of the parents beyond which one could not be considered*

to be backward. What should be that limit can be determined by the appropriate State. Income apart, provision should be made that wards of those backward classes of persons who have achieved a particular status in society either political or social or economic or if their parents are in higher services then such individuals should be precluded to avoid monopolisation of the services reserved for backward classes by a few. Creamy layer, thus, shall stand eliminated. And once a group or collectivity itself is found to have achieved the constitutional objective then it should be excluded from the list of backward class. Therefore,

- (1) No reservation can be made on economic criteria.*
- (2) It may be under Article 16(4) if such class satisfies the test of inadequate representation.*
- (3) Exclusion of creamy layer is a social purpose. Any legislative or executive action to remove such persons individually or collectively cannot be constitutionally invalid.”*

“635. Both the impugned orders issued by the respective governments in 1990 and 1991 reserving appointments and posts for socially and educationally backward classes of citizens, without discharging their constitutional obligation of examining if the identification of backward class by the Commission was in consonance with constitutional principle and philosophy of the basic feature of the Constitution and if the group or collectivity so identified was adequately represented or not which is the sine qua non for the exercise of the power under Article 16(4), are declared to be unenforceable.

(1)

- (8) Creamy layer amongst backward class of citizens must be excluded by fixation of proper income, property or status criteria.”*

Thus, the ratio of the above judgment explicitly excludes the creamy layer category candidates amongst the backward classes from getting the benefit of reservation by fixation of proper income/property or status criteria.

5. By order dated 02.08.2023, we had put a pertinent query to the learned Advocate General, Assam, Mr. Saikia to explain this anomaly in the Notification dated 06.12.2021 issued by the State Government and the Rule 7(i)(d) of 2021 Rules, wherein no further classification has been made for providing reservation

to OBC/MOBC candidates on the basis of economic status. On 07.08.2023, learned Advocate General conceded that there was an error on the part of the State Government in not specifying that reservation/quota to the OBC category candidates in the subject admission process will be restricted to NCL candidates only.

6. An affidavit dated 09.08.2023 sworn by Additional Director of Medical Education has been filed on behalf of the State Government wherein it is averred that the process of admission into 50% State Quota Seats of post graduate courses in the Medical Colleges of Assam for the session 2023 has already started. The Government of Assam has taken a decision in the Cabinet to give reservation to the OBC/MOBC candidates in all Higher Educational Institutes in the State in the order of 27% of the total seats in further admissions. Such reservation has already been provided for admission into first year MBBS/BDS Courses as per Medical Colleges and Dental Colleges of Assam (Regulation of Admission into 1st year MBBS/BDS Courses) Rules, 2017. However, it has been admitted that inadvertently and because of oversight, the reservation to OBC/MOBC categories has not been restricted to NCL category only as is mandated by law.

7. In view of the above position admitted in the affidavit and as stated by learned Advocate General, we hereby direct the respondent authorities to rectify and make necessary amendments in Rule 7(i)(d) of Medical Colleges of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Rules, 2021 so as to provide reservation to the OBC/MOBC candidates of NCL category only. The above amendment shall also be applied to the counselling process which has started on 27.07.2023. Candidates who do not satisfy the

criterion of NCL, in terms of the prevailing regulations, shall not be admitted in the 15% quota reserved for OBC/MOBC category.

This writ petition is disposed of in these terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant