

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:-

Hon'ble Mr. Justice Aniruddha Roy

W.P.A. 23651 of 2022

Tista Das

Vs.

The State of West Bengal & Ors.

For the petitioner	: Mr. Piyush Chaturvedi, Adv., Mr. Tarun Kumar Das, Adv.
For National Medical Commission	: Mr. Sunit Kumar Roy, Adv.
For the State	: Mr. Swapan Kumar Dutta, Adv., Mr. Rajat Dutta, Adv.
Reserved on	: 25.11.2022
Judgment on	: 05.12.2022

ANIRUDDHA ROY, J.:

Facts:-

1. The petitioner was an aspirant in **National Eligibility Cum Entrance Test (NEET) (UG), 2022** for the under graduate medical course. Upon verification of the documents and records pertaining to the candidature of the petitioner, the petitioner was issued with an admit card to participate in the said examination which was held on July 17, 2022. The petitioner participated as an **Economically Weaker Section** (for short, EWS) candidate. The result was declared on September 07, 2022 and the petitioner secured a Rank **80322** as

All India Rank for counseling and secured the general **EWS** Rank **11423** for counseling, **Annexure P-4** to the writ petition. Under the seal and signature of the General Secretary, West Bengal, the State had issued a notification by way of an Office Memorandum dated July 09, 2019 (for short, the reservation notification), **Annexure P-5** to the writ petition, whereunder 10% reservation in direct recruitment in civil posts, services in the Government of West Bengal and for **Admission in Educational Institutions** was provided for the persons belonging to the said EWS, who were not covered under the scheme of reservation for SCs, STs and OBCs. The petitioner being an EWS candidate had received the necessary certificate from the concerned authority and participated in the said Entrance Examination as such. From the official website it appeared that the respondent no.4 issued a notification dated October 11, 2022 **Annexure P-6** to the writ petition specifying the program for counseling in West Bengal for the Under Graduate Medical Entrance Course. On the basis of the said notification the petitioner applied for online registration within the stipulated period and also participated in the verification process as per the schedule, which was held on October 28, 2022. The petitioner physically attended Nil Ratan Sircar Medical College (for short, NRS), where all the documents and records of the petitioner were duly verified by the competent authority and necessary certificate for such verification was issued, page 38 to the writ petition.

2. On October 28, 2022 the **Provisional Seat Matrix Round-I** had been published. The name of the petitioner had appeared under **Serial No.4086** as a

successful verified candidate in the counseling process. The final list of candidates had also been published on October 29, 2022, wherein, the name of the petitioner had also featured against **Serial No. 4088**. From the seat matrix, it appeared that the name of the petitioner was under **Serial No. 317** under the EWS qualified candidates in West Bengal **Annexure P-7** to the writ petition. On perusal of the seat matrix it appeared that considering the total number of seats for the medical entrance for the under graduate medical course, the requisite number of seats which is equivalent to 10% of total seats were not ear marked or reserved under the EWS reservation in terms of the said reservation notification, which is a mandatory requirement of the Constitution. Being aggrieved by the said illegal and arbitrary action on the part of the State authorities the petitioner filed the instant writ petition with the following prayers:-

“a) Kind Leave be granted to move this writ application as urgent one without adequate service of notices as well as copy of the writ application upon the respondent authorities by dispensing Rule 26 of the Appellate Side Writ Rules for moving an application under Article 226 of the Constitution of India;

b) A Writ of and/or in the nature of Mandamus directing the respondent, their men, agents, subordinates and each one of them to admit the petitioner in MBBS Course in any Government Medical College/Government Aided Medical College under EWS category by following the reservation policy forthwith;

c) A Writ of and/or in the nature of Mandamus directing the respondent, their men, agents, subordinates and each one of them to prepare and published a fresh Seat Matrix List by following the reservation policy particularly the Office Memorandum dated 09.07.2019 issued by the Personnel and Administrative Department, Government of West Bengal and to admit the petitioner in MBBS Course in any Government Medical College/Government Aided Medical College under EWS category by considering the representations dated 30.10.2022 and 31.10.2022 forthwith;

d) A Writ or Writs in the nature of Certiorari directing the respondents to produce all the relevant records of the case before the Hon’ble Court, so that conscionable justice may be done after going through the same by and between the parties;

e) Rule NISI in terms of prayers (b) (c) and (d) above;

f) Interim order do issue directing the respondent authorities to prepare and published a fresh Seat Matrix List by following the reservation policy particularly the Office Memorandum dated 09.07.2019 issued by the Personnel and Administrative Department, Government of West Bengal and to admit the petitioner in MBBS Course in any Government Medical College/Government Aided Medical College under EWS category till disposal of this writ petition;

g) Interim order do issue directing the respondent authorities to keep vacant one seat of MBBS Course under EWS category in any Government Medical College/Government Aided Medical College in West Bengal till disposal of this writ petition;

h) Ad-interim order in terms of prayer (f) and (g) above;

i) To pass such other or further order or orders, direction or directions as to Your Lordships may deem fit and proper”.

3. On November 04, 2022 an interim order passed to the effect directing the respondent no.3 to keep one seat set apart and vacant from the time being in the ongoing MBBS admission process for the State of West Bengal. Such interim order was extended on November 14, 2022 and was existing.
4. Considering the issue in the writ petition and pursuant to the direction made by this Court the respondent no,5 filed an affidavit report affirmed on November 14, 2022.
5. Pursuant to the direction made by this Court on November 18, 2022 an affidavit-in-opposition was also filed by the respondent no.1 to 5 which was affirmed on November 21, 2022.

Submissions:-

6. Mr. Piyush Chaturvedi, Learned Counsel appearing for the petitioner submitted that, this reservation notification was issued in terms of and in sync with the Constitutional mandate provided under **Sub-Article (6) to Article 15 and Sub-Article (6) to Article 16 of the Constitution of India**. He submitted that, this

Sub-Articles were introduced under the **Constitution (One Hundred and Third Amendment) Act, 2019** dated January 12, 2019 **w.e.f. January 14, 2019**. The conjoint reading of the said two amended provisions would show that for the **Economically Weaker Section** of the citizen other than the classes mentioned in Sub-Articles 4 and 5 to Article 15, the reservation would be in addition to the existing reservations and subject to maximum of 10% of the total seats in each category.

7. Drawing attention of this Court to the **Provisional Seat Matrix Round 1, Annexure P-7** to the writ petition. Mr. Chaturvedi, further submitted that the petitioner made a representation dated October 30, 2022 before the respondent authorities, page 61 to the writ petition, which was not considered by the respondents at all. The learned counsel submitted that, the total number of seats in the MBBS course under the State for the relevant year for entrance was available as **3414** out of which **1679** had been shown as Unreserved and **223** had been shown as EWS and **11** had been shown as EWS (PC) candidates, whereas as per the arithmetical calculation in terms of the said reservation notification the total number of EWS seats should have been **341** instead of **223**. Learned counsel contended that, the policy for reservation was not followed and was violated. He further submitted that, in the event the policy of reservation would have been strictly followed the petitioner with his serial no. **317** under the EWS category would have received an admission. The provisional seat matrix calculation as calculated by the petitioner was **Annexure P-8** to the writ petition.

8. Learned counsel submitted that, the said action of the State authorities were not only illegal, wrongful and unconstitutional but also in arbitrary exercise of its power and discretion. By exercising its discretion in an arbitrary and colorable manner the State had actually taken away the right of the eligible EWS candidates to secure their admission in the under graduate medical entrance examination. He sought for implementation of the said State policy being the said reservation policy dated July 09, 2019.
9. Learned counsel for the petitioner submitted that, the said constitutional amendment were challenged before the Constitution Bench of the Hon'ble Supreme Court on various grounds, contending violation of diverse provisions of the Constitution. Such challenge was rejected by the Constitution Bench of the Hon'ble Supreme Court. The Constitution Bench of the Hon'ble Supreme Court in its majority view while upholding the amendment specifically held that the amendments were, intra vires to the Constitution and should protect the right of EWS from the discrimination on the ground of Religion, Race, Caste, Sex or Place of Birth and would ensure the equality of opportunity in matters to public employment and education. In support, Mr. Chaturvedi had relied upon the **Constitution Bench** Judgment of the Hon'ble Supreme Court ***In the matter of: Janhit Abhiyan vs. Union of India, delivered in W.P. (Civil) No. 55 of 2019.***
10. Mr. Swapan Kumar Dutta, Learned Senior State Counsel appearing for the respondent nos. 1 to 5 submitted that, in terms of the Medical Council of India Circular dated June 25, 2019 with attached guidelines, an order to implement

the 10% EWS reservation quota, 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 shall not be affected. He submitted that, a college with current intake of 100 seats would need to add 25% additional seats i.e. 25 nos. of seats and that too without reducing last year's general seats, which could not be implemented in this year. He relied upon the necessary circulars **Annexure B** to the affidavit-in-opposition. He also relied upon the guidelines for calculating additional seats for implementing 10% EWS Quota for MBBS course at page 22 to the affidavit-in-opposition.

11. Learned Senior State Counsel further submitted that, for increase of EWS seats in an existing Medical College, orders from the Government of India, Ministry of Health and Family Welfare and Medical Council of India/National Medical Commission are required and for preventing the loss or encroachment of unreserved seats as compared to the previous years' seats in the existing college, the 25% increase of seats is urgently required so that 10% of the seats can be earmarked for EWS candidates in terms of the said reservation policy and the absolute number of seats for unreserved candidates would not get reduced or encroached in the existing college as compared to the previous years' seat matrix.
12. He submitted that, now when 5 Government Medical Colleges namely Diamond Harbour, Purulia, Rampurhat, Cooch Behar and Raiganj were added in 2020, all Colleges had 100 seats each. No EWS seats have been kept in those 5 new Colleges as there was no explicit order of the Government of India. All India

Counselling Authority had also not provided EWS seats in All India quota counseling in 2020 for such 5 new Govt Medical Colleges. The EWS candidates were allotted unreserved seats in such colleges as per inter-se merit rank. Photostat copy of the Round 1 allotment result for All India Quota seats in 2020 indicating that there was no EWS seat in such 5 new Government Medical Colleges in West Bengal and EWS candidates were allotted in General or Unreserved seats, **“Annexure-D”** to the affidavit-in-opposition.

13. He submitted that, since 2021, Government of India provided EWS seats in the said 5 new Colleges and hence, State of West Bengal also provided 10% seats in those 5 new Colleges initially but after representations and legal opinion it was reverted as absolute number of general seats was going to reduce in comparison to 2020 in 2021. In the year 2021, new seats were added in one private medical college in West Bengal namely, Santiniketan Medical College, Bolpur and the EWS seats were provided at the rate of 10% in that college in State Quota seats. Photostat copy of the seat matrix of All India Quota counseling conducted by Government of India, Director General of Health Services showing EWS seats provided in 5 new medical colleges in West Bengal (Diamond Harbour, Purulia, Rampurhat, Coochbehar and Raiganj) is **“Annexure-E”** to the affidavit-in-opposition.

14. Mr. Dutta further submitted that, the seat matrix for West Bengal State Quota Counseling UG Medical and Dental 2020 nor the seat matrix for 2021 was challenged, he, thus, submitted that, this 2022 seat matrix was based on and following the said allotment in the seat matrix for the previous year's had

arrived its finality and could not be challenged. This being a policy decision of the State and could not be interfered with by this Court.

15. Relying upon the communication dated June 25, 2019 **Annexure A** to the affidavit report and the communication dated May, 2019 at page 13 t the affidavit report. Mr. Dutta submitted that, the Medical Council of India was also applying its mind to implement the seat PWS quota in terms of the Constitutional mandate and thereby invited proposals from the State for enhancement of seats in the under graduate Medical Course to accommodate the EWS quota. He submitted that, the State had also taken initiative before the Medical Council of India for enhancement of seats to accommodate the EWS quota.

16. Some relevant averments from the said affidavit-in-opposition filed on behalf of the State, are quoted below:-

“j) Therefore, the colleges where EWS seats could not be arranged this year the same can be arranged in the next year of appropriate 25% seat increase is allowed by Government of India. I say that if the EWS seats are provided in the colleges where there is no increment of seats by 25% at least from the existing seats, the absolute number of unreserved seats shall be reduced in order to provide 10% EWS reservation. Then such candidates shall be seriously prejudiced.

k) It is pertinent to mention that EWS seats and EWS physically challenged seats in MBBS and EWS seats in BDS course are still available. Copy of the Seat Matrix in Round-2 is annexed and marked as “Annexure-G”.

l) The petitioner still has seats to apply for in the counseling as the EWS PWD seats shall be converted to EWS seats in Mop Up round of counseling if no such PWD candidate is available for taking such seats. Moreover, it may be pertinent to mention that as the cut of percentile is equal that is, 50 percentiles in NEET UG Examination; the EWS candidates are also eligible as per general merit rank for taking the unreserved seats as well in the counseling process. I say further that any EWS seat or General seat if kept reserved for this instant petitioner would only cause serious prejudice to the candidates above her in rank and inter se merit and duly participating in the counseling process.

m) In view of the circumstances as stated above, 10% of EWS quota could not be implemented in its true sense due to dearth of seats and

shall be implemented periodically as per enhancement of seats by Medical Council of India. The hands of the State Health Authorities are tied. If 10% flat EWS reservation is to be implemented in the West Bengal State Quota then the Counselling authority of West Bengal shall pray for leave to implement if from the next academic year of counseling that is 2023-24 onwards with the stated fact that it would only reduce the absolute number of unreserved seats and as such the unreserved candidates shall be prejudiced. The Department of Health and Family Welfare, Government of West Bengal is in the process of implementing 10% EWS seats for economically poor but meritorious students at the earliest but the care is also taken that in order to implement such quota the right of another section of the community is not snatched”.

17. Mr. Dutta further submitted that in the event, if any, direction is made to accommodate the EWS Quota to the extent of 10% in terms of the Constitutional mandate, then seats would be encroached from other quotas which again shall violate the rule of law. He submitted that the quota shall be allotted in a progressive manner on year to year basis in every successive years. The EWS reservation cannot be fixed right now so long the total capacity of seats are not enhanced by the Medical Council of India.
18. Mr. Chaturvedi learned counsel for the petitioner, in reply submitted that, from the submissions made on behalf of the State, from the averments made in the reports and the affidavit-in-opposition, it would be clear that the necessary reservation in terms of the constitutional mandate had not been provided for in terms of the policy decision of the State dated July 19, 2019, **Annexure P-5** to the writ petition, and the same needs to be implemented immediately.

Decision:-

19. For the purpose of considering the issue involved in this writ petition the relevant provisions from the Constitution of India are quoted below:-

“15. Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Schedule Tribes.]

[(5) Nothing in this article or in sub-clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes or the Schedule Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

[(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clause (4) and (5); and

*(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of **ten per cent** of the total seats in each category.*

Explanation: For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

16. Equality of opportunity in matters of public employment

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.*
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*
- [(4A) Nothing in this article shall prevent the State from making provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]*
- [(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation on the total number of vacancies of that year.]*
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.*

*[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of **ten per cent** of the posts in each category.]”*

20. **Sub-Article 5 to Article 15** and **Sub-Article 6 to Article 16** of the Constitution of India were newly introduced by virtue of the said Amendment Act, 2019. The amendment was given effect on and from January 14, 2019. Admittedly the said notification dated July 09, 2019 **Annexure P-5** to the writ petition was notified and published at the post amendment stage in sync and line with the said provisions under **Sub-Article 5 to Article 15** and **Sub-Article 6 to Article 16** of the Constitution of India.
21. On a careful scrutiny of the averments made by the State in its affidavit-in-opposition as quoted below, it would be evident that admittedly the State though announced its reservation policy through the said notification dated July 09, 2019 but could not implement the same for the reasons mentioned in the said affidavit. The submission of Mr. Dutta Learned Senior State Counsel as recorded above, that the State would implement the same periodically and only after the total number of seats being increased by the Central Medical Council and that the State had already taken steps requesting the Central Medical Council to increase the total number of seats, cannot be considered as a defense for not implementing its own policy dated July 09, 2019 **Annexure P-5** to the writ petition. The said policy is still in vogue. The submission made on behalf of the State that if the said policy is implemented in strict form and

sense then would amount to an encroachment on the seats earmarked for other quotas, these submissions made on behalf of the State, in the opinion of this Court, do not and cannot hold the field and without any substance, in view of the reservation provisions made under **Sub-Article 5 to Article 15** and **Sub-Article 6 to Article 16** of the Constitution of India.

22. The said two articles are engrafted under **Part III** of the Constitution of India as part and parcel of fundamental right of citizen. Any right of any citizen of the country flows ultimately from the constitutional provisions. Even if, a statutory right is conferred to a citizen under a specific statute, the provisions of such statute should have to be in conformity with the Constitution of India and any deviation or incongruity would render such statute as ultra vires to the Constitution. Such statute then would have no effect or binding effect and no right thereunder can be conferred upon or enjoyed by a citizen.
23. ***In the matter of: Janhit Abhiyan (supra)*** the said amendment incorporating **Sub-Article 5 to Article 15** and **Sub-Article 6 to Article 16** of the Constitution of India had been held to be intra vires by a Constitution Bench of the Hon'ble Supreme Court. It had also been held by the Constitution Bench that incorporation of this two Sub-Articles would no way would be in conflict with any other provisions laid down under the Constitution creating diverse rights of a citizen.
24. ***In the matter of: Janhit Abhiyan (supra)*** the Constitution Bench of the Hon'ble Apex Court, in its majority view, had, inter alia, observed as under:-

“The Referral and the Questions Formulated

4. By an order dated 05.08.2020, a 3-Judge Bench of the Hon’ble Supreme Court took note of the issues arising in these matters and referred the same for determination by a Constitution Bench while observing, inter alia, as under:-

“.....By virtue of the impugned amendments, very Constitution is amended by inserting new clauses in Articles 15 and 16 thereof, which empower the State to make reservations by way of affirmative action to the extent of 10% to economically weaker sections. It is the case of the petitioners, that the very amendments run contrary to the constitutional scheme, and no segment of available seats/posts can be reserved, only on the basis of economic criterion. As such, we are of the view that such questions do constitute substantial questions of law to be considered by a Bench of five Judges. It is clear from the language of Article 145(3) of the Constitution and Order XXXVIII Rule 1(1) of the Supreme Court Rules, 2013, the matters which involve substantial questions of law as to interpretation of constitutional provisions they are required to be heard a Bench of five Judges. Whether the impugned Amendment Act violates basic structure of the Constitution, by applying the tests of ‘width’ and ‘identity’ with reference to equality provisions of the Constitution, is a matter which constitutes substantial question of law within the meaning of the provisions as referred above. Further, on the plea of ceiling of 50% for affirmative action, it is the case of the respondent-Union of India that though ordinarily 50% is the rule but same will not prevent to amend the Constitution itself in view of the existing special circumstances to uplift the members of the society belonging to economically weaker sections. Even such questions also constitute as substantial questions of law to be examined by a Bench of five Judges....”

5. Pursuant to the order aforesaid, this batch of matters has been referred to this Constitution Bench for determination of the issues arising from the challenge to the 103rd Amendment. On 08.09.2022, after perusing the issues suggested by learned counsel for the respective parties, this Court noted, amongst others, the issues suggested by the learned Attorney General for India as follows: -

“(1) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by permitting the State to make special provisions, including reservation, based on economic criteria?

(2) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution by permitting the State to make special provisions in relation to admission to private unaided institutions?

(3) Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution in excluding the SEBCs/OBCs/SCs/STs from the scope of EWS reservation? (4) Whether the cap of 50% referred to in earlier decisions of the Supreme Court can be considered to be a part of the basic structure of the Constitution? if so, can the 103rd Constitution Amendment be said to breach the basic structure of the Constitution?”

26.2. On the question of fifty per cent. ceiling limit, learned Solicitor General has again submitted that this percentage could be exceeded in exceptional

circumstances for, being neither a fundamental tenet of the Constitution nor a part of its basic structure. He lastly contended that the validity of a constitutional amendment cannot be tested on possible apprehensions or absence of guardrails

Points for Determination

31. Three major issues to be answered in these matters by this Bench have been noticed at the outset. In order to answer those issues and in view of the variety of submissions urged as also the subject-matter, following principal points arise for determination:

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

(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?

(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.?

90. The rules of the interpretation of the Constitution have to take into consideration the problems of government, structure of a State, dynamism in operation, caution about checks and balances, not ordinarily called for in the interpretation of statutes. [Mukharji 'The New Jurisprudence', p. 106]

91. Although a Constitution is not to be fettered by the past history, yet it is relevant for properly interpreting the Constitution. This Court accepted the logic that the Indian Constitution was not written on a 'blank slate' and because the Government of India Act, 1935 provided the basic fabric for the Indian Constitution, it was invoked to interpret the Constitution in the light of the provisions of the Act. [M.P.V. Sundararamier & Co. v. State of A.P. and Others, 1958 SCR 1422 : AIR 1958 SC 468]

92. The principle of ejusdem generis, a rule of statutory interpretation, has been applied to the Indian Constitution by this Court in the State of West Bengal v. Shaik Serajuddin Batley, 1954 SCR 378. The statutory rule of interpretation expressed "Expressio unius est exclusion alterius" (the express mention of one person or thing is the exclusion of another) is not strictly applicable to constitutional interpretation. [Mukharji 'The New Jurisprudence', p. 110]

93. It is the fundamental principle of construction that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitution vide Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Others, 1959 SCR 279 : AIR 1958 SC 538. [Reference : Law, Judges and Justice by S.M.N. Raina, First Edn.]

102. Yaniv Roznai in his thesis referred to above, has referred to Water Murphy who argues:

“Thus an ‘amendment’ corrects or modifies the system without fundamentally changing its nature: An ‘amendment’ operates within the theoretical parameters of the existing Constitution. A proposal to transform a central aspect of the compact to create another kind of system – for example, to change a constitutional democracy into an authoritarian state ... – would not be an amendment at all, but a re-creation of both the covenant and its people. That deed would lie outside the authority of any set of governmental bodies, for all are creatures of the people’s agreement.”

25. The introduction and existence of **Sub-Article 5 to Article 15** and **Sub-Article 6 to Article 16** having been held to be intra vires in law, the State in the facts of this case had rightly accepted the constitutional mandate and adopted the policy for necessary reservation in terms and in conformity therewith under the said notification dated July 09, 2019 **Annexure P-5** to the writ petition and any stand taken or plea raised showing any reason whatsoever for not implementing the same, would be in clear breach and violation of the constitutional mandate, as it happened in the facts of this case.
26. In view of the foregoing reasons and discussions, this court is of the considered opinion that following the law laid down by the Constitution Bench of the Apex Court ***In the matter of: Janhit Abhiyan (supra)*** it is the bounden duty and obligation of the State to give effect to and implement the said reservation policy in terms of its notification dated July 09, 2019, **Annexure P-5** to the writ petition forthwith and without any further delay.
27. **Accordingly, the respondent state authorities and/or any other appropriate state authorities are directed to give an immediate effect to the said reservation policy as embodied in the notification dated July 09, 2019, Annexure P-5 to the writ petition, positively within a period of seven days from date.**

28. **The provisional seat matrix prepared and published by the State authority for the West Bengal Under Graduate Medical and Dental Counseling, 2022 being the provisional seat matrix Round-1 Annexure P-8 to the writ petition stands set aside and quashed as the same is in violation of the said reservation policy.**
29. The state authorities are directed to prepare and publish the revised provisional seat matrix afresh following the provisions for the reservation for the EWS in strict compliance with the reservation policy as enumerated in the **notification dated July 09, 2019** issued by the Chief Secretary West Bengal, **Annexure P-5** to the writ petition and to conduct and proceed with the relevant Under Graduate Medical Admission Course on the basis of such revised seat matrix strictly in terms of the said **notification dated July 09, 2019, Annexure P-5** to the writ petition as expeditiously as possible.
30. It is made clear that this judgment and order has been passed only to the extent of the implementation of the reservation policy in terms of the constitutional mandate and for implementation of the state policy as enumerated in the **notification dated July 09, 2019 Annexure P-5** to the writ petition only.
31. It is further made clear that this judgment shall not create any equity in favour of the petitioner in any manner and the admission of the petitioner in the Under Graduate Medical Course shall be strictly guided by the merit of the petitioner and under the relevant rules and regulations applicable for the relevant admission procedure.

32. In view of the above, this writ petition **WPA 23651 of 2022** stands disposed of.
33. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)