# IN THE HIGH COURT OF MADHYA PRADESH
# AT JABALPUR

**BEFORE**

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,**
**CHIEF JUSTICE**
**&**
**HON'BLE SHRI JUSTICE VIVEK JAIN**

**WRIT PETITION NO. 35264 OF 2024.**

**ATHARV CHATURVEDI**

**VS.**

**THE STATE OF MADHYA PRADESH AND OTHERS.**

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Shri Atharv Chaturvedi- petitioner in person.
Smt. Janhavi Pandit– Additional Advocate General for the respondents-State.
Ms. Ritika Chouhan- Advocate for the respondent No. 6.

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## ORDER

(Reserved on : 03/12/2024)
(Pronounced on : 17/12/2024)

***Per: Hon'ble Shri Justice Vivek Jain.***

The present petition has been filed by a NEET aspirant candidate challenging the notification dated 02.07.2024 issued by the State Government by exercising powers under Section 12 of Madhya Pradesh Niji Vyavsayik Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 and making amendment to Madhya Pradesh Medical Education Admission Rules 2018 for the purpose of granting admission in private Medical Colleges in the State of M.P. for the Session 2024-25.

**2.** The grievance of the petitioner by the aforesaid notification is that the State Government has not carved out any reservation for the

candidates of Economically Weaker Section (for short "EWS") for admission to MBBS Course in the private medical colleges in the State of M.P. and though such reservation has been carved out for the Government Medical Colleges in the State of M.P. Ancillary relief is also sought that in similar terms since reservation is granted to candidates of Other Backward Classes (OBC) category in private Medical Colleges for MBBS seats, the candidates of EWS category should also be granted reservation to private medical colleges in the State and it is contended that the meritorious EWS students are unable to secure admission in such private medical colleges though lesser meritorious OBC and NRI categories students are getting admissions in such private medical colleges in the State.

**3.** The petitioner who is a 19 years old young adult has argued his case at length by referring to the relevant provisions of law including Article 14 and 15 of the Constitution of India, the provisions engrafted by 103rd Constitutional Amendment Act 2019 so also various judgments of the Supreme Court in the matter of reservation.

**4.** The contention of the petitioner before this Court is that by 103rd amendment in the Constitution of India clause (6) in Article 15 and Clause (6) in Article 16 has been inserted in the Constitution of India as per which an enabling provision has been inserted for advancement of Economically Weaker Sections of citizens and creation of provisions relating to their admissions to Education Institutions including private institutions whether aided or unaided by the State, other than the minority institutions and it has been provided that in case of

reservation, it would be in addition to the existing reservation and subject to maximum of 10% of the total seats.

**5.** The petitioner has vehemently argued that in the NEET examination he appeared as a candidate of General-EWS category and he secured 530 marks out of 720 i.e. 92.9579475 percentile marks. His NEET all India rank was 163996 and his rank in his category of GEN-EWS was 21679 in the NEET Examination held in the year 2024.

**6.** The petitioner while referring to allocation of the seats in the private medical colleges in the State has argued that in the respondent No. 7 Medical College which is a Private Medical College situated at Jabalpur, the last student to be admitted under unreserved open category was having 558 marks and in the said medical college the candidate under unreserved- Government School category was admitted having marks upto 489 in NEET examination 2024. It is therefore, the contention of the petitioner that if EWS reservation had been provided in the said medical colleges, then the petitioner would certainly have got a seat under GEN-EWS category in the said medical College or any other private medical college in the State.

**7.** The petitioner has vehemently submitted that by not granting reservation to EWS category in private medical colleges in the State of Madhya Pradesh, the State Government while issuing the notification Annexure P/5 dated 02.07.2024, has violated the mandate of 103rd amendment of the Constitution of India and has acted contrary to Article 15(6) and 16(6) of the Constitution of India and therefore, the aforesaid notification should be held to be unconstitutional being contrary to provisions of Article 15(6) and 16(6) of the Constitution of

India as it is contrary to constitutional mandate. It was also argued by the petitioner in person that once the State Government has decided to extend the benefit of EWS reservation in the medical education in the State of Madhya Pradesh, then such reservation which if restricted only to Government Medical Colleges in the State of M.P. would be violative of the Article 14 read with Article 15(6) of the Constitution of India and this is a arbitrary and unconstitutional Act on the part of the State Government in denying EWS reservation to medical students in private medical colleges in the State even for the seats which are filled up on merit by NEET counselling.

**8.** The petitioner has further argued that not only in the original process but also in the mop-up process, the seats are to be filled up by the same category under which they fell vacant and since in the initial process there was no provision for EWS reservation in private medical colleges and therefore, EWS category candidates like the petitioner could not get admission in private medical colleges in the State even in the mop-up round because the mop-up round was restricted to the original category against which the concerned seat fell vacant.

**9.** It is further the case of the petitioner that once the State has given the benefit of reservation to OBC category in private medical Colleges then there is no reason why the said benefit should not be given to EWS category candidates who also belong to vertical reservation category like OBC, SC and ST and it was not open to the State Government to have restricted the benefit of EWS category reservation in private medical colleges in the State which seems just to benefit and

grant leverage to private medical colleges in the State at the cost of deserving candidates of EWS category.

**10**. The petitioner arguing in person relied on the judgment of Supreme Court in the case of **Janhit Abhiyan Vs. Union of India and others reported in 2023(5) SCC 1,** wherein the Supreme Court has considered and upheld the constitutionality of 103rd amendment to the Constitution.

**11.** The petitioner has also heavily relied on judgment of Supreme Court in the case of **S. Krishna Sradha Vs. State of Andhra Pradesh and others reported in AIR 2020 SC 47** wherein the Supreme Court has held that mere close of admission is not a ground to deny the legal rights to meritorious students who pursued their legal remedies without delay, and in such cases lapse of cut off date for admission will not be a ground to deny appropriate relief to such a candidate.

**12**. The petitioner further relied on the judgment of Orissa High Court in the case of **Neha Goel Vs. Siksha 'O' Anusandhan University, Bhubaneswar and others passed in W.P. (C) No. 12827 of 2013 on 25.10.2023** to submit that once admissions have been granted to less meritorious students by the authorities then exercising extra ordinary powers the Court can order grant of admission to the students who have been unlawfully left out. In similar lines, reliance is placed on the judgment of Orissa High Court in the case of **Dr. Nilamani Mohanty Vs. State of Orissa reported in AIR 2010 Orissa 28**.

**14.** Per contra, counsel for the respondent has opposed the present petition on the ground of estoppel and also that on merits too, the

petitioner has no case. It is contended that the petitioner participated in the counseling process with open eyes and the notification dated 02.07.2024 was issued prior to start of counselling process and at the relevant time, the petitioner did not agitate any issue about there not being any EWS reservation in private medical colleges and participated in counselling process without any demur. It was only when he was not selected, then he came up and challenged the counselling process by alleging that the reservation for EWS categories was not given in private medical colleges. On these averments, a plea of estoppel is raised by the State. It is further contended by the State that the entire admission process is now over and the last admission had been given in the first week of November 2024 and therefore, at this stage, this court cannot grant any admission to the petitioner because the admission process has closed and the petition itself has been filed after close of all the admissions in November 2024.

**15.** It is further contended by the counsel for the State that in the State of M.P. there was never any EWS reservation in the private medical colleges since the year 2019 after enactment of 103rd amendment of the Constitution of India. It is not something new which has been done in the State of Madhya Pradesh in the year 2024 and there are not being any EWS reservation in private medical colleges in the State was something which was well within the knowledge of the petitioner since very beginning, and even since the date he started preparing for NEET examination. Thus, at this stage no interference at his instance can be made when after appearing in NEET examination and the consequential counselling, he has been unable to get a seat in

MBBS course. Reopening the issue at this stage shall lead to utter chaos in Medical education in the State.

**16.** On merits of the matter, it is contended by the State counsel that the Ministry of Health and Family Welfare, Government of India had framed a Medical Education policy consequent to 103rd amendment to Constitution of India. The said policy dated 29.01.2019 has been placed on record as Annexure R/2. It is contended that as per the said policy it was decided by the Government of India that the number of seats in each category prior to implementation of EWS reservation shall remain the same and for granting EWS reservation, additional seats are required to be created in the concerned medical college. It is argued that since in none of the private medical colleges in the State, the seats have been increased, therefore, the EWS reservation is being provided only in Government Medical Colleges where the seats have been increased in terms of the aforesaid medical education policy of the Government of India.

**17.** Heard.

**18.** The petitioner has vehemently argued that the action of the State in not providing EWS reservation in private medical colleges in the State violates Article 15(6) and Article 16(6) of the Constitution of India. However, in the State of Madhya Pradesh there has not been any reservation in private medical colleges since 103rd amendment to Constitution of India was enacted by the Parliament and came into force. The petitioner must be having knowledge of non-availability of EWS reservation in private medical colleges of the State even on the date he started appearing for NEET examination but he did not choose

to challenge the said policy matter at that point of time. He appeared in the NEET examination in the year 2024 and when the counseling policy and mechanism for the year 2024 was notified by the State Government on 02.07.2024 by impugned notification Annexure P/5, then also the petitioner also did not wake up and suddenly woke up only when the entire counseling process was over in November 2024 and the petitioner failed to secure any seat for himself in MBBS Course. Thus the petitioner is clearly estopped from challenging the notification at this stage when the entire admission process has been over and admission is closed for the Session 2024-25 in the Medical Colleges of the State, and he participated in all the stages of counselling carried out in pursuance to the impugned notification dated 02.7.2024.

**19.** Even on merits, the Government of India after enforcement of 103rd amendment to Constitution of India had come out with medical education policy and as per the said policy it was provided that the Educational Institution concerned, with prior approval of the appropriate authority shall increase number of seats over and above its annual permitted strength in each branch of study and faculty so that the number of seats available is not less than the number of such seats available in each category for the academic session immediately preceding the date coming into force of the guidelines. The aforesaid policy provided as under:-

> *"b) Every Central Educational Institution shall, with the prior approval of the appropriate authority as defined in clause (c) of section 2 of the 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 dare of coming into force of these guidelines.*

*c) The applicability of this Amendment Art, 2019 for the increase of annual permitted strength need to be implemented from the academic year following the commencement of the Amendment Act but in case the annual permitted strength cannot be implemented for reasons of financial, physical or academic limitation or in order to maintain the standards of education, such increase can be implemented over a period of two years beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as stated above. At any stage of Implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced."*

**20**. The aforesaid instructions were circulated to all the States and Union Territories to take appropriate action for implementing the provisions of Constitutional amendment in the Medical/Dental/ Nursing/Pharmacy Institutions under their control. The Board of Governors in Supersession of Medical council of India, Dental Council of India, etc. were also instructed to take necessary measures to facilitate implementation of provisions of 103rd amendment to the Constitution.

**21.** Thereafter the Government of India, Ministry of Health and Family Welfare came out with another order dated 21.06.2019 whereby further instructions were issued to provide reservation for EWS category in Medical Colleges who had increased intake capacity appropriately to implement EWS quota. The aforesaid letter reads as under:-

*"I am directed to refer to the Provisions of the Constitution Amendment (One Hundred and Third Amendment) Act, 2019 dated 12.01.2019 for implementation of reservation for Economically Weaker Sections (EVVSs) in admission to educational Institutions for the academic year 2019-20 and BoG-MCI's letter No.MCI-*

*34(41)(EWSV2019-Med/122349 dated 04/06 June, 2019 seeking applications from the Medical Colleges/Anstitucions for increase of MBBS seats to Implement EWS quota and to say that BoG-ICI after considering the applications, vide letter No.MCI-34(41) (EWS)/2019- Med/125319-20 dated 20.06.2019 submitted a proposal to the Ministry containing the names of Medical Colleges with perinitted MBBS seats under EWS quacz for 2019-20.*

*2 After carefully considering the matter, Ministry of Health & Family Welfare has accepted the proposal of the BpG-MCI and hereby directs the Counselling Authorities (States/UTs/AIQ) for filling up the MBBS seats under EWS quota as per rules in forthcoming academic year 2019-20. A copy of the list showing details of Medical Colleges and permitted MBBS seats is enclosed herewith."*

**22.** During the course of hearing it was admitted by the petitioner himself that the number of seats in the government colleges in the State have been increased to provide reservation for EWS category but there has not been any increase in medical seats in private medical colleges in the State to provide EWS reservation in such private medical Colleges. The petitioner relied on Clause (c) of Medical Education Policy vide order dated 29.01.2019 issued by the Government of India and submitted that the outer limit of two years had been set by Government of India to increase medical seats and now such outer limit has long expired but no action has been taken by the private medical college for enhancement of the seats to provide EWS reservation.

**23.** Since, it is admitted that the number of seats in private medical colleges in the State has not been increased to provide EWS reservation in terms with the medical education policy of the Government of India dated 29.01.2019 & 31.06.2019, it cannot be said that the notification dated 02.07.2024 (Annexure P/5) violates Article 15(6) and Article 16(6) of the Constitution of India because the

precedent condition as laid down by the Ministry of Health and Family Welfare i.e. enhancement of intake of seats, has not been carried out in private medical colleges so far.

**24.** The Medical Colleges had started admitting students under EWS category without getting their intake increased. In such situation, the National Medical Commission (NMC for short), vide order dated 20.10.2023, directed the Medical Colleges to not exceed their sanctioned intake to grant EWS category admissions. It is, therefore, clear that there has to be a seat intake enhanced and sanctioned by the NMC and there cannot be any implied or unilateral increase of seats to grant admissions under EWS category.

**25.** The Supreme Court in the case of **Janhit Abhiyan Vs. Union of India (supra)** has upheld the applicability of EWS reservation in private medical institutions and has held as under:-

> ***184.3.*** *Reservation for economically weaker sections of citizens up to ten per cent in addition to the existing reservations does not result in violation of any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of fifty per cent because, that ceiling limit itself is not inflexible and in any case, applies only to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India.*
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> ***185.*** *Not much of the contentions have been urged in relation to the impact of the amendment in question on admissions to private unaided institutions. However, it could at once be clarified that what has been observed hereinabove in relation to the principal part of*

*challenge to the amendment in question, read with the decision of this Court in Pramati Trust [Pramati Educational & Cultural Trust v. Union of India, (2014) 8 SCC 1 : 6 SCEC 699] , the answer to the issue framed in that regard would also be against the challenge.*

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***275.*** *Thus, if Article 15(5) of the Constitution has been found to be consistent with the socialistic goals set out in the Preamble and the directive principles in Part IV and to ensure the march and progress of the weaker sections resulting in progress to Socialistic Democratic State establishing the egalitarian ethos/egalitarian equality which is the mandate of the Constitution and has also been approved in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , then clause (6) in Article 15 of the Constitution could also be said to be consistent with the socialistic goals set out in the Preamble and the directive principles in Part IV. Article 15(6), brought in by way of the Constitution (103rd Amendment) Act, 2019, which provides for identical reservation for the economically weaker sections of the citizens in private unaided educational institutions. The Constitution Bench in Pramati Educational & Cultural Trust [Pramati Educational & Cultural Trust v. Union of India, (2014) 8 SCC 1 : 6 SCEC 699] was not impressed with the challenge to Article 15(5) on the ground of breach of basic structure so far as it relates to the unaided private educational instittions.*

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***290.*** *Economic criteria can be a relevant factor for affirmative action under the Constitution. In N.M. Thomas [State of Kerala v. N.M. Thomas, (1976) 2 SCC 310 : 1976 SCC (L&S) 227] , the constitu-*

*tional validity of Rule 13-AA giving further exemption of two years to the members belonging to the Scheduled Tribes and Scheduled Castes in the service from passing the tests referred to in Rule 13 or Rule 13-A, was questioned. The High Court struck down the rule. Allowing the State appeal, this Court held that : (SCC pp. 344-45, 376 & 404-05, paras 67-69, 71, 158 & 230-31)*

> *"67. Today, the political theory which acknowledges the obligation of Government under Part IV of the Constitution to provide jobs, medical care, old age pension, etc. extends to human rights and imposes an affirmative obligation to promote equality and liberty. The force of the idea of a State with obligation to help the weaker sections of its members seems to have increasing influence in constitutional law. The idea finds expression in a number of cases in America involving social discrimination and also in the decisions requiring the State to offset the effects of poverty by providing counsel, transcript of appeal, expert witnesses, etc. Today, the sense that Government has affirmative responsibility for elimination of inequalities, social, economic or otherwise, is one of the dominant forces in constitutional law. While special concessions for the underprivileged have been easily permitted, they have not traditionally been required. Decisions in the areas of criminal procedure, voting rights and education in America suggest that the traditional approach may not be completely adequate. In these areas, the inquiry whether equality has been achieved no longer ends with numerical equality; rather the equality clause has been held to require resort to a standard of proportional equality which requires the State, in framing legislation, to take into account the private inequalities of wealth, of education and other circumstances. [ See "Developments in the Law of Equal Protection", 82 Harv LR 1065 (1969).]*
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> *68. The idea of compensatory State action to make people who are really unequal in their wealth, education or social environment, equal, in specified areas, was developed by the Supreme Court of the United States. Rousseau has said:*
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> *It is precisely because the force of circumstances tends to destroy equality that force of legislation must always tend to maintain it. [ Contract Social ii, 11.]*
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> *69. In Griffin v. People of the State of Illinois [Griffin v. People of the State of Illinois, 1956 SCC OnLine US SC 46 : 100 L Ed 891 : 351 US 12 (1956)] an indigent defendant was unable to take advantage of the one appeal of right granted by Illinois*

*law because he could not afford to buy the necessary transcript. Such transcripts were made available to all defendants on payment of a similar fee; but in practice only non-indigents were able to purchase the transcript and take the appeal. The Court said thatthere can be no equal justice where the kind of trial a man gets depends on the amount of money he has and held that the Illinois procedure violated the equal protection clause. The State did not have to make appellate review available at all; but if it did, it could not do so in a way which operated to deny access to review to defendants solely because of their indigency. A similar theory underlies the requirement that counsel be provided for indigents on appeal. In Douglas v. People of State of California [Douglas v. People of State of California, 1963 SCC OnLine US SC 41 : 9 L Ed 2d 811 : 372 US 353 (1963)] the case involved the California procedure which guaranteed one appeal of right for criminal defendants convicted at trial. In the case of indigents the appellate court checked over the record to see whether it would be of advantage to the defendant or helpful to the appellate court to have counsel appointed for the appeal. A negative answer meant that the indigent had to appeal pro se if at all. The Court held that this procedure denied defendant the equal protection of the laws. Even though the State was pursuing an otherwise legitimate objective of providing counsel only for non-frivolous claims, it had created a situation in which the well-to-do could always have a lawyer — even for frivolous appeals — whereas the indigent could not.*

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*71. Though in one sense Justice Harlan is correct, when one comes to think of the real effect of his view, one is inclined to think that the opinion failed to recognise that there are several ways of looking at equality, and treating people equally in one respect always results in unequal treatment in some other respects. For Mr Justice Harlan, the only type of equality that mattered was numerical equality in the terms upon which transcripts were offered to the defendants. The majority, on the other hand, took a view which would bring about equality in fact, requiring similar availability to all of criminal appeals in Griffin case [Griffin v. People of the State of Illinois, 1956 SCC OnLine US SC 46 : 100 L Ed 891 : 351 US 12 (1956)] and counsel-attended criminal appeals in Douglas case [Douglas v. People of State of California, 1963 SCC OnLine US SC*

*41 : 9 L Ed 2d 811 : 372 US 353 (1963)] . To achieve this result, the legislature had to resort to a proportional standard of equality. These cases are remarkable in that they show that the kind of equality which is considered important in the particular context and hence of the respect in which it is necessary to treat people equally. [ See "Developments in the Law of Equal Protection", 82 Harv LR 1065 (1969).]*

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*158. It is no doubt true that Article 16(1) provides for equality of opportunity for all citizens in the services under the State. It is, however, well settled that the doctrine contained in Article 16 is a hard and reeling reality, a concrete and constructive concept and not a rigid rule or an empty formula. It is also equally well-settled by several authorities of this Court that Article 16 is merely an incident of Article 14, Article 14 being the genus is of universal application whereas Article 16 is the species and seeks to obtain equality of opportunity in the services under the State. The theory of reasonable classification is implicit and inherent in the concept of equality for there can hardly be any country where all the citizens would be equal in all respects. Equality of opportunity would naturally mean a fair opportunity not only to one section or the other but to all sections by removing the handicaps if a particular section of the society suffers from the same. It has never been disputed in judicial pronouncements by this Court as also of the various High Courts that Article 14 permits reasonable classification. But what Article 14 or Article 16 forbid is hostile discrimination and not reasonable classification. In other words, the idea of classification is implicit in the concept of equality because equality means equality to all and not merely to the advanced and educated sections of the society. It follows, therefore, that in order to provide equality of opportunity to all citizens of our country, every class of citizens must have a sense of equal participation in building up an egalitarian society, where there is peace and plenty, where there is complete economic freedom and there is no pestilence or poverty, no discrimination and oppression, where there is equal opportunity to education, to work, to earn their livelihood so that the goal of social justice is achieved. ...*

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*230. Scheduled Castes and Scheduled Tribes are castes and tribes specified by the President under Articles 341 and 342 of*

*the Constitution to be known as such for the purposes of the Constitution. It is accepted that generally speaking these castes and tribes are backward in educational and economic fields. It is claimed that the expression "Scheduled Castes" does not refer to any caste of the Hindu society but connotes a backward class of citizens. A look at Article 341 however will show that the expression means a number of existing social castes listed in a schedule; castes do not cease to be castes being put in a schedule though backwardness has come to be associated with them. Article 46 requires the State to promote the economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes. The special reference to the Scheduled Castes and the Scheduled Tribes does not suggest that the State should promote the economic interests of these castes and tribes at the expense of other "weaker sections of the people". I do not find anything reasonable in denying to some lower division clerks the same opportunity for promotion as others have because they do not belong to a particular caste or tribe. Scheduled Castes and Scheduled Tribes no doubt constitute a well-defined class, but a classification valid for one purpose may not be so for another; in the context of Article 16(1) the sub-class made by Rule 13-AA within the same class of employees amounts to, in my opinion, discrimination only on grounds of race and caste which is forbidden by clause (2) of Article 16.*

*231. All I have said above relates to the scope of Article 16(1) only, because counsel for the appellant has built his case on this provision alone. Clause (4) of Article 16 permits reservation of appointments on posts in favour of backward classes of citizens notwithstanding Article 16(1); I agree with the views expressed by Khanna, J. on Article 16(4) which comes in for consideration incidentally in this case. The appalling poverty and backwardness of large sections of the people must move the State machinery to do everything in its power to better their condition but doling out unequal favours to members of the clerical staff does not seem to be a step in that direction : tilting at the windmill taking it to be a monster serves no useful purpose."*

**26.** The aforesaid legal position having been settled by the Supreme Court and is not in dispute at all. This court, however, cannot lose sight

of the fact that till date medical seats in private medical colleges have not been enhanced in terms with the Medical Education Policy of the Government of India which was framed to comply with the 103rd Constitutional amendment, and in absence of enhancement of the seats it is not possible for the State Government to provide EWS reservation in private colleges in the State of M.P. The petitioner at this stage argued that this Court should issue direction for enhancement of medical seats in private medial colleges. We are afraid that passing such a direction would be totally beyond the scope of our jurisdiction. Sanctioned intake in a medical college for medical seats depends on various factors that includes financial and physical infrastructural facilities in the medical colleges and its associated hospitals which have to be assessed by Medical Experts appointed by the National Medical Commission in accordance with the parameters and guidelines laid down by the said Commission. It is not in the domain of the Court to decide that which medical College should have how many seats and whether a particular medical college should have its seat enhanced, because it is in the domain of the concerned academic Council i.e. NMC. Thus, this court cannot give any direction either to the National Medical Commission or to the respondent No. 7 Medical College or to the State Government to enhance the seats in respondent No. 7 private medical college or in other private medical college in the State.

**26.** The petitioner has argued that candidates under NRI category having less merit than the petitioner have been allotted seats in private medical colleges. The aforesaid aspect though may deserve sympathy of the court but will not translate into any relief for the petitioner

because the petitioner does not belong to NRI category being not a NRI sponsored candidate.

**27.** So far as students belonging to UR-Government School Category getting seats in private medical Colleges having lower merits in concerned, those candidates belongs to special horizontal category which is for the students studying in government schools in the State for which a special horizontal reservation has been carved out by the State Government which was the subject matter of consideration of the Hon'ble Supreme Court in the case of **Ramnaresh @ Rinku Kushwaha Vs. State of Madhya Pradesh and others [SLP (C) No. 2111/2024] decided on 20.08.2024**. The petitioner obviously does not fall in the category of government school student and thus, cannot claim any parity with the students falling in the government school category for which 5% horizontal reservation has been carved out by the State Government.

**28.** In view of the above, this Court is unable to hold that the notification Annexure P/5 dated 02.07.2024 in any manner violates 103rd amendment to Constitution of India. Challenge to the aforesaid notification is rejected and the petition filed for the relief sought is dismissed.

**29.** However, in the interest of justice, we direct that the respondent No. 1 to 7 to complete the process of enhancement of seats in the private medical colleges in the State subject to their infrastructure, to provide for EWS reservation in such medical colleges in line with clause (c) of notification dated 29.01.2019 issued by the Government of India, Ministry of Health and Family Welfare. An outer limit of two

years was prescribed for the said purpose but despite lapse of more than 4 years the process has not been carried out in the private Medical Colleges in the State which is causing heart-burn to EWS category students in the State and the present case before this Court is one such classic example. Let the process for enhancement of the seats in the private medical colleges in the State be completed within next one year so that the spirit of Article 15(6) and Article 16(6) of the Constitution of India can be implemented even in private medical colleges in the State of Madhya Pradesh without any further delay.

**30.** Before parting with the matter we give a note of appreciation to the petitioner in person who despite being a young 19 year old NEET aspirant, argued his matter by referring to reservation policy, constitutional provisions and all the legal nuances applicable in the matter.

**31.** With the aforesaid observation, the petition is **dismissed**.

**(SURESH KUMAR KAIT)**
**CHIF JUSTICE**

**(VIVEK JAIN)**
**JUDGE**

*MISHRA*