# ARCHIVED COURT-TEXT MIRROR — NOT AN OFFICIAL OR CERTIFIED COURT PDF


## *Shreyasi Dhang vs The State Of West Bengal And Ors on 12 August, 2026*


Source: https://indiankanoon.org/doc/60350638/
Retrieved: 4 November 2026. Local typeset reproduction of the public Indian Kanoon court text. Pagination differs from the court original. Verify against the court record.


[Cites
9
, Cited by
0
]

Calcutta High Court (Appellete Side)

Shreyasi Dhang vs The State Of West Bengal And Ors on 12 August, 2026

Author:
Rajasekhar Mantha

Bench:
Rajasekhar Mantha

12.08.2026

Court No.13

Item No.63

AP/sp/pk

MAT 1320 of 2026

With

CAN 1 of 2026

Shreyasi Dhang

Vs.

The State of West Bengal and Ors.

Mr. Anindya Lahiri, Senior Advocate

Mr. Samrat Dey Paul

Mr. Subhomoy Paul

Mr. A. Chakraborty

... For the Appellant.

Mr. Piush Chaturvedi

Mr. Tarun Kumar Das

... For the State.

Mr. Amitava Chaudhuri

Mr. N. Roy

... For the WBJEEB.

1. Affidavit of service filed in Court today is taken on
record.

2. A peculiar situation has arisen in the instant case.

The writ petitioner/appellant obtained an OBC certificate dated 13th April, 2026 claiming to fall under the Goala, Gope (Pallav Gope, Ballav Gope, Yadav Gope, Gope Ahir and Yadav).

3. This Court finds that the certificate has been issued under notifications that were prima facie found to be void ab initio by this Court in an order dated 17th June, 2025 in WPA (P) 111 of 2025.

4. At this juncture, it is necessary to indicate the background of the OBC reservations in the State prevailing prior to 2010 and thereafter.

2

5. As on 2010, the list of categories of persons in the Other Backward Classes within the State as declared by a notifications under Article 16(4) of the Constitution of India stood at 66. Subsequently thereafter, when ruling dispensation in the State changed in the year 2011, several notifications were issued, both by the immediately preceding Government in 2010 and the new dispensation in the years 2011 and 2012. As many as 77 and 37 classes of persons were identified and declared as Other Backward Classes.

6. The West Bengal Backward Classes Reservation (Other than Scheduled Castes and Scheduled Tribes) (Reservation in Services and Posts) Act of 2012 was passed. Thereafter the aforesaid newly declared OBC classes of 77 and 37 were included in as OBC-A and OBC-B in the Schedules to the Act of 2012. The said Act also increased the quota of reservation from the pre-existing 7% to 17%. The said 17% was divided into OBC-A and OBC-B categories. OBC-A was given 10% reservation and OBC-B was given 7% reservation.

7. The declaration of these additional 77 and 37 classes came to be challenged in several Public Interest Litigation being WPA 22145 of 2010, WPO 60 of 2011, WPO 578 of 2012, WPO 1160 of 2013 and WPA 8844 of 2020. The said writ petitions were heard and disposed of by a coordinate Bench of this Court (of which one of us

3

was a member) by a judgement and/or order dated 22nd May, 2024.

8. By the said judgement the coordinate Bench had struck down the inclusion of the said 77 and 37 classes as OBCs. The said categorization of the OBC into OBC-A and OBC-B was also struck down. The reservation of 10% for OBC-A and 7% for OBC-B was also struck down.

9. Although not relevant for the purpose of the instant appeal, some portions of the Act of 2012 have been read down. The Schedules to the Act of 2012 were, however, struck down by the coordinate Bench in the judgement dated 22nd May, 2024 (supra).

10. The State as well as the West Bengal Commission for Back Ward Classes filed Special Leave Petitions being SLP(C) No.017751-017755/2024 and SLP(C) Diary No.36073 of 2024 against the said judgement. The Hon'ble Supreme Court had admitted the SLPs but did not stay the Court's judgement dated 22nd May, 2024.

11. The State thereafter sought to publish several notifications once again declaring the aforesaid 77 and 37 Classes as Other Backward Classes in or about June 2025. The said notifications came to be challenged afresh in a Public Interest Litigation being WPA(P) 111 of 2025. By an interim order dated 17th June, 2026 a coordinate Bench stayed the notifications issued afresh in June 2025 by the State Government in the year 2025.



12. The State of West Bengal challenged the interim order dated 17th June, 2025 before the Hon'ble Supreme Court in SLP (C) 017422 of 2025, SLP (C) No. 017528 of 2025 and SLP (C) Nos. 017973-017974 of 2025.

13. By an order dated 20th July, 2025, the Hon'ble Supreme Court stayed the interim order dated 17th June, 2025 passed by a Co-ordinate Bench in the aforesaid WPA (P) 111 of 2025. Consequently, the notifications declaring afresh the aforesaid 77 and 37 classes of persons as OBCs stood revived.

14. The State conducted several recruitment processes between 8th May, 2025 and 12th June, 2025. In such recruitment processes, reservations were provided both for OBC-A and OBC-B category to the extent of 10% and 7%. Several letters of appointments were also issued after completion of the said recruitment process.

15. Thereafter, the new dispensation in the State Government withdrew all the aforesaid Special Leave Petitions challenging both the original judgment and order dated 22nd May, 2024 (supra) and 17th June, 2025 (supra). This withdrawal had the effect of extinguishing the order dated 20th July, 2025 passed by the Hon'ble Supreme Court and consequently reviving this Court's order dated 17th June, 2025.

16. The principal ground on which the interim order dated 17th June 2025 was passed by the coordinate



Bench was that the notifications reviving the clauses of OBCs struck down in the judgment of Co-ordinate Bench dated 22nd May, 2024, were all issued under the West Bengal Backward Classes Commission Act, 1993. They were in fact the same classes struck down in judgement dated 22nd May, 2024 for want of a proper survey and for being Religion specific.

17. The Act of 1993 was framed and passed by the State Legislature to constitute a Backward Classes Commission within the State to identify and recommend classes as backward and deserving reservations as the OBC category for the benefit of State employment. The Act prescribed the constitution, power, scope and authority of the Backward Classes Commission.

18. Yet another reason for the interim order dated 17th June, 2025 was that during the subsistence of the Act of 2012 meant for declaring classes as OBC for State employment, exercise of power under Article 16(4) of the Constitution of India was found impermissible in the decision of the Co-ordinate Bench dated 22nd May, 2024 (supra).

19. In sum and substance the re-declaration of 77 and 37 classes as OBC, by the State Cabinet in May, 2025 and June, 2025 did not have the force or authority of law

and was void ab initio.

20. It would be relevant at this juncture to note that the reasoning provided in the judgment and order dated



22nd May, 2024 was by reference to the decision of the Supreme Court in the case of Indra Sawhney Vs. Union of India reported in (1992) (Supp) 3 SCC 217 at Page 495, particularly, paragraph No.392 that reservations for other backward classes who were not adequately represented in State service, could either be declared by executive order under the

Article 16(4)

of the

Constitution of India or under special legislation. In this context, it will be useful to quote paragraphs 392 and 525 of Indra Sawhney Vs. Union of India (supra) which runs thus :

"392. This question has been examined by Brother Judges and they have held that the reservations can be provided by the Parliament, State Legislatures, statutory rules as well as by way of Executive Instructions issued by the Central Government and the State Governments from time to time. The Executive Instructions can be issued only when there are no statutory provisions on the subject. Executive Instructions can also be issued to supplement the statutory provisions when those provisions are silent on the subject of reservations. These propositions of law are unexceptionable and I reiterate the same. I, however, make it clear that any Executive Instruction [issued under

Article

16(4)

, 73

or 162] providing reservations, which goes contrary to statutory provisions or the rules under

Article 309

or any other statutory rules,

shall not be operative to the extent it is contrary to the statutory provisions/rules.

.....

525. .....

Question VI:

Would making "any provision" under
Article 16(4)
for reservation "by the State" necessarily have to be by law made by the legislatures of the State or

by law made by Parliament? Or could such provisions be made by an executive order?

526. The language of
Article 16(4)
is very clear. It enables the State to make a "provision" for the reservation of appointments to the posts. The provision may be made either by an Act of legislature or by rule or regulation made under such Act or in the absence of both, by executive order. Executive order is no less a law under
Article 13(3)
which defines law to include, among other things, order, bye-laws and notifications. The provisions of reservation under
Article 16(4)
being relatable to the recruitment and conditions of service under the State, they are also covered by
Article 309
of the Constitution.
Article 309
expressly provides that until provision in that behalf is made by or under an Act of the appropriate legislature, the rules regulating the recruitment and conditions of service of persons appointed to services under the Union or a State may be regulated by rules made by the President or the Governor as the case may be. Further, wherever the Constitution requires that the provisions may be made only by an Act of the legislature, the Constitution has in express terms stated so. For example, the provisions of
Article
16(3)
speak of the Parliament making a law, unlike

the provisions of
Article 16(4)
which permit the
State to make "any provision". Similarly,
Articles
302
, 304
and
307
require a law to be enacted by
the Parliament or a State legislature as the case
may be on the subjects concerned. These are but
some of the provisions in the Constitution, to
illustrate the point."

21. At the risk of repetition, it is stated that the State had a specific legislation in the form of the West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of Vacancies in Services and Posts) Act, 2012, it could not have resorted to
Article
16(4)
of the Constitution of India and that too under the West Bengal Commission for Backward Classes Act 1993. The said Act of 1993 did not empower the State to declare classes as OBCs for the benefit of service under the State.

8

22. In the light of the above, while it is true that the appellant/writ petitioner herein, had obtained an OBC-A certificate on 13th April, 2026, such certificate was obtained under the notifications of May and June, 2025 that are void ab initio. The certificate of the petitioner dated 13th April, 2026 is, therefore, invalid for having been obtained under a void executive order.

23. In the light of the above discussion, the writ petitioner could not have been part of any OBC category and hence could not have an OBC certification per se unless it was applied under the pre 2010 existing classes of OBC. The formal withdrawal of the void notifications issued by the State from 8th May, 2025 till 12th June, 2025, by Gazette Notification dated 18th May, 2026, is, therefore, based on this Court's judgment dated 22nd

May, 2024.

24. The said notifications do not exist by reason of their withdrawal and such non-existence would date back to day when the notifications were issued. Alternatively the said notifications were void ab initio in view of the observations of this Court already made hereinabove.

25. It is, therefore, found that all OBC certificates issued by the State between 8th May, 2025 and 12th June, 2025 and those certificates that were issued in the interregnum between 10th June, 2025 and 18th May, 2026 would also be all no consequence and void ab



initio. Persons falling within the OBC category under the classes existing prior to 2010 would have to apply a fresh for certification as OBC, if they fall within the classes that have been saved by the judgment of Coordinate Bench dated 22nd May, 2024.

26. In the light of the above, none of the prayers made in the writ petition could not have been entertained by the Single Bench. The writ petition was rightly rejected by the Single Bench. The petitioner and other persons, who participated in the National Eligibility cum Entrance Test claiming to be OBCs under the central list or under the JENPAS (UG), 2026 conducted by the West Bengal Joint Entrance Examination Board must be treated as general category candidates.

27. The State or the appropriate competent authority concerned may in their discretion take appropriate steps or measures in the interest of students claiming to be OBCs under classed pre-existing the year 2010 from West Bengal participating in national and State eligibility tests as also those who participated in such eligibility tests for this year.

28. This should not be treated as any specific direction on the State. It is left entirely to the discretion of the State, to avoid any inconvenience to anyone in competitive examination held for the current year.



29. Nothing further remains to be adjudicated in MAT 1320 of 2026 and the same is disposed of without any order. Consequently CAN 1 of 2026 is also disposed of.

30. There shall be no order as to costs.

31. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Anuj Singh, J.)