

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2090 OF 2015

Sushant s/o. Ulhasrao Kawade,
Age: 26 yers, Occ.: Nil,
R/o. Sankalp, Sai Vihar,
Behind Hotel Prasad,
Ghulewadi, Tq.Sangamner,
Dist.: Ahmednagar

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Womens and Child Welfare Department,
Mantralaya, Mumbai
2. Maharashtra Service Public Commission,
Bank of India Building,
3rd Floor, Mahatma Gandhi Marg.
Hutatma Chowk, Mumbai 01.
3. Sandip Sambhaji Yadav,
Age: 39; Occ.: Service,
R/o. Vrindavan Bunglow,
Shivaji Nagar,
At Post Chendhreh, Taluka Alibag,
Dist. : Raigad.
4. The Director of Sport and Youth
Services, Pune 5.

RESPONDENTS

...

Ms.Pradnya Talekar, Advocate holding for
Mr.S.B.Talekar, Advocate for the petitioner
Mr.S.B.Yawalkar, AGP for Respondent – State
Mr.Avinash Deshmukh, Advocate for respondent
no.3
Respondent no.2 served

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Reserved on : 01.07.2016
Pronounced on : 05.08.2016

JUDGMENT: (Per S.S.Shinde, J.):

Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition takes exception to the impugned judgment and order dated 28.01.2015 in Original Application No.383/2013 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, to the extent that the petitioner is held to be ineligible for being considered from the Sports Category. There is further prayer seeking directions to respondent no.2 to recommend the name of the petitioner for appointment to the post of CDPO, and further direction is sought to respondent nos.1 and 4, to appoint the

petitioner as Child Development Project Officer (Group-A) w.e.f. 20.12.2013 and grant all other consequential benefits including arrears of pay and seniority.

4. It is the case of the petitioner that the petitioner applied for the post of Child Development Project Officer (Group-A) pursuant to the advertisement no.221 of 2012 dated 23.02.2012 issued by the Maharashtra Public Service Commission (for short 'the Commission'). Out of total 11 posts of CDPO (Group-A); one was reserved for sports person. The Commission selected respondent no.3 and recommended his name, vide communication dated 28.03.2013. As a result, respondent no.3 came to be appointed as a Deputy Chief Executive Officer, Raigad, which is equivalent to CDPO (Group-A), vide order dated 20.12.2013. The petitioner, in support of his claim of belonging to sports category, submitted certificate issued by the Chairman,

Vice-Chairman, Organizing Secretary, Honorary Secretary General of Cricket Federation of India.

5. It is further the case of the petitioner that the 1st International Rajiv Gandhi League Cricket Championship at Panchkula, Haryana (India) was organized by the Cricket Federation of Haryana under the aegis of Cricket Federation of India. It is submitted that the Cricket Federation of India is affiliated to Kuala Lumpur Cricket Association (KLCA), Malaysia. Kuala Lumpur Cricket Association (KLCA), Malaysia, has issued a declaration stating that it is an affiliate of Malaysian Cricket Association, which is an Associate Member of the International Cricket Council (ICC). It is further the case of the petitioner that out of 15 players in the team representing India, three belong to State of Maharashtra. The petitioner was one of those three players,

who were representing India in the 1st International Rajiv Gandhi U-23 League Cricket Championship. The Tribunal was wrong in holding against his eligibility. The cricket is not covered in the Olympic games and, therefore, the question of affiliation with the Olympic Committee did not arise. Neither the Cricket Federation of India, nor the Board of Cricket Control in India (BCCI), nor the International Cricket Council (ICC) is affiliated to Indian Olympic Association (IOA) as well as International Olympic Committee (IOC). It cannot be said that the representation or participation in the international team or national level team is to be ruled out. The Indian Team could not have participated in the International Cricket Championship unless it is affiliated to the International Cricket Council (ICC). The petitioner secured the second position being Runner-up, as a player of the Indian

cricket team, at the 1st International Rajiv Gandhi U-23 League Championship held at Panchkula (Haryana). The eligibility criteria prescribed for Group-A post in the Government Resolution dated 30.04.2005 is two-fold. First and foremost, the candidate must have participated in International sports and secured first, second or third position i.e. gold, silver or bronze medal in sports organized by the International Olympic Committee. In the alternative, the candidate must have participated in International sports organized by a recognized Association, whereas his selection should have been made from the national team. The case of the petitioner falls in the second category.

6. The learned counsel for the petitioner submits that the learned Tribunal did not consider the alternative criterion of eligibility that being the participation in International sports organized by a

recognized Association when the candidate has been selected from the national team. As a matter of fact, the Deputy Director of Sports and Youth Services, Aurangabad, had clarified the alternative criterion of eligibility in para 5 of the additional reply filed on behalf of respondent no.4 on 11.12.2014. The Tribunal was not correct in holding that no document was tendered by the petitioner showing that he fulfilled the eligibility criterion, and therefore, he was not eligible for the appointment against sports quota reservation. However, the learned Tribunal has rightly held that respondent no.3 was not eligible to be considered to avail the benefit of reservation from sports category. It is submitted that the petitioner represented India in International Sports Competition, and therefore, was eligible to avail the reservation meant for sports category. The Government Resolution dated

30.04.2005 provides two different categories of eligibility criteria, such as the candidate must have participated in International sports and secured first, second or third position i.e. gold, silver or bronze medal in sports organized by Olympic Committee. In the alternative, the candidate must have participated in International sports organized by a recognized Association and his selection should have been made from the national team. The Tribunal committed an error in not considering the case of the petitioner in second category, as per the Government Resolution dated 30.04.2005. The Cricket Federation of India was affiliated to the International Cricket Council (ICC) and at the same time, the Cricket Tournament held at Panchkula (Haryana) by the Kuala Lumpur Cricket Association (KLCA), Malaysia, which is in turn associated to Malaysian Cricket

Association. Admittedly, the Malaysian Cricket Association is not only associated with but it is a member of the International Cricket Council (ICC). Therefore, the Tribunal ought to have appreciated the aforesaid contention of the petitioner. The Tribunal ought to have appreciated that the teams of as many as 4 countries participated in the Cricket Tournament held at Panchkula (Haryana) by the Kuala Lumpur Cricket Association (KLCA), whereas the petitioner participated in the Indian team, which was Runner-up, and therefore, had secured the silver medal. As such, the petitioner was eligible to be considered for appointment to the post of CDPO from the sports category. The Tribunal has not properly appreciated that the qualifying standard or the benchmark prescribed for reserved categories has to be different, than the benchmark prescribed for the General

category candidates. The Tribunal ought to have relied on the judgments of the Supreme Court cited by the counsel for the petitioner holding that the qualifying standards need to be relaxed in respect of reserved categories, particularly when there is no other eligible candidate. The MPSC had relaxed the qualifying marks prescribed for interview, since except the petitioner no other candidate was eligible to be considered for appointment as CDPO, particularly when the petitioner has secured just one mark less than the qualifying marks prescribed.

7. It is submitted that the very object for providing reservation for the candidate from sports category would get defeated in case the said policy which is meant for the benefit of the sports person is not interpreted liberally. The learned counsel for the petitioner invites our attention to the said Government Resolution, which is

placed on record at Exhibit-0 Page 80 of the Compilation of the Writ Petition and submits that the clause 4A of the said Government Resolution provides that the candidate who has participated in the International Tournament in individual capacity or as a member of team to represent the India and if has secured first, second or third place or gold, silver, bronze medal, then such sports person is entitled for the benefits granted by the said Government Resolution so as to get appointment in the State Employment. It is submitted that the Tournament in Kuala Lumpur was organized; it was International Tournament under the aegis of International Cricket Council, and therefore, the benefit of aforementioned Government Resolution ought to have been given to the petitioner. It is submitted that the petitioner secured highest marks in written examination from the sports category. However, the petitioner could not

secure minimum 40 marks and the petitioner was short by one mark. The learned counsel for the petitioner relying on the judgment of the Hon'ble Supreme Court in the case of *Ram Bhagat Singh and another Vs. State of Haryana & another*¹ and on particular para 2 and 3 of the said judgment, submits that the Supreme Court in the facts of that case considered the issue of fixation of the standard of marks and observed that prescribing 45% of marks in the aggregate in all the written papers for the candidates from reserved category has resulted in denial of opportunity to the candidates from SC & ST thus amounting to denial of equality of opportunity in the jobs. The learned counsel for the petitioner also invites our attention to para 6 of the said judgment and submits that the Supreme Court in the interest of justice and keeping in view the constitutional mandates, directed the

¹ (1997) 11 SCC 417

Government concerned to consider this question as to what should be the minimum percentage of marks necessary for the administration. It was further directed to the Government to make conscious decision objectively before the next selections for the posts in Haryana Judicial Service take place, and determine a minimum percentage of marks consistent with efficiency and the need for ensuring equality of opportunity to Scheduled Castes and Scheduled Tribes.

9. The learned AGP appearing for the respondent – State relying upon the averments in the affidavit-in-reply submits that in view of the findings recorded by the Maharashtra Administrative Tribunal, which are in consonance with the documents placed on record, the petition deserves no consideration.

10. The learned counsel appearing for

respondent no.2 relying upon the averments in the affidavit-in-reply submits that as per the provision mentioned in para 3.10.3 of the General Instructions to the candidates given on the website, the candidates who secured 41% and above in the interview are only considered for recommendation. As the petitioner secured 39 marks in the interview the question of considering him for recommendation does not arise. Respondent no. 3 secured 48 marks. While sending the recommendations to the concerned Government Department, the Commission specifically mentions in the recommendation letter that the certificates and other eligibility claims of candidates be verified and only thereafter the decision to appoint the candidate be taken. In this case also, the Commission specifically mentioned this fact in the recommendation letter sent to the Government. It is submitted that 3 candidates were called

for the interview against 1 post reserved for the sports category. The three candidates namely (1) Smt. Deokate, (2) Shri Yadav i.e. respondent no.3, and (3) Shri Kawade i.e. the petitioner attended the interview and were accordingly interviewed. Respondent no.3 secured 48 marks, therefore, his name was recommended to the Government for appointment. Smt. Deokate secured 41 marks in the interview, however, due to unavailability of the post, her name was not recommended to the Government. The name of the petitioner was not recommended as he could secure only 39 marks; below the qualifying marks of 41. It is submitted that since the petitioner was disqualified in the interview of the said post, and therefore, the question of considering his case as regards other aspects raised by the petitioner does not arise.

11. The learned counsel appearing for

respondent no.3 relying upon the averments in the affidavit-in-reply submits that the writ petition filed by the petitioner does not deserve to be entertained, since the petitioner did not secure minimum qualifying marks. It is submitted that the petitioner had represented the Team of Cricket Federation of India and not the Indian Team. The certificate placed on record by the petitioner itself establishes beyond doubt that he had not represented team India and / or Team of the country, but had only represented Team of Cricket Federation of India. The petitioner having never challenged muchless sought quashment of the decision of respondent no.4 of declaring him to be ineligible to claim the benefit of sports reservation cannot pray for a direction to appoint him as CDPO particularly on a post reserved for the sports category person. It is submitted that the petitioner has not

added International Cricket Council as a party respondent either before the Tribunal or before this Court.

12. A bare reading of para 4 (A) of the Government Resolution dated 30.04.2005 clearly shows and establishes that only such tournaments / competitions are recognized by the Government of Maharashtra, which are conducted either by the International Olympic Committee on its own or by the International Federations of the concerned sport, which are affiliated to the International Olympic Committee. Therefore, when the said clause is made applicable to petitioner's case, it becomes explicit that the above named competition held at Panchkula in Haryana was neither conducted by the International Olympic Committee on its own, nor was it conducted by the International Federation concerning the game of Cricket viz. the ICC and therefore, it goes without saying that

the petitioner does not fulfill the said eligibility for claiming Sports reservation as mentioned in the first part of para 4 (A) of the Government Resolution dated 30.04.2005. The tournament held at Panchkula in Haryana in which the petitioner claimed to have participated was not conducted by the ICC. Therefore, on this count also, the petitioner does not fulfill the requirement even under the said second part of para 4 (A) of the Government Resolution dated 30.04.2005. The communication dated 16.12.2014 sent by respondent no.4 to the Divisional Deputy Director of Sports and Youth Services, Aurangabad, clearly conveys not only that the ICC was / is the International governing body of Cricket, but it was only the Cricket Federation of India had the Membership / Affiliation with the ICC that the person like the present petitioner was / is eligible to get the benefit of 5%

job reservation under the sports category. It is submitted that the International Cricket Council (ICC) is only recognized body governing Cricket and the Cricket Federation of Haryana had conducted the tournament at Panchkula under the aegis of the CFI.

13. It is submitted that likewise, it also needs consideration that the tournament at Panchkula was clearly such a tournament which was conducted either 'individually' or on 'invitational basis' by the Cricket Federation of Haryana and it had no connection either with the ICC or with the BCCI which is the Apex body of Cricket in India. In a nutshell, it can be said that if and when the petitioner's contention regarding his eligibility is to be accepted then it would mean rewriting of the very policy of Sports Reservation introduced by the State Government, because holding the petitioner to be eligible would mean

inclusion of even such tournament/s as the one recognized in spite of the fact that the same was/is not covered under the Government Resolution dated 30.04.2005.

14. We have heard the learned counsel appearing for the parties at length. With their able assistance, perused the pleadings in the Petition, grounds taken therein, replies filed by the respective respondents, short affidavit filed by the petitioner, further affidavit and also rejoinder affidavit. Upon considering the entire material placed on record, we are of the opinion that, Writ Petition No.2090/2015 deserves no consideration for the reasons set out herein below:

15. The contention of the counsel for the petitioner that he was part of the Indian Team in the 1st International Rajiv Gandhi U-23 League Cricket Championship organized by

the ICC Youth Development Programme, and therefore, the petitioner is entitled for the appointment from the sports category is devoid of any merits. It appears that the petitioner participated in the sport of Cricket conducted by the local affiliated body of Cricket Federation of India, which was affiliated to the Kuala-Lumpur Cricket Association, which, in turn, was affiliated to Malaysian Cricket Association. It appears that the petitioner participated in the sports of Cricket organized by the local affiliated body, which cannot be considered directly under the ICC or BCCI. The ICC is an International Cricket Council. This is an international body and all National Cricket Councils have to be affiliated to the ICC. BCCI is the Board of Control for Cricket in India. This National body is affiliated to the I.C.C. and all State Cricket Associations have to be affiliated to the BCCI. National

Test matches, one-day international matches and 20-20 international matches are conducted by ICC. The Maharashtra Cricket Association is recognized as it is affiliated to BCCI. The National Trophies like Ranji Trophy, Irani Trophy, C.K. Naidu Trophy, Vijay Hazare Trophy and Vijay Merchant Trophy are conducted by the various State Cricket Associations under the aegis of the BCCI. Private Cricket tournaments not recognized by ICC or BCCI or MCA and are not recognized by any statutory cricket organization. Any player who was played under any of the above statutory bodies, is a recognized player by the MCI / BCCIU / ICC. Therefore, it is only when the player has participated in such tournaments and secured first, second or third position while participating in the International tournaments for India, is entitled to claim the benefit of provisions of Government Resolution dated 30.04.2005 or

06.05.2008 issued by the School Education and Sports Department, Government of Maharashtra.

16. Therefore, in the facts of the present case, the petitioner's participation in the private cricket tournaments cannot be considered for the purpose of granting benefit of the Government Resolution dated 30.04.2005 issued by the School Education and Sports Department.

The another contention of the learned counsel for the petitioner that, scoring 1 mark below the minimum standard ought not to bar eligibility of the petitioner has no any force and we are not prepared to accept the said contention for the simple reason that the petitioner participated in the selection process, knowing fully well that, securing 40 marks is the Benchmark prescribed in the advertisement. Therefore, having been

participated in the selection process, it is not open for the petitioner to contend that the said criteria should be lowered down or one grace mark should be given to the petitioner when entire selection process is over.

17. In the light of discussions in the foregoing paragraphs, we are unable to persuade ourselves to cause interference in the impugned judgment and order dated 28.01.2015 passed by the Maharashtra Administrative Tribunal Mumbai Bench at Aurangabad in Original Application No.383 of 2013 and grant any relief to the petitioner, hence the Petition stands rejected. Rule stands discharged.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE