

W.P.(MD) No.26623 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.07.2025

CORAM

THE HON'BLE MR.JUSTICE C. SARAVANAN

W.P.(MD) No.26623 of 2024

and

W.M.P.(MD) No.22585 of 2024

Mohandoss

... Petitioner

Vs.

1. The Secretary to Government,
Government of India,
Ministry of Personnel, Public Grievances and
Pensions Department of Personnel and Training,
North Block, New Delhi 110 001.
2. The Chairman,
National Testing Agency,
Okla Industrial Estate, New Delhi.
3. The Secretary,
Sainik School Society, New Delhi - 11.
4. The Secretary,
Ministry of Higher Education,
Government of India,
302-C, Shastri Bhawan, New Delhi.
5. The Secretary Ministry of Human Resource Development,
Government of India,
Shastri Bhawan, New Delhi.

(R4 and R5 are suo motu impleaded
vide order dated 12.12.2024)

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned Reservation Criteria of the Sainik Schools issued in Para 6.2 and Appendix V of the Information Bulletin for the All India Sainik Schools Entrance Examination - 2024 issued by the 2nd respondent and quash the same and consequent direction may be issued to the respondents to include reservation for Economic Weaker Section (EWS) as provided under the Constitution (One Hundred and Third Amendment) Act, 2019 in Sainik Schools Admission Reservation Criteria from All India Sainik Schools Entrance Examination – 2025.

For Petitioner : Mr.T.A.Ebenezer

For R1 & R3 : Mr. A.R.L.Sundaresan,
Additional Solicitor General of India
for Mr.K.Govindaraj
Deputy Solicitor General of India

For R2 : Mr.P.Karthik

ORDER

The Petitioner has filed this Writ Petition seeking to quash the impugned reservation criteria of the Sainik Schools, as set out in Paragraph 6.2 and Appendix V of the Information Bulletin for the All India Sainik Schools Entrance Examination - 2024, issued by the 2nd Respondent, the Chairman, National Testing Agency, New Delhi and also

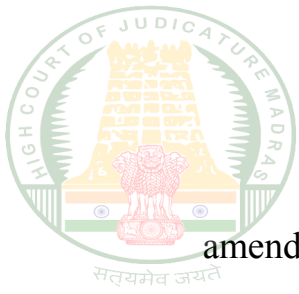


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for a consequential direction to the Respondents to include reservation under Article 15(6) of the Constitution of India, by incorporating provisions for the Economically Weaker Sections (EWS) in the Sainik School admission criteria from the All India Sainik Schools Entrance Examination.

2. The case of the Petitioner is that, although the Petitioner's son had qualified securing 229 marks out of 300 was not granted admission as he was considered under the General Category, since the Petitioner belongs to the Hindu Reddy Ganjam community, a notified Backward Caste in the State List which was not included in the Central List of Other Backward Classes. It is stated that the Petitioner's son is entitled to be issued an Economically Weaker Section (EWS) Certificate, and therefore, the Petitioner was issued an EWS Certificate by the competent authority.

3. The facts on record reveal that the Respondents have not issued any Notification in the All India Sainik Schools Entrance Examination, 2025 for seats against Economically Weaker Section (EWS). It is stated that, although the scheme for reservation under the EWS category was introduced by the Government in 2019 following the Constitutional



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amendment, the Respondent Sainik School did not implement the EWS reservation till date.

4. Further, it is also revealed that the Information Bulletin for the All India Sainik Schools Entrance Examination - 2024 reveals that the Sainik Schools did not provide reservation for candidates who belong to the Economically Weaker Section (EWS).

5. Therefore, the Petitioner has filed this Writ Petition challenging the reservation criteria of the Sainik Schools as specified in Paragraph 6.2 and Appendix V of the said Information Bulletin, issued by the 2nd Respondent. Therefore, seeks for a direction to the Respondents to include reservation for the candidates under EWS category as provided under the Constitution (One Hundred and Third Amendment) Act, 2019.

SUBMISSIONS ON BEHALF OF THE PETITIONER:-

6. The learned counsel for the Petitioner submits that, as per Articles 15(6) and 16(6) of the Constitution of India, a maximum of 10% reservation is permitted for Economically Weaker Sections (EWS) in “educational institutions”. It is further submitted that, in accordance with

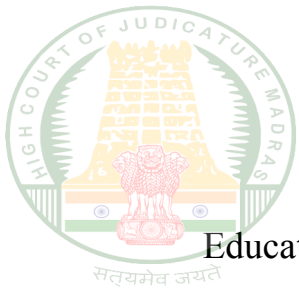


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these constitutional provisions, an Office Memorandum dated 17.01.2019 was issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India, mandating that EWS reservation shall be provided in 'Central Educational Institutions' as defined under Clause (d) of Section 2 of the Central Educational Institutions (Reservation in Admission) Act, 2006, with effect from the Academic Year 2019-2020.

7. It is submitted by the learned counsel for the Petitioner that Sainik Schools are “educational institutions” established by the Central Government under the Societies Registration Act, 1860, and therefore, it is evident that EWS reservation is applicable to Sainik Schools as well. It is submitted that, although the Office Memorandum was issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India, it does not state that the applicability of EWS reservation is confined only to institutions of higher education.

8. It is further submitted by the learned counsel for the Petitioner that the Office Memorandum states that EWS reservation is applicable to “Central Educational Institutions”, and not merely to “Central Higher



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Educational Institutions”. Therefore, once the Office Memorandum was issued making EWS reservation under Article 15(6) of the Constitution mandatory for “Central Educational Institutions”, the argument that it applies only to higher education institutions is not sustainable.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:-

9. *Per contra*, Mr.A.R.L.Sundaresan, the learned Additional Solicitor General of India for the 1st and 3rd Respondents, submits that the Sainik School falls within the meaning of ‘Central Educational Institution’ as defined under Section 2(d) of the Central Educational Institutions (Reservation in Admission) Act, 2006. He further submits that, in terms of the Office Memorandum in F.No.12-A/2019-U1 dated 17.01.2019 issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education, pursuant to the amendment to the Constitution of India *vide* the Constitution (One Hundred and Third Amendment) Act, 2019, reservation for the Economically Weaker Section (EWS) was introduced, subject to a maximum of 10% of the total seats in each category. The said reservation is to be implemented in accordance with the conditions laid down in O.M.No.20013/01/2018-BC-II dated 17.01.2019 issued by the Ministry of



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Social Justice and Empowerment. It is further submitted that the said reservation is not applicable to eight institutions, including Research and Miscellaneous Institutions.

10. Further, the learned Additional Solicitor General of India, submits that the Petitioner is seeking to quash the existing reservation criteria and to issue a writ of mandamus directing the provision of reservation for Economically Weaker Sections (EWS) as per the One Hundred and Third Amendment to the Constitution of India. The Petitioner also seeks a direction to the Respondents to implement EWS reservation enabled by the insertion of Article 15(6) through the said Amendment. It is submitted that a Writ of Mandamus directing the grant of reservation is not maintainable, as the One Hundred and Third Amendment to the Constitution of India merely confers an enabling power upon the State to provide such reservation; it does not impose a mandatory obligation.

11. It is further submitted by the learned Additional Solicitor General of India that Article 15(6) only states that nothing in this Article or in Article 19 shall prevent the State from making special provisions for



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the reservation of Economically Weaker Sections (EWS) in educational institutions. It is submitted that the amendment does not mandate that reservation must compulsorily be provided for EWS in such institutions. In other words, it is an enabling provision and not a mandatory one.

12. It is further submitted by the learned Additional Solicitor General of India that whether reservation for EWS is required, and if so, to what extent, and in respect of which class or category of educational institutions, whether Higher Educational Institutions, Arts and Science Colleges, or Schools, are all matters to be considered by the State. Only if the State decides that EWS reservation is necessary, and that it is required in certain types of institutions or in some among them, would the State be empowered to make special provision for EWS reservation.

13. It is submitted by the learned Additional Solicitor General of India that the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, New Delhi, has issued an Office Memorandum dated 17.01.2019 prescribing the criteria for reservation for Scheduled Castes, Scheduled Tribes, and Socially and Educationally Backward Classes, whose family gross annual income is below Rs.8.00



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lakhs and that certain exclusions have also been provided therein, disqualifying individuals from being identified as EWS irrespective of their family income.

14. It is further submitted by the learned Additional Solicitor General of India that the Office Memorandum further provides that every educational institution shall, with the prior approval of the appropriate authority, increase the number of seats over and above its permitted strength in each branch of study or faculty, so that the number of seats available for candidates other than those belonging to the EWS category is not less than the total number of seats available in the academic session immediately preceding the date of coming into force of the said Office Memorandum. It is submitted that a copy of the said Office Memorandum has also been communicated to the Secretary, Department of Personnel and Training, New Delhi, and the Secretary, Department of Higher Education, New Delhi.

15. It is further submitted by the learned Additional Solicitor General of India that, on the same day, i.e., 17.01.2019, the Government of India, Ministry of Human Resource Development, Department of



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Higher Education, issued an Office Memorandum directing that reservation for Economically Weaker Sections (EWS) be provided in accordance with the directions contained in the aforementioned Office Memorandum dated 17.01.2019 issued by the Ministry of Social Justice and Empowerment, subject to the conditions mentioned therein.

16. It is submitted by the learned Additional Solicitor General of India that Para 3 of the said Office Memorandum provides that the Chairman of the University Grants Commission (UGC), the All India Council for Technical Education (AICTE), and the Chairperson of the National Council for Teacher Education (NCTE), along with the Bureau Heads of the Department of Higher Education in the Ministry of Human Resource Development, shall ensure immediate compliance with the said Office Memorandum.

17. It is further submitted by the learned Additional Solicitor General of India that a copy of the said Office Memorandum has been communicated to the Chairman, UGC; Chairman, AICTE; Chairperson, NCTE; and the Bureau Heads of the Department of Higher Education.



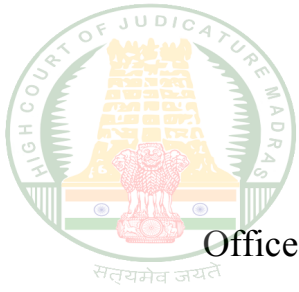
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18. The learned Additional Solicitor General of India submits that reservation has been provided by the respondents to the extent of 15% for Scheduled Castes (SC), 7.5% for Scheduled Tribes (ST), and 22% for Other Backward Classes (OBC), as per Appendix V, Para 6.2 of the Information Bulletin.

19. It is submitted by the learned Additional Solicitor General of India that such reservation is in accordance with the provisions statutorily mandated under the Central Educational Institutions (Reservation in Admission) Act, 2006. It is further submitted that any reservation beyond the same, including under Article 15(6) of the Constitution, can be provided by an educational institution only if the State decides to introduce such reservation for Economically Weaker Sections (EWS).

20. It is further submitted by the learned Additional Solicitor General of India that the Government has decided to provide EWS reservation only in higher educational institutions and not in school-level educational institutions. A reading of the Office Memorandum dated 17.01.2019 issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, New Delhi, and the



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Office Memorandum of the same date issued by the Ministry of Human Resource Development, Department of Higher Education, clearly reflects this decision.

21. It is submitted by the learned Additional Solicitor General of India that no policy decision has been taken by the Government of India, as of now, to extend EWS reservation to school education. Therefore, the 3rd Respondent herein cannot be compelled to provide EWS reservation in its school admissions.

22. The learned Additional Solicitor General of India refers to the decision of the Hon'ble Supreme Court in ***Society for Unaided Private Schools of Rajasthan v. Union of India and another***, reported in (2012) 6 SCC 1, and prays for the dismissal of this Writ Petition.

23. In reply, the learned counsel for the Petitioner submits that in the decision of the Hon'ble Supreme Court in ***Society for Unaided Private Schools of Rajasthan*** (cited *supra*), it was clarified that the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) does not apply to boarding schools. The Hon'ble Supreme Court, in the said



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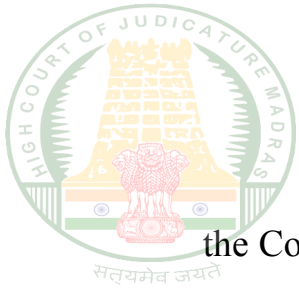
decision, held that boarding schools and orphanages are not covered under the provisions of the RTE Act, which mandates free and compulsory education for children aged 6 to 14 years. It is submitted that the reservation for Economically Weaker Sections (EWS) under Article 15(6) of the Constitution of India does not pertain to free or compulsory education, and hence, the said judgment is not applicable to the facts of the present case.

DISCUSSION:-

24. I have considered the arguments advanced by the learned counsel for the Petitioner, the learned Additional Solicitor General of India for the 1st and 3rd Respondents and the learned counsel for the 2nd Respondent.

25. Article 15(6) and Article 16(6) were inserted to the Constitution of India *vide* Sections 2 and 3 of the Constitution (One Hundred and Third Amendment) Act, 2019.

26. The relief prayed in this Writ Petition is concerned with Article 15(6) of the Constitution of India, which was inserted *vide* Section 2 of



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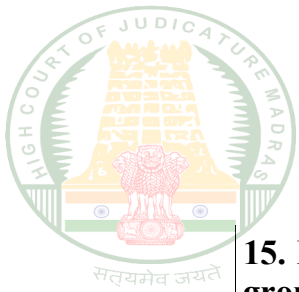
the Constitution (One Hundred and Third Amendment) Act, 2019. For the

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sake of clarity, both Article 15(6) and Article 16(6) of the Constitution of

India are reproduced below:-

Article 15(6) of the Constitution of India	Article 16(6) of the Constitution of India
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15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1)
(2)
.....

(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 clauses (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) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than 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)
(2)
.....

(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.



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WEB COPY 27. For the sake of clarity, Article 15(4) and Article 15(6) are also reproduced below:-

Article 15(4) of the Constitution of India	Article 15(5) of the Constitution of India
15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) (2) (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 Scheduled Castes and the Scheduled Tribes.	15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) (2) (5) Nothing in this article or in sub-clause (g) of 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 Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

28. Both these clauses to Article 15 of the Constitution of India however give powers to the “State” as defined in Article 12 of the Constitution of India to make special provisions or by law, for the advancement of any socially and educationally backward classes of



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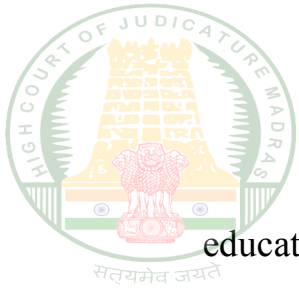
citizens or for the Scheduled Castes or the Scheduled Tribes.

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29. Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It enjoins the State to not to discriminate against its citizens on grounds of religion, race, caste, sex, place of birth, or any of them. Article 16 of the Constitution of India, on the other hand, enjoins the State to give equality of opportunity to all its citizens in matters relating to the employment or appointment to any office under the State.

30. Article 15 of the Constitution of India was inserted to give power to make special provision for admission to educational institutions including private institutions, whether aided or unaided by the State, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes, exception being minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India.

31. Article 15(4) of the Constitution of India gives the power to the State to make any special provision for advancement of any socially and



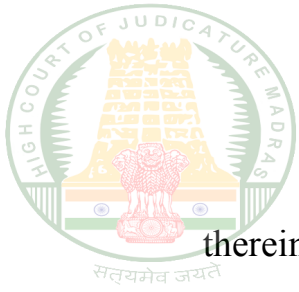
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educationally backward classes of citizens or for the Scheduled Caste and Scheduled Tribes. Article 15(4) of the Constitution of India was inserted by the 1st amendment to the Constitution in the year 1951 in the light of the decision of the Hon'ble Supreme Court in ***State of Madras Vs. Champakam Dorairajan***, reported in AIR 1951 SC 226 which was rendered on 09.04.1951.

32. There the Communal Government Order No. 2208 dated 16.06.1950 of the State of Madras which reiterated a pre-constitutional Communal Order and proceeded on the basis of religion, caste, community and race provided reservation for the purpose of admission to Government Medical and Engineering Colleges in the State of Madras was challenged before this Court.

33. The issue that arose for consideration before this Court in the said challenge to the aforesaid Communal Government Order No. 2208 dated 16.06.1950 is that whether the Communal Government Order No. 2208 dated 16.06.1950 when applied to the case of the two Petitioners



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therein in any way inconsistent with either or both the said provisions of the Constitution and whether the fundamental right of the Petitioners therein either under Article 15 or under Article 29 been ignored by the Government in seeking to enforce the said Communal Government Order.

34. The Full Bench of this Court *vide* Judgement dated 27.07.1950 in Civil Miscellaneous Petition Nos.5255 and 5340 of 1950 in ***Champakam Dorairajan and Ors Vs. The State of Madras*** struck down the Communal Government Order No.2208 dated 16.06.1950 stating that the aforesaid Communal Government Order is violative of Article 16(1) of the Constitution of India. The Court held that the Article 16(1) of the Constitution is unambiguous and declares that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

35. The Full Bench of this Court while answering the question of whether the State is at liberty to do anything to achieve the object of Constitution to provide for the upliftment of the backward and weaker section of the people, this Court held that the State is entitled to do so as



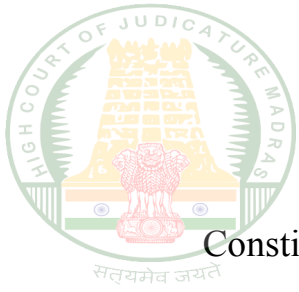
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long the Fundamental Rights enshrined in the Constitution is not infringed or impaired and no provision of the Constitution is contravened.

36. The decision of the Full Bench of this Court in the aforesaid case was affirmed by the Constitutional Bench of the Hon'ble Supreme Court in the ***State of Madras vs. Champakam Dorairajan*** (cited *supra*). The Hon'ble Supreme Court held that the said Communal Government Order violated Article 29(2) of the Constitution of India.

37. The Constitutional Bench of the Hon'ble Supreme Court, while dismissing the appeals of the State of Madras in ***State of Madras vs. Champakam Dorairajan*** (cited *supra*) held that the Directive Principles of State Policy which are unenforceable by Courts cannot override the Fundamental Rights of citizens which are enforceable. It held Fundamental Rights are sacrosanct and not liable to be abridged by any legislative or executive act or order and the Directive Principles have to conform to and run as subsidiary to Fundamental Rights.

38. This decision led to the 1st Amendment to the Constitution on 10.05.1951 which laid down that in accordance to Article 46 of the



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Constitution of India, as a Directive Principle of State policy, the State should promote with special care the educational and economic interests of the weaker sections of the people and protect them from social justice. It further laid down that any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory. It is proposed that Article 15(3) to be suitably amended. Thus, Article 15(4) to the Constitution of India was inserted.

39. Article 15(5) of the Constitution of India, on the other hand, prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15(5) of the Constitution of India was inserted vide the Constitution (Ninety-Third) Amendment, 2005 with effect from 20.01.2006 long after the Hon'ble Supreme Court rendered its decision in ***Indra Swahney etc Vs. Union of India & Ors.***, reported in AIR 1993 SC 477, wherein the correctness of challenge to implementation of the Mandal Commission was decided.

40. Article 15(6) of the Constitution of India is an exception to Articles 15(1) to 15(5), Sub-Clause (g) to clause (1) to Article 19 and



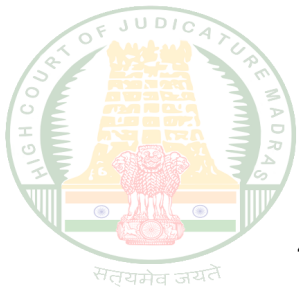
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Article 29(2) of the Constitution of India.

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41. A reading of Article 15(6) of the Constitution of Indian makes it clear that nothing in Article 15(1) to (5) or Article 19(1)(g) or Article 29(2) of the Constitution of India shall prevent the State from making any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in Article 15(4) and Article 15(5) and any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in Article 15(4) and Article 15(5) in so far as such special provisions relating to their admission in educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Article 30(1). The 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.

42. Till the enactment of Central Education Institutions (Reservation in admission), Act, 2006, the reservation in “Central Educational Institutions” was through various Central Government Orders and Memorandums.



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43. The Central Educational Institutions (Reservation in Admission) Act, 2006 came into force on 03.01.2007. It contemplates reservation of seats in “**Central Educational Institutions**”. The expression '**Central Educational Institution**' has been defined in Section 2(d) of the Act, which reads as under:

2. Definitions. _

(a)

.....

(d) “**Central Educational Institution**” means—

- (i) a university established or incorporated by or under a Central Act;
- (ii) an institution of national importance set up by an Act of Parliament;
- (iii) an institution, declared as a deemed University under section 3 of the University Grants Commission Act, 1956 (3 of 1956), and maintained by or receiving aid from the Central Government;
- (iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in clause (i) or clause (ii), or a constituent unit of an institution referred to in clause (iii);
- (v) an educational institution set up by the Central Government under the Societies Registration Act, 1860(21 of 1860).

44. It provides for reservation in admission of students belonging to the Scheduled Castes, the Scheduled Tribes, and the Other Backward Classes of citizens in certain Central Educational Institutions established,



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maintained, or aided by the Central Government, and for matters

connected therewith or incidental thereto.

45. Section 3 of the Act prescribes reservation under the said Act. It

reads as under:

3. Reservation of seats in Central Educational Institutions.—The reservation of seats in admission and its extent in a Central Educational Institution shall be provided in the following manner, namely:—

- (i) out of the annual permitted strength in each branch of study or faculty, **fifteen per cent.** seats shall be reserved for the **Scheduled Castes**;
- (ii) out of the annual permitted strength in each branch of study or faculty, **seven and one-half per cent.** seats shall be reserved for the **Scheduled Tribes**;
- (iii) out of the annual permitted strength in each branch of study or faculty, **twenty-seven per cent.** seats shall be reserved for the **Other Backward Classes**:

Provided that the State seats, if any, in a Central Educational Institution situated in the tribal areas referred to in the Sixth Schedule to the Constitution shall be governed by such reservation policy for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, as may be specified, by notification in the Official Gazette, by the Government of the State where such institution is situated:

Provided further that if there are no State seats in a Central Educational Institution and the seats reserved for the Scheduled Castes exceed the percentage specified under clause (i) or the seats reserved for the Scheduled Tribes exceed the percentage specified under clause (ii) or



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the seats reserved for the Scheduled Castes and the Scheduled Tribes taken together exceed the sum of percentages specified under clauses (i) and (ii), but such seats are—

(a) less than fifty per cent. of the annual permitted strength on the date immediately preceding the date of commencement of this Act, the total percentage of the seats required to be reserved for the Other Backward Classes under clause (iii) shall be restricted to the extent such sum of percentages specified under clauses (i) and (ii) falls short of fifty percent of the annual permitted strength;

(b) more than fifty per cent. of the annual permitted strength on the date of immediately preceding the date of commencement of this Act, in that case no seats shall be reserved for the Other Backward Classes under clause (iii) but the extent of the reservation of seats for the Scheduled Castes and the Scheduled Tribes shall not be reduced in respect of Central Educational Institutions in the specified north-eastern region.

46. An exception has been provided in Section 4 of the aforesaid Act, as per which the provisions of the said Act do not apply to (i) institutions of excellence, (ii) research institutions, (iii) institutions of national and strategic importance specified in the Schedule to the Act, (iv) a Minority Educational Institution as defined in the Act, and any course or programme at high levels of specialisation, including at the post-doctoral level, within any branch of study or faculty, which the Central



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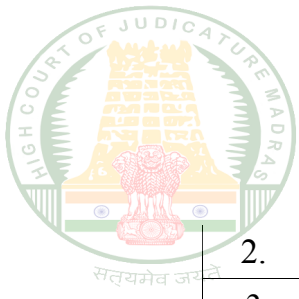
Government may, in consultation with the appropriate authority, specify.

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47. Earlier, the provisions of the said Act did not apply to a Central Educational Institution established in the tribal areas referred to in the Sixth Schedule to the Constitution as per Section 4(a) of the Act. However, the said Section 4(a) was omitted by Section 4 of the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012 (Act No.31 of 2012), with effect from 19.06.2012.

48. In Schedule to the said Act, the following institutions have been named as the **Institutions of Excellence**, which are outside the purview of Section 3 of the said Act:

THE SCHEDULE [See section 4(b)]	
S. No.	Names of the Institutions of Excellence, etc.
1.	Homi Bhabha National Institute, Mumbai and its constituent units, namely:— (i) Bhabha Atomic Research Centre, Trombay; (ii) Indira Gandhi Centre for Atomic Research, Kalpakkam; (iii) Raja Ramanna Centre for Advanced Technology, Indore; (iv) Institute for Plasma Research, Gandhinagar; (v) Variable Energy Cyclotron Centre, Kolkata; (vi) Saha Institute of Nuclear Physics, Kolkata; (vii) Institute of Physics, Bhubaneswar; (viii) Institute of Mathematical Sciences, Chennai; (ix) Harish-Chandra Research Institute, Allahabad; (x) Tata Memorial Centre, Mumbai.



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2.	Tata Institute of Fundamental Research, Mumbai.
3.	North-Eastern Indira Gandhi Regional Institute of Health and Medical Science, Shillong.
4.	National Brain Research Centre, Manesar, Gurgaon.
5.	Jawaharlal Nehru Centre for Advanced Scientific Research, Bangalore.
6.	Physical Research Laboratory, Ahmedabad.
7.	Space Physics Laboratory, Thiruvananthapuram.
8.	Indian Institute of Remote Sensing, Dehradun.

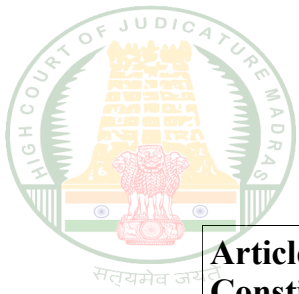
49. As per proviso to Section 4(b) of the aforesaid Act, the Central Government can, as and when considered necessary, amend the Schedule by notification in the Official Gazette.

50. As far as the State of Tamil Nadu is concerned, till the enactment of the Tamil Nadu Act for Reservation of Seats in Educational Institutions and Appointments or Posts in State Services for Backward Classes, Scheduled Castes and Scheduled Tribes, 1944, reservation was also through Government Orders and Memorandums. Some of these predated the Constitution under Government of India Act, 1935. As far as employment is concerned, reservation was provided under Part I to Tamil Nadu State and Subordinate Service Rules framed under Article 309 of the Constitution of India.



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WEB COPY 51. These are and were in consonance with Article 73 of the Constitution of India for the Central Government and Article 154 for the State Government. For the sake of clarity, Article 73 in Part V Chapter I and Article 154 in Part VI Chapter II of the Constitution of India are reproduced below:-



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Article 73 in Part V Chapter I of the Constitution of India	Article 154 in Part VI Chapter II of the Constitution of India
73. Extent of executive power of the Union.— (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend— (a) to the matters with respect to which Parliament has power to make laws; and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. (2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.	154. Executive power of State.— (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. (2) Nothing in this article shall— (a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or (b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

52. The Supreme Court has also given its decision in the context of recommendation of the Mandal Commission Report in **Indra Swahney etc** (cited *supra*) and the reservation was capped at 50% of total vacancy,



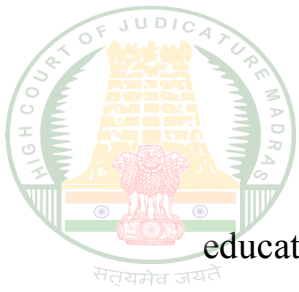
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in the state of Tamil Nadu the reservation is capped at 69% in terms of the aforesaid enactment viz., Tamil Nadu Act for Reservation of Seats in Educational Institutions and Appointments or Posts in State Services for Backward Classes, Scheduled Castes and Scheduled Tribes, 1944.

53. Prior to the insertion of Article 15(6) of the Constitution of India *vide* Section 2 of the Constitution (One Hundred and Third Amendment) Act, 2019, Government of India Ministry of Human Resources Development [Department of School Education & Literacy] has issued a circular bearing F.No.1-3/2010-EE4, dated 13.07.2012.

54. The said Circular was issued in the light of Section 35(1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 itself was enacted in the light of insertion of Article 21A of the Constitution of India *vide* Constitution (Eighty-Sixth Amendment) Act, 2002 with effect from 01.04.2010.

55. As per the amendments with the insertion of Article 21A of the Constitution of India, the State has to provide free and compulsory



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education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Even prior to the aforesaid amendment came into force with effect from 01.04.2010, the Right to Education (RTE) Act, 2009 was enacted.

56. Text of the aforesaid Circular bearing F.No.1-3/2010-EE4, dated 13.07.2012 issued by Government of India Ministry of Human Resources Development [Department of School Education & Literacy] is reproduced below:

F.No. 1-3/2010- EE4

Government of India

Ministry of Human Resource Development
[Department of School Education & Literacy]

Room No. 429-A, "C" Wing, Shastri Bhavan,
New Delhi, dated, 13th July, 2012.

Subject: Guidelines under Section 35(1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 in respect of Residential Schools-reg.

The Hon'ble Supreme Court in para 13 of its judgement dated the 12th April, 2012 in WP (C) 95/2010 in the case of Society for **Unaided Private Schools of Rajasthan Vs. Union of India and Anr.***, and similar writ petitions tagged along with directed that appropriate Guidelines under section 35 of the



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Right of Children to Free and Compulsory Education Act, 2009
be issued clarifying its applicability to boarding or residential
schools.

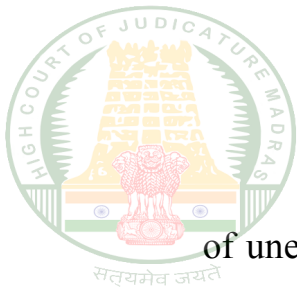
2. The aforementioned issue has arisen in the context of applicability of the provisions of clause (c) of sub-section (1) of section 12 of the Right of Children to Free and Compulsory Education Act, 2009 on private unaided schools. In the said section it has been, inter alia, provided that children belonging to weaker section and disadvantaged group residing in the specified neighbourhood of the school have a right to be admitted therein to the extent indicated in the said clause and provided free and compulsory education till completion of elementary education. In respect of residential schools, **however, the applicability of clause (c) of sub-section (1) of section 12 would be limited to day scholars, since only in respect of day scholars can the neighbourhood criterion apply.**

3. The provisions of clause (c) of sub-section (1) of section 12 of the Right of Children to Free and Compulsory Education Act, 2009 shall not apply to the residential schools which start admitting children at classes higher than class I.

4. The aforementioned Guideline may be brought to the knowledge of all concerned for necessary compliance.

[* reported in (2012) 6 SCC 1

57. Article 41 of the Constitution of India contemplates the right to work, to education, and to public assistance in certain cases. It provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing these rights in cases



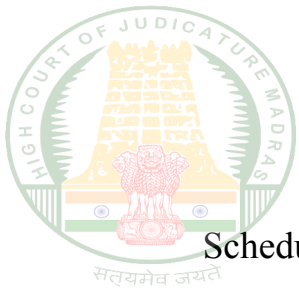
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of unemployment, old age, sickness, and disablement, as well as in other cases of undeserved want.

58. Article 45 of the Constitution of India was also substituted by Constitution (Eighty-Sixth Amendment) Act, 2002. Article 45 of the Constitution of India before the amendment and after the amendment is reproduced below:

Article 45 of the Constitution of India before the amendment	Article 45 of the Constitution of India after the amendment
45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.	45. Provision for early childhood care and education to children below the age of six years: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

59. Article 46 of the Constitution of India also provides for promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. As per Article 46 of the Constitution of India, the State is required to promote the educational and economic interests of the weaker sections of society, particularly



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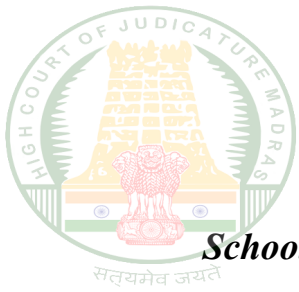
Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and exploitation.

60. Thus, there are numerous provisions in the Constitution which mandate that education must be provided to children belonging to the Scheduled Castes, Scheduled Tribes, and Backward Communities not only under the Directive Principles of State Policy in Part IV of the Constitution, but also under Part III, which deals with the Fundamental Rights of the citizens.

61. Articles 15(6) and 16(6), referred to above, were perhaps inserted in the Constitution because the Directive Principles of State Policy are not enforceable, unlike the Fundamental Rights of the citizens.

62. The provisions of Section 35(1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 was the subject matter of challenge in *Society for Unaided Private Schools of Rajasthan* (cited *supra*).

63. The Hon'ble Supreme Court in *Society for Unaided Private*



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Schools of Rajasthan (cited *supra*) was concerned with the challenge to the amendment to the Constitution of India by insertion of Article 15(6), wherein it observed that Article 21A of the Constitution provides that the State shall compulsorily education to all children of the specified age in such manner as the State may, by law, determine. Thus, the primary obligation to provide free and compulsory education to all children of the specified age is on the State.

64. The Hon'ble Supreme Court in ***Society for Unaided Private Schools of Rajasthan vs. Union of India and Another*** (cited *supra*), pursuant to which the above Circular bearing F.No.1-3/2010-EE4, dated 13.07.2012 was issued and also referred to by the learned Additional Solicitor General of Indian appearing for the first and third respondents, deals with 'Majority' in paragraphs 64, 65 and 65-A, which read as under:

Conclusion (according to Majority)

64. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local



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authority;

(iii) a school belonging to specified category; and

(iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

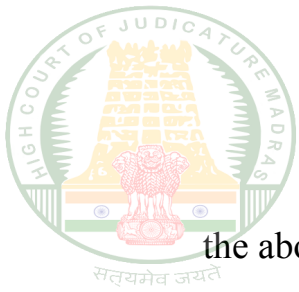
65. However, the said 2009 Act, and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the *R.M.D. Chamarbaugwalla v. Union of India* [AIR 1957 SC 628 : 1957 SCR 930] principle of severability, the said 2009 Act shall not apply to such schools.

65-A. This judgment will operate from today. In other words, this will apply from academic year 2012-2013. However, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened.

65. In paragraph 54, the Hon'ble Supreme Court has held as under (according to Majority):

54. However, we want the Government to clarify the position on one aspect. There are boarding schools and orphanages in several parts of India. In those institutions, there are day scholars and boarders. The 2009 Act could only apply to day scholars. It cannot be extended to boarders. To put the matter beyond doubt, we recommend that appropriate guidelines be issued under Section 35 of the 2009 Act clarifying the above position.

66. However, the minority view of the Hon'ble Supreme Court in



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the above case has ultimately concluded as follows:

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311. (1) Article 21-A casts an obligation on the State to provide free and compulsory education to children of the age of 6 to 14 years and not on unaided non-minority and minority educational institutions.

(2) Rights of children to free and compulsory education guaranteed under Article 21-A and the RTE Act can be enforced against the schools defined under Section 2(n) of the Act, except unaided minority and non-minority schools not receiving any kind of aid or grants to meet their expenses from the appropriate Government or local authorities.

(3) Section 12(1)(c) is read down so far as unaided non-minority and minority educational institutions are concerned, holding that it can be given effect to only on the principles of voluntariness, autonomy and consensus and not on compulsion or threat of non-recognition or non-affiliation.

(4) No distinction or difference can be drawn between unaided minority and non-minority schools with regard to appropriation of quota by the State or its reservation policy under Section 12(1)(c) of the Act. Such an appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution.

(5) The appropriate Government and local authority have to establish neighbourhood schools as provided in Section 6 read with Sections 8 and 9, within the time-limit prescribed in the statute.

(6) The duty imposed on parents or guardians under Section 10 is directory in nature and it is open to them to



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admit their children in the schools of their choice, not invariably in the neighbourhood schools, subject to availability of seats and meeting their own expenses.

(7) Sections 4, 10, 14, 15 and 16 are held to be directory in their content and application. The authorities concerned shall exercise such powers in consonance with the directions/guidelines laid down by the Central Government in that behalf.

(8) The provisions of Section 21 of the Act, as provided, would not be applicable to the schools covered under sub-clause (iv) of clause (n) of Section 2. They shall also not be applicable to the minority institutions, whether aided or unaided.

(9) In exercise of the powers conferred upon the appropriate Government under Section 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under sub-section (2) of Section 38 of the RTE Act [Ed.: In exercise of powers conferred by S. 38 of the RTE Act, 2009, the Central Government has framed the Right of Children to Free and Compulsory Education Rules, 2010 vide Ministry of Human Resource Development (Deptt. of School Education and Literacy), Notification No. G.S.R. 301 (E), dt. 8-4-2010, published in the Gazette of India, Extra., Part II, S. 3(i), dt. 9-4-2010, pp. 22-44, No. 180; see also 2010 CCL III 384 [201].]

(10) The directions, guidelines and rules shall be framed by the Central Government, appropriate Government and/or such other competent authority under the provisions of the RTE Act, as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.

(11) All the State Governments which have not constituted the State Advisory Council in terms of Section



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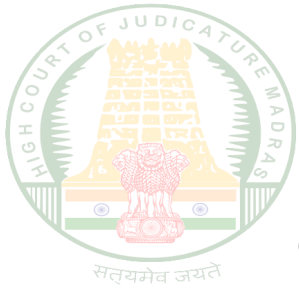
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34 of the RTE Act shall so constitute the Council within three months from today. The Council so constituted shall undertake its requisite functions in accordance with the provisions of Section 34 of the Act and advise the Government in terms of clauses (6), (7) and (8) of this order immediately thereafter.

(12) The Central Government and the State Governments may set up a proper regulatory authority for supervision and effective functioning of the Act and its implementation.

(13) Madrasas, Vedic pathshalas, etc. which predominantly provide religious instructions and do not provide for secular education stand outside the purview of the Act.

67. In the minority decision of the Hon'ble Supreme Court in ***Society for unaided Private Schools of Rajasthan*** (cited *supra*) delivered by then Hon'ble Justice Radhakrishnan, it was held that the right guaranteed under Article 21-A is a socio-economic right and the Right to Children to Free and Compulsory Education (RTE) Act, 2009 was enacted to fulfil that right. The preamble and Parts III and IV of the Constitution of India are often called and described as the 'conscience of the Constitution' and they reflect our civil, political and socio-economic rights which we have to protect for a just and humane society.



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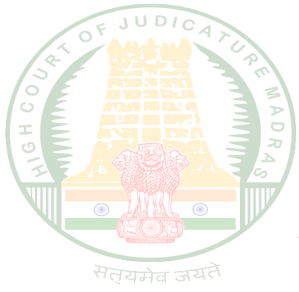
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68. It is further stated that the manner in which this obligation is to be discharged by the State has been left to the State to determine by law.

The State may do so through its own schools, aided schools, or private schools, so long as the law does not transgress any other constitutional limitation. This is because Article 21A of the Constitution vests the power in the State to decide the manner in which it will provide free and compulsory education to children.

69. After the amendment to the Constitution of India by insertion of Article 15(6) vide Section 2 of the Constitution (One Hundred and Third Amendment Act, 2019, the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, issued Office Memorandum **dated 17th January 2019** bearing reference **F.No. 20013/01/2018-BC-II**.

70. In the wake of the above amendment to the Constitution, the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, has issued the Office Memorandum **dated 17th January 2019**, bearing reference **F.No.20013/01/2018-BC-II**, and decided to implement the mandate of the said amendment.



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71. The Government through Office Memorandum **dated 17th January 2019**, bearing reference **F.No.20013/01/2018-BC-II** issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, decided to provide 10% reservation to EWSs in

- i. civil posts and services in Government of India and
- ii. admission in Educational Institutions.

72. The Office Memorandum also prescribes the criteria for determining eligibility for reservation under the Economically Weaker Sections (EWS) category. As per the said criteria, every educational institution, with the prior approval of the appropriate authority, must 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 persons belonging to the EWS category, is not less than the total number of seats available in the academic session immediately preceding the date of the coming into force of the Office Memorandum **dated 17th January 2019**, bearing reference **F.No. 20013/01/2018-BC-II**, issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment.



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WEB COPY 73. The text of the Office Memorandum **dated 17th January 2019**, bearing reference **F.No.20013/01/2018-BC-II**, issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, is reproduced below:

F. No.20013/01/2018-BC-II

Government of India

Ministry of Social Justice and Empowerment

Department of Social Justice and Empowerment

17th January, 2019

Shastri Bhawan, New Delhi

OFFICE MEMORANDUM

Subject: Reservation for Economically Weaker Sections (EWSs) in civil posts and services in the Government of India and admission in Educational Institutions.

In pursuance of insertion of clauses 15(6) and 16(6) in the Constitution vide the Constitution (One Hundred and Third Amendment) Act, 2019 and in order to enable the Economically Weaker Sections (EWSs) who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes, to receive the benefits of reservation on a preferential basis in civil posts and services in the Government of India and **admission in**



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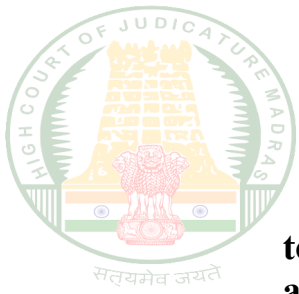
Educational Institutions, it has been decided by the Government to provide 10% reservation to EWSs in civil posts and services in Government of India and admission in **Educational Institutions**.

2. Persons who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes and whose family has gross annual income below Rs. 8.00 lakh are to be identified as EWSs for the benefit of reservation. Family for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years. The income shall include income from all sources i.e. salary, agriculture, business, profession etc. and it will be income for the financial year prior to the year of application. Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWSs, irrespective of the family income:

- i. 5 acres of Agricultural Land and above;
- ii. Residential flat of 1000 sq. ft, and above;
- iii. Residential plot of 100 sq. yards and above in notified municipalities;
- iv. Residential plot of 200 sq. yards and above in areas other than the notified municipalities.

3. The income and assets of the families as mentioned in para 2 would be required to be certified by an officer not below the rank of Tehsildar in the States/UTs. The officer who issues the certificate would do the same after carefully verifying all relevant documents following due process as prescribed by the respective State/UT.

4. Every Educational Institution shall, with the prior approval of the **appropriate authority**, 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**



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to the EWSs, are not less than the total seats available in the academic session immediately preceding the date of the coming into force of this O.M.

5. Instructions regarding reservation in employment and admission to educational institutions will be issued by DoPT and Ministry of HRD respectively.

74. The above Office Memorandum **dated 17th January 2019**, bearing reference **F.No.20013/01/2018-BC-II**, issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, was intended to provide special reservation to persons belonging to the Economically Weaker Sections (EWS) of society who are outside the categories of Scheduled Castes, Scheduled Tribes, and Socially and Educationally Backward Classes. No specific definition of the term "educational institution" has been provided in the aforesaid Office Memorandum.

75. A reading of the Office Memorandum **dated 17th January 2019**, bearing reference **F.No.20013/01/2018-BC-II**, issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, makes it clear that it has also prescribed the



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method for implementing the promise in the above amendment. The aforesaid exercise has not excluded the respondent Sainik School. The respondent Sainik School is not an institution, which is excluded under any Notification.

76. The above Office Memorandum is intended to implement the mandate introduced by the amendment to Article 15(6) and Article 16(6) of the Constitution, vide the Constitution (One Hundred and Third Amendment) Act, 2019, and cannot be ignored by the respondent Sainik School.

77. Already, the Sainik Schools are following the Rules of Reservation under the provisions of Constitution of India for students belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes - Non-Creamy Layer. This is evident from the Brochure of Sainik School, which is reproduced below:

- (a) 15% of the seats are reserved for the category Scheduled Caste (SC),
- (b) 7.5% for the category Scheduled Tribe (ST) and
- (c) 27% for the category Other Backward Classes belonging to the Non-Creamy Layer (OBC-NCL) as per the central



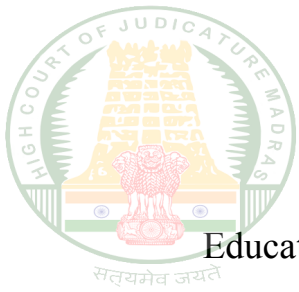
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78. The Respondent Sainik School which is run by the society registered under the Societies Registration Act is thus required to implement the mandate of the amendment to the Constitution of India by insertion of Article 15(6) vide Constitution (One -Hundred and Third) Amendment Act.

79. Text of the above Office Memorandum **dated 17th January 2019**, bearing reference **F.No.20013/01/2018-BC-II**, issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment has also been incorporated in the Office Memorandum **dated 17.01.2019** bearing reference **F.No.12-A/2019-U1** issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education for reservation for Economically Weaker Sections (EWSs) for admission in Central Educational Institutions. The said Office Memorandum **dated 17.01.2019** bearing reference **F.No.12-A/2019-U1** issued by the Government of India, Ministry of Human Resource Development, Department of Higher



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Education reads as under:

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F No: 12-4/2019-U1
Government of India
Ministry of Human Resource Development
Department of Higher Education

Shastri Bhawan, New Delhi

Dated: 17th January, 2019

OFFICE MEMORANDUM

Subject: Reservation for Economically Weaker Sections (EWSs) for admission in Central Educational Institutions.

In accordance with the provisions of the Constitution (One Hundred and Third Amendment) Act 2019, and the reference of Ministry of Social Justice and Empowerment vide OM No. 20013/01/2018-BC-II dated 17th January 2019, enabling provision of reservation for the Economically Weaker Sections (EWSs) who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes, it has been decided to provide reservation in admission to **educational institutions** subject to a maximum of ten per cent of the total seats in each category. This would not apply to the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India.

2. The provision of reservations to the Economically Weaker Sections shall be in accordance with the directions contained in the OM No.20013/01/2018-BC-II dated 17th January 2019 of the Ministry of Social Justice & Empowerment and shall be subject to the following:



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- a) The reservations shall be provided to EWSs for admission in **Central Educational Institutions**, (as defined in clause (d) of section (2) of The Central Educational Institutions (Reservation in Admission) Act, 2006) from the academic year 2019-20 onwards.
- b) The above reservation would not be applicable to the 8 institutions of excellence, research institutions, institutions of national & strategic importance as specified in the Schedule to The Central Educational Institutions (Reservation in Admission) Act, 2006, as amended from time to time, and appended to this OM, and to the minority educational institutions referred to in clause (1) of article 30 of the Constitution.
- c) Every **Central Educational Institution** shall, with the prior approval of the appropriate authority (as defined in clause (c) of section 2 of The Central Educational Institutions (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 the coming into force of this O.M.
- d) Where, on a representation by any Central Educational Institution, the appropriate authority is satisfied that for reasons of financial, physical or academic limitations or in order to maintain the standards of education, the annual permitted strength in any branch of study or faculty of such institution cannot be increased for the academic session following the commencement of this Act, it may permit such institution to increase the annual permitted strength over a maximum period of two years beginning with the academic session following the commencement of this Act; and then, the extent of reservation for the Economically Weaker Sections shall be limited for that



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academic session in such manner that the number of seats made available to the Economically Weaker Sections for each academic session shall not reduce the number and the percentage of reservations provided for SC/ST/OBC categories.

- e) The scheme for implementing the reservation for the EWS shall be displayed on the website of the institution as soon as possible, but no later than 31st March 2019.

3. The Chairman UGC, Chairman AICTE and Chairperson NCTE and the Bureau Heads of the Department of Higher Education in the Ministry of Human Resource Development responsible for management of the Institutions of National Importance are requested to ensure immediate compliance of this OM.

4. This issues with the approval of the Minister for Human Resource Development.

Encl: As above

80. The Appendix to the aforesaid Memorandum is a replica of the Schedule mentioned above in the Central Educational Institutions (Reservation in Admission) Act, 2006.

81. Thus, it is evident that the Constitution (One Hundred and Third Amendment) Act amending the Constitution by insertion of Article 15(6) and 15(6) to the Constitution of India has been implemented. No further

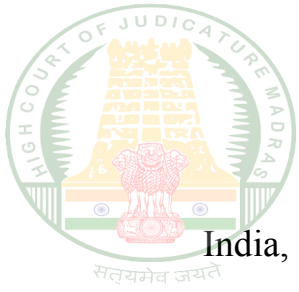


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notification or statutory device is required to implement the promise under the the Constitution (One Hundred and Third Amendment) Act. The State has to provide additional reservation of 10% to the Economically Weaker Section [EWS] of the Society.

82. The argument of the Respondent that on the same date, yet another Office Memorandum **dated 17.01.2019** bearing reference **F.No. 12-A/2019-U1** has been issued by Government of India, Ministry of Human Resource Development, Department of Higher Education, excluding certain other central educational institution as defined in The Central Educational Institutions (Reservation in Admission) Act, 2006) and therefore Sainik Schools need not provide Economic Weaker Sections (EWSs) reservation cannot be countenanced.

83. The Office Memorandum **dated 17.01.2019** bearing reference **F.No.12-A/2019-U1** issued by Government of India, Ministry of Human Resource Development, Department of Higher Education to keep few institutions outside the purview of EWS reservation, is of no consequence. This is because in the exercise of power under Article 73 of the Constitution of India, when read with Article 15(6) of the Constitution of



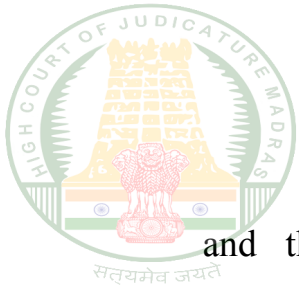
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India, the Central Government has decided to exclude Central Educational Institutions (CEIs) as defined in the said act outside the purview of Economically Weaker Section (EWS) reservation. By virtue of the Office Memorandum **dated 17.01.2019** bearing reference **F.No.12-A/2019-U1** issued by Government of India, Ministry of Human Resource Development, Department of Higher Education, only few Central Educational Institutions (CEIs) have been kept out side the purview of Economically Weaker Section (EWS) reservation.

84. The Hon'ble Supreme Court in *Nagaraj and others Vs. Union of India and others*, reported in 2006 (8) SCC 212, has held that a purposive rather than a strict approach should be adopted while interpreting the provisions of the Constitution. It further held that a Constitutional principle must not be constructed in a narrow and constricted sense but in a liberal sense.

85. Reference to Paragraph No.54 of the majority decision of the Hon'ble Supreme Court in *Society for unaided Private Schools of Rajasthan* (cited *supra*) that the provisions of Right to Children to Free and Compulsory Education (RTE) Act, 2009 will not apply to day scholar



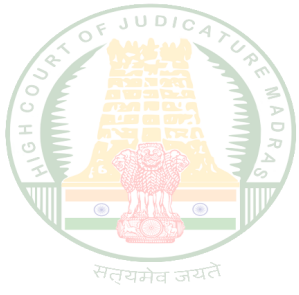
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and that appropriate guidelines to be issued for the purpose of implementing Section 35 of the Right to Children to Free and Compulsory Education (RTE) Act, 2009 is of no relevance.

86. There has been no consequential amendment to guideline issued vide aforesaid Office Memorandums dated 13.07.2012 and 17.01.2019 pursuant to the aforesaid decision in ***Society for unaided Private Schools of Rajasthan*** (cited *supra*) of the Hon'ble Supreme Court in the context of right to education.

87. Although, the Respondent Sainik School is a residential school, there is nothing in Article 15(6) of the Constitution of India which restricts its applicability to Right to Education in Sainik Schools pursuant to the insertion of Article 15(6) of the Constitution of India vide Constitution (One -Hundred and Third) Amendment Act.

88. It would have been different if an enactment was passed and a provision similar to Section 12(1)(c) of the Right to Children to Free and Compulsory Education (RTE) Act, 2009 was enforced. That being the case, the interpretation by the learned Additional Solicitor General of India cannot be countenanced.



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WEB COPY 89. Therefore, the petitioner's son is entitled to admission during the current academic year 2025–2026 in the respondent Sainik School, and the same cannot be denied merely because of the lapse of time for admission at the respondent Sainik School. The respondents are, therefore, directed to consider the application of the petitioner's son under the category of seats that were to be reserved for the Economically Weaker Sections (EWS) and to strictly implement the Office Memorandum dated 17th January 2019, bearing reference F.No. 20013/01/2018-BC-II, issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, in both letter and spirit, without any equivocation.

90. In the light of the above, this Writ Petition is allowed with the above observation. No costs. Consequently, the connected Miscellaneous Petition is closed.

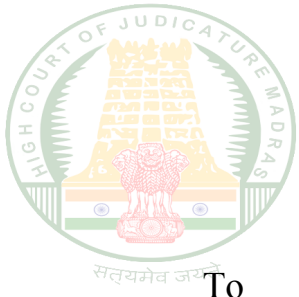
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Index : Yes

Internet : Yes

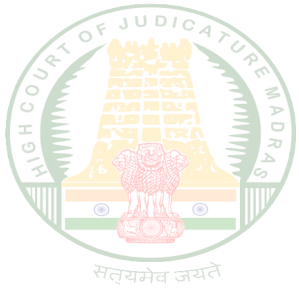
Neutral Citation : Yes



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To
WEB COPY

- 1.The Secretary,
Government of India,
Ministry of Personnel, Public Grievances and
Pensions Department of Personnel and Training,
North Block, New Delhi 110 001.
- 2.The Secretary,
Sainik School Society,
New Delhi - 11.
- 3.The Secretary,
Ministry of Higher Education,
Government of India,
302-C, Shastri Bhawan, New Delhi.
- 4.The Secretary Ministry of Human Resource Development,
Government of India,
Shastri Bhawan, New Delhi.



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C.SARAVANAN, J.

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W.P.(MD) No.26623 of 2024
and
W.M.P.(MD) No.22585 of 2024

14.07.2025