

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

WRIT PETITION NO.5093 OF 2016

Kailas Sambhaji Lohakre,
Age 22 years, Occu. Student,
R/o. Kanjala, Tq. Loha,
District Nanded.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Nanded, Tq. & District Nanded
3. The Union of India,
Through its Ministry of Defence,
New Delhi.
4. Coe
Dir Rtg
Sena Bharti Karyalaya,
Army Recruiting Office
T-39, Assey Lines, Aurangabad
Maharashtra Pin 431002

RESPONDENTS

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Mr.S.G.Jadhavar, Advocate for the petitioner
Mr.A.V.Deshmukh, AGP for respondent nos.1 & 2
Mr.D.G.Nagode, ASGI for respondent Nos.3 & 4

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

Reserved on : 11.08.2016
Pronounced on : 08.09.2016

JUDGMENT: (Per Sangitrao S. Patil, J.):

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

2. A short but important question that is involved in this Writ Petition is whether the order passed by the Juvenile Justice Board holding a juvenile in conflict with law guilty of the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code would be a disqualification for him to join the services in Army.

3. The petitioner completed his Diploma in Mechanical Engineering with distinction on 9th June, 2015. Respondent no.4 initiated District-wise open ground recruitment process for his Department on 27th July, 2015. The petitioner appeared before respondent no.4 and participated in the recruitment process.

His medical examination was conducted. Thereafter, the petitioner appeared for written examination on 29th November, 2015. Respondent no.4 published a list of successful candidates, wherein the name of the petitioner was included. All the successful candidates were called upon to produce the original documents for verification. Accordingly, the petitioner submitted all the original documents for verification. Respondent no.2 Superintendent of Police, Nanded, issued a certificate on 6th January, 2016 and mentioned therein that Crime No.59/2010 for the offences punishable under Sections 324, 323, 504, 506 r/w. 34 of the Indian Penal Code was registered against the petitioner in Police Station Usmannagar and that he was released by the Juvenile Justice Board on 15th January, 2011, under Section 15 (1) (a) of the Juvenile Justice (Care and Protection of Children) Act, 2000,

('the Act of 2000' for short). On receiving the said certificate, respondent no.4, vide letter dated 31st March, 2016, informed the petitioner that since he was convicted for an offence under the law, could not be enrolled in the Army. Accordingly, the candidature of the petitioner came to be cancelled.

4. The learned counsel for the petitioner submits that the main object of the Act of 2000 is to provide proper care, protection and treatment to the juveniles in conflict with law and to rehabilitate them. He submits that as per sub-section (1), Section 19 of the Act of 2000, a juvenile who has committed an offence and has been dealt with under the provisions of this Act, would not suffer disqualification, if any, attached to a conviction of an offence under such law, notwithstanding anything contained in any other law. He submits that the petitioner was dealt with by the Principal Magistrate of

Juvenile Justice Board, Nanded in RCC No. 84/2010 for the offences punishable under Sections 324, 323, 504, 506 r/w. 34 of the IPC and as per the judgment and order dated 15th January, 2011, after holding the petitioner guilty for the said offences, on accepting plea of being guilty made by the petitioner, allowed the petitioner to go home with an advice not to involve in any other offence in future, vide clause (a), sub-section (1), of Section 15 of the Act of 2000. In view of sub-section (1), of Section 19, passing of such order against the petitioner would not be a disqualification for enrolment of the petitioner in Army. He submits that the impugned letter dated 31st March, 2016, issued by respondent no.4, therefore, may be set aside and the petitioner may be directed to be enrolled in Army.

5. The learned counsel for the

petitioner further submits that as per sub-section (2), Section 19 of the Act of 2000, the Juvenile Justice Board has to make an order directing that the relevant records of the conviction of the juvenile in conflict with law shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the Rules. He submits that respondent no.2 wrongly retained the record of conviction of the petitioner even after the expiry of the period of appeal. He, therefore, sought a direction against respondent no.2 to remove the relevant records of Crime No.59/2010 in respect of the petitioner.

6. No formal reply has been filed by respondent nos.1 to 3. Respondent no.4 filed affidavit-in-reply and resisted the petition. According to him, all actions of Army Recruiting Authorities are governed by the "Directives on Recruitment of Junior

Commissioned Officers and Other Ranks, 2014. The candidature of the petitioner came to be rejected as per the provisions of para 33 (d) Page 86 Part IX Section II of the said Directives since he was convicted by the Principal Magistrate, Juvenile Justice Board, Nanded, vide order dated 15th January, 2011. As per the recruitment policy in vogue, any candidate who has ever been convicted for an offence under the Indian Penal Code, cannot be enrolled in the Army. Accordingly, respondent no.4 communicated to the petitioner, vide letter dated 31st March, 2016, that since he was convicted for an offence under the law, cannot be enrolled into the Army. It is stated that the Juvenile Justice Board is equally the court of law, the petitioner has pleaded guilty before the said Board for the above mentioned offences and accordingly, he has been convicted as per the judgment and order dated 15th January,

2011, passed in RCC No.84/2010. Consequently, his candidature has been rightly rejected by respondent no.4.

7. On the basis of the averments made in the affidavit-in-reply, the learned counsel for respondent no.4 submits that since the petitioner is a previous convict, he was not entitled to be enrolled into the Army. He, therefore, supports the decision of respondent no.4 to reject the candidature of the petitioner for being enrolled into the Army and prays that the Writ Petition may be dismissed.

8. The petitioner was prosecuted for the offences punishable under Sections 324, 323, 504, 506 r.w. 34 of the Indian Penal Code alleged to have been committed by him and his companions on 22nd July, 2010. The learned Principal Magistrate, Juvenile Justice Board, Nanded, framed the charges

against him for the said offences, vide Exhibit 10 on 15th January, 2011 and explained the contents thereof to him in vernacular. The petitioner pleaded guilty for the said charges. The learned Principal Judge accepted his plea of being guilty and passed the following order:

ORDER

1- The Juvenile Offender in conflict with law namely Kailas Sambhaji Lohakare is held guilty for committing the offence punishable u/ss.324, 323, 504, 506 r.w. 34 of Indian Penal Code and he is allowed to go home as per Sec. 15 (a) of Juvenile Justice (Care and Protection of Children) Act, 2000 on advice not to involve in any other offence in future.

2- Muddepal property if produced, be returned to the concern Police Station to produce in a trial against major offender.

9. The Juvenile Justice (Care &

Protection of Children) Act, 2015, ('the Act of 2015' for short) came into force on 1st January, 2016. Since the offences alleged against the petitioner were committed on 22.07.2010 and he has been dealt with by the Juvenile Justice Board on 15th January, 2011, he would be governed by the Act of 2002, which was in force at the relevant time. Even under the Act of 2015, there is an analogous provision in Section 24 pertaining removal of disqualification attached to conviction of an offence of "a juvenile in conflict with law", who is referred to as "a child in conflict with law" as per the Act of 2015.

10. As mentioned in the statement of objects and reasons of the Act of 2000, one of the objects is to rehabilitate the juvenile/child in conflict with law. The provisions of sub-section (1) of Section 19 would provide the juvenile in conflict with

law found guilty of an offence an opportunity to amend and regulate his delinquency. Removal of disqualification attached to a conviction of a juvenile in conflict with law would have the effect of opening the doors for him of a descent and disciplined civilized life. The order holding him guilty of an offence would not disqualify him from getting any job to which otherwise he would be legitimately entitled.

11. Sub-section (1) of Section 19 of the Act of 2000 starts with a *non obstante* clause i.e. "notwithstanding anything in any other law". In the directive no.33 (d) it is mentioned that the candidate must submit an affidavit giving his personal details including the fact that he has not been ever convicted for any offence under law. The said clause cannot be used for disqualifying the petitioner for his enrolment in the Army on the ground that he was held guilty by the

Juvenile Justice Board. Such disqualification has been specifically removed by the provisions of sub-section (1) of Section 19 of the Act of 2000 and the *non obstante* clause used therein would override directive no.33 (d) issued by respondent nos. 3 and 4. Respondent no.4, therefore, was not justified in cancelling the candidature of the petitioner for his enrolment in the Army on the ground that he was held guilty by the Juvenile Justice Board, Nanded. The letter dated 31st March, 2016, issued by respondent no.4 cancelling candidature of the petitioner, in the above circumstances, is liable to be quashed and set aside. Respondent no.4 will have to be directed to reconsider the candidature of the petitioner for enrolment into the Army on his own merits without being influenced by his conviction by the Juvenile Justice Board.

12. So far as 2nd prayer of the

petitioner seeking directions against respondent no.2 Superintendent of Police for removal of the relevant records of his conviction is concerned, it would be worthwhile to reproduce here the provisions of sub-section (2) of Section 19 of the Act of 2000 which read as under:

19. Removal of disqualification attaching to conviction. -

(1)

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

As seen from the above provision, it is for the Juvenile Justice Board to make an order directing that the relevant records of the conviction of the juvenile in conflict with

law should be removed after expiry of the period of appeal. In the present case, besides the petitioner there are other accused persons involved in the offences alleged to have been committed on 22nd July, 2010. It is not known whether the trial against the co-accused of the petitioner has been conducted or not. The original record produced before the Juvenile Justice Board would be required to be produced before the Regular Criminal Court for conducting the trial against his co-accused. Therefore, it is necessary for the learned Principal Magistrate, Juvenile Justice Board, Nanded, to consider the question of removal of the concerned record of conviction of the petitioner and pass necessary orders keeping in mind the provisions of sub-section (2) of Section 19 of the Act of 2000.

13. In view of the above facts and circumstances, the Writ Petition will have to

be allowed partly. In the result, we pass the following order:

ORDER

- i) The impugned letter dated 31st March, 2016, addressed by respondent no.4 to the petitioner, cancelling the candidature of the petitioner for getting enrolled into the Army, is quashed and set aside.
- ii) Respondent no.4 is directed to consider the candidature of the petitioner for his enrolment into the Army on its own merits and should not reject it merely on the ground that the petitioner was held guilty of certain offences by the Juvenile Justice Board.
- iii) The respondents shall take decision as expeditiously as possible and within 6 weeks from today and in case the petitioner is found eligible for the post of Mechanical Soldier shall appoint him to the said post without further delay.

- iv) The Principal Magistrate, Juvenile Justice Board, Nanded shall pass necessary orders under sub-section (2), Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000 in respect of the records holding the petitioner guilty of the offences alleged against him.
- v) Rule is made absolute partly accordingly.
- vi) The Writ Petition is disposed of in the above terms.
- vii) The parties shall bear their own costs.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE