

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

WRIT PETITION NO.5730 OF 2015

Santosh s/o. Dnynoba Chavan,
Age 31 Years, Occ.Service,
R/o. Jijamata Niwas, Sant
Tukaram Society, Vikas Nagar,
Udgir, Tal. Udgir, Dist. Latur **PETITIONER**

VERSUS

- 1] The State of Maharashtra
Through the Secretary for
School Education and Sports
Department, Mantralaya Extension,
Mumbai-32.
- 2] Atyapatya Federation of India,
Through its Secretary,
Nagpur Sharirik Shikshan
Mahavidyalaya, Dr.Munje Marg.,
Dhantoli, Nagpur 440 012.
- 3] The Assistant Director,
Sports and Youth Service,
Maharashtra State, Pune.
- 4] Maharashtra Public Service Commission,
Head Office 8th Floor,
Uparej Telephone Building,
Maharshi Karve Road, Uparej,
Mumbai – 400 021. **RESPONDENTS**

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Mr. P.R.Katneshwarkar, Advocate for
petitioner.

Mr.S.B.Yawalkar, AGP for respondent Nos.1 & 3
Respondent nos.2 and 4 served.

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

Reserved on : 18.04.2016
Pronounced on : 06.05.2016

JUDGMENT: [Per S.S.Shinde, J.]:

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

2] Heard the learned counsel appearing
for the respective parties.

3] It is the case of the petitioner
that while taking education, he constantly
practised Indian Origin Sport known as
'Atyapatya'. The petitioner has acquired
mastery in the said sport. He also received
participation certificate for the years
2008-2009, 2010-2011, 2012-2013 at State
level and for the year 2012-2013 at National
level, and secured second place in the said

sport. All these sport competitions in respect of Atyapatya were held by Atyapatya Federation of India which is affiliated to All India Olympic Association. In order to promote sports in the State of Maharashtra and more particularly, Indian Origin Sports, the Government of Maharashtra has taken a policy decision to reserve 5% of posts in jobs for sports persons by issuing Government Resolution dated 30.04.2005. An object to be achieved by the said policy is that the persons who show progress in National sports need to be taken care of, because of their career in sports, they may not be able to concentrate on educational career, and they may not be in a position to compete with other students who focus on educational career. After the young age is over, the meritorious sports person has to search for service. This reservation would be applicable in all offices of State of Maharashtra, Corporations

and undertakings of State of Maharashtra, Local Self Bodies and other Institutions which would receive direct or indirect benefits from the State Government.

4] It is further the case of the petitioner that the candidate who seeks reservation from the sports quota must possess required educational qualification besides sports qualification and for that purpose four groups i.e. (a), (b), (c) and (d) are made. The petitioner falls in group (b). He has obtained second place in Atyapatya competition. The petitioner was representing State of Maharashtra in the said competition. Thus, the petitioner is entitled for appointments in all institutions and service places as mentioned in the Government Resolution dated 30.04.2005. The petitioner appeared for Maharashtra Public Service Commission Examination [Pre], 2014. The petitioner has passed preliminary

examination. Thereafter, he appeared for main examination and the petitioner got qualified in main examination also. The petitioner was also called for verification of his documents. Since the petitioner sought appointment from sports quota, he was asked to submit the sport certificates as contemplated under the Government Resolution. After verification of documents, the Deputy Director, Sports and Youth Service, Maharashtra State, Pune issued a letter dated 17.03.2015, who is supposed to do the verification of certificates, and the said authority held that as per Circular dated 11.02.2011, Indian Olympic Association has withdrawn the affiliation of Atyapatya Federation of India, and therefore, the petitioner did not qualify / possess eligibility from sports quota.

5] The learned counsel appearing for the petitioner submits that the impugned

Government Resolution dated 30.12.2013 is contrary to the policy of the Government. The aims and object of the policy creating sports quota is stated in the Government Resolution dated 30.04.2005. This policy is still intact. However, the impugned Resolution runs contrary to this policy. The impugned Government Resolution has no nexus with the object which is to be achieved. The object is to promote sports persons who in their peak period of education career devote to the sport, engage in sport activities and are not in a position to compete with other persons who focus on educational career and so as to give protection to such sports persons, the Government Resolution dated 30.04.2005 was issued. In the impugned Government Resolution, there is no deviation from the policy. In such circumstances, depriving the petitioner on technicality that the affiliation of Atyapatya Federation of

India is withdrawn by All Indian Olympic Association would be illegal and discriminatory. The object which is to be achieved by the above referred policy has to be taken into consideration. The impugned Government Resolution running contrary to the object which is to be achieved by the policy of State of Maharashtra, thus, is unreasonable, discriminatory and violative of Article 14 of the Constitution of India.

6] It appears that, Indian Olympic Association has withdrawn affiliation of 31 National Federations on 11.02.2011 which includes Atyapatya Federation of India. This fact came to be noticed by the Government of Maharashtra, for the first time in February, 2013, as can be seen from para 2 of the impugned Government Resolution. However, by this Resolution, the Government protected the sports persons by holding them as eligible, who had played during the period

from February, 2011 to December, 2013 and on that basis were selected for Government Service. This protection was given on the ground that the said sports persons were not aware about withdrawal of affiliation. It was resolved that the sports certificates which were sent to the Directorate of Sports for verification prior to 28.02.2014 only should be presumed to have approval of Indian Olympic Association and accordingly, it should be verified. It was made clear that the certificates of such sports persons sent after 01.03.2014 would not be verified.

7] According to the learned counsel for the petitioner, this clause is violative of Article 14 since it creates two sections, though identically / similarly situated qua the sports eligibility is concerned. On this ground also, this Government Resolution needs to be quashed and set aside.

8] It is further submitted that the Government itself has taken the fact into consideration that the Government as well as the students were not aware of withdrawal of affiliation till February, 2013. In such circumstances, no fault can be attributed to the sport persons. The sports persons who were contemporary to the petitioner got service from 5% reserved sports quota, merely because their selection was prior in time. This caused serious injustice to the petitioner. It is further submitted that the Resolution is within legislative competence of State of Maharashtra. The State of Maharashtra has given recognition to all the federations including Atyapatya Federation of India. It appears from the impugned Government Resolution that recognition of federation given by the State of Maharashtra has not yet been withdrawn and therefore, whether there is affiliation by Indian

Olympic Association or not should not make any difference as such, federation is recognized by State of Maharashtra and the competitions are held under the control of federation as well as the State of Maharashtra as well Central Government. Thus, merely because, for any reason the affiliation is withdrawn that does not mean that, the petitioner is not a sports person nor does it result that he did not compete in national level competition nor the certificate issued in Pondicherry competition can be said to be invalid. Thus, the action of respondent is unreasonable and unjust.

9] In pursuance of the notices issued to the respondents. Respondent nos.1 and 3 have filed affidavit in reply. Relying upon the said affidavit in reply, the learned AGP appearing for the respondent - State submitted that the contention of the petitioner that the Government of Maharashtra

has issued Resolution dated 30.12.2013 whereby the eligibility of the candidates who play Atya Patya after 11.02.2011 is taken away and benefits given under the Government Resolution dated 30.04.2005 are withdrawn, is not correct. In pursuance to the said Government Resolution, the services of other candidates, who were selected by the different selection process have been protected and their certificates have been held to be valid upto 31st December, 2013 only. It is submitted that the provisions in the Government Resolution dated 30.12.2013 cannot be made applicable to the case of the petitioner on the grounds, (a) His sports certificate was invalidated on 06.02.2015. (b) His sports certificate was not received upto 28th February, 2014 for re-verification. (c) His sports certificate was received for verification by respondent no.4 vide letter dated 26.12.2014 and as per the provisions in

the Government Resolution dated 30.12.2013 clause 2 (b) his application was treated as fresh application and as per Government Resolution dated 30.04.2005, the condition to have recognition of Indian Olympic Association was applicable to the petitioner.

10] Though the petitioner claimed that he acquired mastery in the sports [Atya Patya]. However, he has not produced any documentary evidence to prove that he has acquired mastery in the said sports. It is submitted that the Indian Olympic Association has amended its Constitution with effect from 12.02.2011 in the Annual General Assembly held on 12.02.2011. The Indian Olympic Association has de-recognized the National Sports Federations, which includes the Atya Patya Federation of India, vide letter dated 11.07.2011. It is submitted that as the 27th Men and 23rd Women Senior National Atya Patya Championship tournaments were conducted after

12.02.2011 without having recognition of Indian Olympic Association, therefore, the players participated in those tournaments are not held to be eligible for any job opportunity under 5% reservation for sports persons. Accordingly, the present petitioner is not eligible for being appointed to the post of Gazetted Officer Group-B, under sports reservation quota.

11] It is submitted that vide Resolution dated 30.04.2005, the Government of Maharashtra has introduced a scheme of 5% job reservation for the welfare of the meritorious sport persons. As per the rule 4 (B) of the said Government Resolution for appointment to the Group B post the sports person who represents Maharashtra State should have secured 1st, 2nd, 3rd position or has secured Gold, Silver or Bronze medal in the individual / group sports competition, the said sports competition should have been

organized by National Federation and should have affiliated with the concerned sports of Indian Olympic Samiti and further the sports competition should have been organized at National Level and it should be affiliated with Indian Olympic Federation. The participant in the said sports competition should be selected from State Level Team. Therefore, it is submitted that considering the above mentioned eligibility criteria for Group-B post, it is mandatory to check the important point of affiliation / recognition by Indian Olympic Association. Accordingly, respondent no. 3 verified sports certificate of the present petitioner and came to the conclusion that as per the circular dated 11.02.2011, Indian Olympic Association has withdrawn the recognition of Atya Patya Federation of India and therefore the petitioner does not qualify / possess eligibility from sports quota, and therefore,

an action initiated by respondent no.3 is proper and correct. Therefore, the learned AGP appearing for the respondent – State submits that the Petition may be rejected.

12] We have carefully considered the submissions of the learned counsel appearing for the petitioner and the learned AGP appearing for the Respondent – State. With their able assistance, perused the pleadings and the grounds taken in the petition, annexures thereto, affidavit in reply and annexures thereto, and we are of the opinion that, the Petition deserves no consideration for the reasons set out hereinbelow.

13] The respondents have placed on record inter se communication between the Secretary General, Indian Olympic Association addressed to the National Sports Federations, dated 11th July, 2011, [Exhibit-R2 Page-49]. The said letter reads thus:

IOA/Recogn./107/2011/316 July 11, 2011

To,
The National Sports Federations
(List attached)

This is to inform you all that the Constitution of the Indian Olympic Association was amended in the Annual General Assembly on 12th February, 2011.

As per the amended Constitution, the National Sports Federations and State Olympic Associations (list at annexure 'A') which are affiliated with the Indian Olympic Association will only be its members and none else. There shall be no category of recognized members henceforth. Amended Constitution has been uploaded in the website www.olympic.ind.in.

Yours faithfully,

*Sd/-
(Randhir Singh)
Secretary General*

Therefore, what decision is to be taken by the Indian Olympic Association is within the domain of the said Association, and the aforementioned decision was taken by the said Association in the year 2011 itself.

The letter dated 17th March, 2015, written by the Joint Director, Sports and Youth Activities, Maharashtra State, Pune to the Deputy Secretary, MPSC, Mumbai [Exhibit-E Page-29], clearly mentions in clause 5 as under:

5. शासन निर्णय क. कीर्स्पर्धा-2108 / (प्र.क.440/08) कीयुसे-2 दि.20 सप्टेंबर 2013.

अन्वये क्रीडा प्रमाणपत्राची पडताळणी केली असता, सदर खेळाच्या संघटनेची मान्यता 11-2-2011 च्या परीपत्रकान्वये आय. ओ.ए. ने काढून टाकलेली आहे. त्यामुळे हे प्रमाणपत्र अपात्र आहे. यास्तव श्री.संतोष ज्ञानोबा चव्हाण हे उमेदवार 5 टक्के आरक्षणांतर्गत गट-ब,क व ड या पदाकरिता विहीत केलेली खेळविषयक अर्हता पूर्ण करित नाहीत

True translation of the clause 5 of the said letter done by the Translator, is as under:

5. As per Govt. Resolution No. SC-2108 (C.No. 440/08) SUS-2, dated 20th September, 2013, when the Sport Certificate is verified, the recognition of said Sport Organization has been withdrawn by I.O.A.

vide Circular dated 11-2/2011. Therefore this certificate is invalid. Hence the candidate - Shri.Santosh Dnyanoba Chavan is not fulfilling the sport related qualification required under the 5 % reservation provided to the Group B, C & D Posts.

Upon careful perusal of the aforementioned communication, it is abundantly clear that as per the amended Constitution, the Indian Olympic Association has decided to treat their members only those National Sports Federations and State Olympic Associations, whose names are mentioned in the list at Annexure-A of the communication. Therefore, once such decision was taken by the Indian Olympic Association in the year 2011, it was not possible for the respondents to grant benefit to the sport event / activity performed by the petitioner. The contentions of the learned counsel appearing for the petitioner that keeping in view the object of the Government Resolution

dated 30th April, 2005, issued by the School Education and Sports Department, the weightage of 5% available to the sports event / activity wherein the petitioner participated ought to have been continued, deserves no consideration because which sport activity / event should be considered for giving 5% reservation quota would fall within the domain of the respondents and it is not for the Courts to rewrite the policy of the Government.

14] It is true that by the Government Resolution dated 30th December, 2013, by way of one time measure the Government of Maharashtra decided to re-verify the certificates if submitted prior to 28th February, 2014, by the concerned Department, since at the relevant time the sports persons were not aware about the decision taken by the Indian Olympic Association withdrawing recognition to the National Sports

Federations under whose supervision the sport activity was conducted and the certificates were issued in favour of such candidates. However, in the said Government Resolution itself, it was made clear that from 1st March, 2014, no verification of the sports certificate will be done. Therefore, upon perusal of the contents of the said Government Resolution, it appears that as one time measure the said exemption was granted to the sports persons who participated in the selection process for re-verification for their sports certificate provided that if certificate is submitted through the concerned Department on or before 28th February, 2014. The petitioner's case is not from the same selection process of the candidates to whom the aforementioned exemption has been granted. Therefore, the contention of the petitioner that there is discrimination by the respondents, deserves

no consideration. It is not necessary to reiterate the contentions raised by respondent nos. 1 and 3 in their affidavit-in-reply. Suffice it to say that those are in consonance with the decision taken by the Indian Olympic Association and the decision taken by the State Authorities.

15] In that view of the matter, we are unable to persuade ourselves to grant any relief to the petitioner, hence, Petition stands rejected. Rule stands discharged.

Sd/-

[SANGITRAO S.PATIL]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE