

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.1020 OF 2021

DISTRICT : NASHIK

Jayashri Govind Naik)
Age : 37 years, Occ. Service,)
Working as Child Development Project)
Officer), R/o. Balvikas Prakalpa Karyalay,)
Satana Road, Deola, Dist. Nashik)
Permanent Address : D-306, Ganraj)
Heights, KP Nagar, Dhankawadi,)
Haveli, Pune 43)..**Applicant**

Versus

1. The State of Maharashtra,)
Through its Principal Secretary,)
Department of Sports and Youth)
Services, Mantralaya, Mumbai 32)
2. The State of Maharashtra,)
Through its Principal Secretary,)
General Administrative Department,)
Mantralaya, Mumbai.)
3. The Maharashtra Public Service)
Commission, Head Office, 5th, 7th &)
8th floor, Kuprej Telephone Nigam)
Building, Maharshi Karve Road,)
Kuprej, Mumbai 400 021)
4. The Commissioner,)
Sport and Youth Services,)
Balewadi Sports Complex,)
Maharashtra State, Pune.)

5. The Deputy Director, Sports and Youth Services, Kolhapur Division, Kolhapur, Divisional Sports Complex, Shooting Range Room No.1) Behind Northstar Hospital, Sambhaji Nagar, Kolhapur 416 012)
6. Maharashtra Athletic Association, Through its General Secretary, Dr. Pralhad Madhavrao Sawant, Sharyu, Patrakarnagar, Senapati Bapat Road, Pune 411 0016)
7. The State of Maharashtra, Through its Principal Secretary, Department of Women and Child Development Mantralaya, Mumbai 32)
8. The Commissioner, Women and Child Development, Maharashtra State, Pune.)..Respondents

M/s. Talekar & Associates, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

RESERVED ON : **17.10.2022**

PRONOUNCED ON : **11.11.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant challenges the impugned communication dated 26.11.2021 issued by the Commissioner, Sports and Youth Services, Pune, thereby directing the Deputy Director, Sports and Youth Services, Kolhapur, i.e., Respondent no. 5, to cancel the Sports Verification Certificate of the applicant as well as notice dated 29.11.2021 issued by Respondent no. 5, thereby directing the applicant to appear before him for hearing in pursuance of the directions issued by Respondent no. 4.

2. The Applicant was appointed on 21.01.2020 with the posting order dated 26.02.2020 as Child Development Project Officer. She was selected and appointed to the post reserved for Sports Category. She has produced the certificate of merit issued under the signature of General Secretary and President of the Amateur Athletic Federation of India. The said certificate was verified on 02.12.2017 issued by the Respondent No.5, the Deputy Director, Sports and Youth Services, Kolhapur Division, Kolhapur in favour of the Applicant. She was appointed from Open (Sports Category) and now she is selected and recommended by the Maharashtra Public Service Commission (M.P.S.C.) for appointment to the post of Naib Tahsildar (NT), Group-B from Open (Sports) Female Category. The Applicant had appeared for the examination conducted by M.P.S.C. for the various posts of Group-A and Group-B and she was selected from (Sports) Female Category pursuant to Advertisement No.50/2018. She passed Preliminary Examination as well as Main Examination and her name appeared in the list of eligible candidates for the post of Naib Tahsildar, Group-B. Her name was short-listed for interview on 05.03.2020 and was further recommended on 01.10.2021 by M.P.S.C. However, the Applicant was called for re-verification on 28.10.2021

by Respondent No.4, the Commissioner, Sport and Youth Services. She submitted all the record and the documents to Respondent No.4. However, shockingly she received communication / notice on 29.11.2021 that her earlier Sports Verification dated 02.12.2017 is to be cancelled and for that purpose she is directed to appear before Respondent No.5, the Deputy Director, Sports and Youth Services, Kolhapur Division, Kolhapur on 03.12.2021. The said communication dated 29.11.2021 is the subject matter of challenge in this Original Application.

3. Learned counsel Mr. Talekar submits that the Applicant is Sports Person. She has played Cross Country Championship in the year 2003 and secured merit certificate verified on 02.12.2017. Learned Advocate placed reliance on Government Resolution (G.R.) dated 1.7.2016, wherein there is no provision to re-open the validation process in respect of Sports Verification Certificate once verified and issued in favour of the Applicant on 02.12.2017. Learned counsel has submitted that once the Deputy Director has taken decision about the Sports Certificate then Respondent no.4, the Commissioner, Sport and Youth Services has no authority to change it. If at all he finds it is false then he can only file Petition before the Hon'ble High Court seeking cancellation of such certificate. Learned counsel has urged that the Deputy Director is a quasi-judicial authority whose order can be questioned only before the Hon'ble High Court. Learned counsel while criticizing the letter dated 26.11.2021 written by Mr. Om Prakash Bakoria, Commissioner, Sports and Youth Services addressed to Secretary, M.P.S.C. has submitted that the Commissioner had already taken decision that the said certificate was false. Hence, the letter issued by the Director dated 29.11.2021 is illegal. Learned counsel submitted that as soon as the Applicant received this letter, she immediately on 02.12.2021 addressed letter to Respondent No.5

and demanded the reason for taking objection to her certificate. Learned counsel has further submitted that the Applicant has played in State Level Competition of Cross Country which was organized by the Rajasthan Amateur Athletic Association in the year 2003 and she has secured 3rd rank in the '8th All India Federation Cup Cross Country Championship'. It was organized under the auspices of Amateur Athletic Federation of India, which is affiliated to Indian Olympic Association and also to Maharashtra Olympic Association. He relied on the verification certificate dated 02.12.2017 issued by the Respondent No.5, the Deputy Director, Sports and Youth Services, Kolhapur. Relying on G.R. dated 01.07.2016 and 27.03.2017 learned counsel demonstrated how the Applicant is qualified as State Level Sports person. The Respondent-Commissioner, Sports and Youth Services, has no power to direct the Deputy Director, Sports & Youth Services, Kolhapur, in his letter raising doubt about the Sports Certificate issued to the applicant. The Commissioner, Sports and Youth Services, M.S, Pune, though was the second Appellate Authority, he was not competent and authorize to decide the validity of the Sports Certificate. In this case, the Commissioner, literally directed to reverify the Sports Validity Certificate of the applicant for the reason that the event was not organized by the authentic federation and the said Federation Cup was not duly recognized. Learned counsel for the applicant has submitted that the authority has no power of review as review is not inherent, but a statutory power. In absence of such provision, the power of review cannot be exercised, he can challenge the validity only by filing writ against the order of the Deputy Director. The Deputy Director, Sports and Youth Services has acted as a quasi-judicial authority. The decision of the quasi-judicial authority cannot be changed, except under review, if such power is available and in the present

case no such statutory power was available to the Deputy Director, Sports and Youth Services, Kolhapur.

4. Learned counsel for the applicant has relied on the following judgments:-

- (i) NARESH KUMAR & ORS Vs. GOVERNMENT (NCT OF DELHI) (2019) 9 SCC 416.
- (ii) INDIAN NATIONAL CONGRESS (I) Vs. INSTITUTE OF SOCIAL WELFARE & ORS, (2002) 5 SCC 685.

5. Learned C.P.O, referred to the G.R dated 1.7.2016 and submitted that in clause 5 of the said G.R, the procedure of verifying the Sports Certificate is mentioned. As per sub-clause (iii) of clause 5, when the Sports Certificate is produced by the Deputy Director, he has to verify the said Certificate on the basis of other documents and then mention in which category, i.e., a, b, c and d, the applicant is eligible. If at all, any candidate is found not eligible as per the report of the Deputy Director, that is to be communicated to the concerned Sportsman and if at all the candidate wants to challenge such decision, then he is required to file first appeal before the Joint Director, Sports and Youth Services and second appeal is to be filed before the Commissioner, Sports and Youth Services, Pune. As per sub-rule (vi) of Clause 5, M.P.S.C is the selecting authority. Sub-clause (viii), (ix), (x), (xi) & (xii) of clause 6 is the procedure to be followed by the Government Departments. Learned C.P.O further relied on the affidavit in reply dated 3.8.2022 filed by Mr. Omprakash Bakoria, Commissioner, Sports & Youth Services, M.S, Pune, wherein he has referred to letter dated 27.10.2021. The decision was taken on 21.10.2021 to re-verify the documents. Thereafter Mr Bakoria, Commissioner, Sports and Youth Services wrote letter on 26.11.2021, wherein applicant's name is shown at Sr. No. 5, for the post of Naib

Tahsildar, Group-B, open Sports. There is no merit in the challenge as the order passed is in accordance with law. At the outset, it is to be clarified that 'Review' which is contemplated in the present case is against the judicial or quasi-judicial power and orders passed therein. However, the power of review of the administrative authority cannot be questioned. Hence, the application be dismissed.

6. In the case of NARESH KUMAR (supra), the Hon'ble Supreme Court has considered the power of review. Once the award is passed under Section 11 of the Land Acquisition Act, 1894, the Hon'ble Supreme Court held that under Section 11 of the said Act the award attains finality and under Section 13-A certain clerical errors can be corrected. The Hon'ble Supreme Court held that there is no special provision of review which is necessary to invoke such powers. Such provisions of review is to be necessarily made in the Statute and in its absence, the earlier award cannot be modified or reverified.

7. In the case of Indian National Congress (I) (supra), the Hon'ble Supreme Court was considering the group of appeals under the Representation of the People Act, 1951 and the power to deregister or cancel the registration of a Political Party under Section 29-A of the said Act. While discussing the issue, the Hon'ble Supreme Court distinguished between the two actions, i.e., quasi-judicial act and administrative action of the authority. The Hon'ble Supreme Court held as under:-

“27. What distinguishes an administrative act from quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.....

29. At the outset, it must be borne in mind that another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions. The afore-quoted passage from Administrative Law by Wade & Forsyth is wholly inapplicable to the present case. Rather, it goes against the argument of learned counsel for the respondent. The afore-quoted passage shows that where an authority whose decision is dictated by policy and expediency exercises administratively although it may be exercising functions in some respects as if it were judicial, which is not the case here.”

The ratio of the Hon’ble Supreme Court throws light on the distinction between these two quasi-judicial and administrative actions

8. We have considered G.R dated 1.7.2016, 27.3.2017 and so also 10.10.2017. The said Competition was arranged by the Amateur Athletic Federation of India and it was associated with the Indian Olympic Association. On reading, the criteria of the valid document as pointed out by learned counsel of both the sides, we are not convinced that this Federation Cup Cross Country Championship is a valid tournament for 5% reservation as per G.R dated 1.7.2016. The name is not mentioned in the G.R. It appears that without taking into account this factual position, the Deputy Director of Sports and Youth Services has validated the Sports Certificate of the applicant in the year 2017. The applicant has now appeared for the post of Naib Tahsildar Group-B in a reserved category of Female Sports. Her Sports Certificate is bound to be verified again as she sought appointment in the said category. Therefore, it was again verified. The fact that it was earlier verified by the Deputy Director, Sports and Youth Services, when she was appointed earlier as Child Development Project Officer is not

disputed. The main argument of Mr Talekar, learned counsel was on the competency of the authority to review the validity once declared as valid.

9. The dictionary meaning of word quasi is “not exactly”. Thus, literally it means quasi-judicial body is not exactly like the normal court. The proceedings differ in the sense that quasi-judicial bodies are not bound by strict rules of procedure and evidence. The authority is said to act quasi – judicially, if:

- The authority is required and empowered by statute to act judicially and to adjudicate the rights and liabilities of the parties wherein there are propositions and oppositions i.e., lis;
- The authority is required by statute to enquire before arriving at the decision;
- There are two contending parties (the two contending parties herein may be authority proposing the act and the subject opposing it);

Thus, an authority is said to be acting quasi judicially when it is acting “not exactly but somewhat similar to a court” wherein it will be discharging the judicial function of adjudicating the rights and liabilities of the parties although not strictly adhering to the normal court procedures and rules of evidence. Talking about administrative decision, it is always policy based decision, which does not involve any contention or conflict of interest, however upon implementing the decision it may give rise to a contention of rights/conflict of interests which then needs to be adjudicated. Whether a decision is a quasi-judicial one or an administrative one depends upon the facts and circumstances of each case.

10. The expression Quasi Judicial Authority is not always used with clarity and accuracy. The decision taking process is not necessarily always judicial. The decision taking is involved in all stages of the administration also. Finding of the facts and truth is judicial function. Similarly, fact finding or fact ascertaining is also included in the administrative work. When the administrative authority conducts enquiry after giving opportunity to a party or records evidence in the fact-finding process, then the administrative decision takes a colour of judicial /quasi-judicial decision.

11. At various levels in the administration the Civil Servants are required to take decisions of accepting or rejecting certain facts or documents. Verification of the documents in order to decide a particular application or proposal or submission is as per the policy manifested in G.R cannot be said as Quasi Judicial Act. The scrutiny of the documents involves verification, vice-versa verification involves scrutiny and that cannot be said as a Quasi Judicial Act. It is an administrative function and on that basis the authority decides whether a particular person is eligible or not. For e.g., Number of applications are submitted to M.P.S.C. for a particular post. It is a duty of the officers in the M.P.S.C. to scrutinize the documents on the basis of relevant guidelines or the recruitment rules in order to determine whether a person is eligible or not. This act and decision cannot be said that it is similar to judicial Act. Therefore, the verification of this certificate of 02.12.2017 by the Deputy Director is not a Quasi Judicial decision, but it is an Administrative Act. The administrative act, if found wrong can be corrected in absence of statutory provision for the review. One peculiar fact in this case is also taken into account by us. The applicant is serving as Child Development Officer since 21.01.2020. Pursuant to advertisement No.50/2018,

the applicant has appeared for the M.P.S.C. examination, of which Preliminary Examination was conducted on 17.02.2019 and Main Examination was conducted during the period 13.07.2019 to 15.07.2019 for the post of Naib Tahsildar in Female Sports Category. Thus, it is a fresh recruitment of the Applicant. Therefore, it is in fact verification of the documents which cannot be labelled as re-verification of the documents.

12. Let us advert to G.R. dated 01.07.2016 whereby the directions regarding maintaining reservation in Sports Certificate are laid down. The relevant clause of the said G.R is reproduced below:-

५. क्रीडा प्रमाणपत्राची वैधता पडताळणी:-

(i)

(ii)

(iii) सदर खेळविषयक प्रमाणपत्र खेळाडूंकडून पडताळणीसाठी प्राप्त झाल्यानंतर संबंधित विभागीय उपसंचालक, क्रीडा व युवक सेवा यांनी त्यांची संघटनेकडून प्राप्त झालेल्या निकालाच्या आधारे सर्व आवश्यक कागदपत्रांची पूर्तता झाल्यानंतर पडताळणी करून प्रमाणपत्र योग्य असल्याची खात्री करून सदर क्रीडा प्रमाणपत्र अ,ब,क,व,ड या संवर्गापकी कोणत्या संवर्गासाठी पात्र ठरतो याबाबतचा स्पष्ट उल्लेख करून परिशिष्ट "क" नुसार प्रमाणित प्रमाणपत्र खेळाडूस पाठवावे. तसेच सदर अहवाल क्रीडा विभागाच्या संकेतस्थळावर अपलोड करावा. उपसंचालकांद्वारे वरील पूर्ण कार्यवाही खेळाडूंकडून आवश्यक कागदपत्रे प्राप्त झाल्यानंतर व संघटनेकडून निकालासंदर्भात आवश्यक कागदपत्रे प्राप्त झाल्यानंतर २० कार्यालयीन दिवसांच्या आत करण्यात येईल.

(iv)

(v) संबंधित विभागीय उपसंचालक यांचेमार्फत कळविण्यात आलेल्या निर्णयावर खेळाडूला आक्षेप असल्यास याबाबत खेळाडूस निर्णय प्राप्त झाल्यापासून २ महिन्यांचे आत सहसंचालक, क्रीडा व युवक सेवा, शिवछत्रपती क्रीडासंकुल, महाळुंगे बालेवाडी, पुणे यांचेकडे प्रथम अपील करता येईल. प्राप्त होणा-या अपीलावर सुनावणी घेवून निर्णय देण्याची कार्यवाही सहसंचालक, क्रीडा व युवकसेवा हे करतील. सहसंचालक क्रीडा व युवकसेवा यांच्या निर्णयावर आक्षेप असल्यास आयुक्त, क्रीडा व युवकसेवा, पुणे यांच्याकडे द्वितीय अपिल करता येईल.

६. शासकीय विभाग/ कार्यालयांनी करावयाची कार्यवाही :-

(i)

(ii)

(iii)

(iv)

(v)

(vi)

- (vii)
 (viii)
 (ix)
 (x) संबंधित विभागाने खेळाडू उमेदवाराकडून प्राप्त झालेल्या अर्जाची छाननी करतेवेळी त्यासोबत परीशिष्ट ब मधील प्रमाणित प्रमाणपत्र असल्याची खात्री करावी. तसेच क्रीडा विभागाच्या संकेतस्थळावरील माहितीशी पडताळणी करावी. त्यानंतरच अर्जदारास भरतीविषयक पुढील/ प्रक्रीयेसाठी पात्र ठरवावे.
- (xi) खेळाडूबाबतची माहिती संकेतस्थळावर अपलोड करण्यास सुमारे सहा महिन्यांचा कालावधी लागेल, दरम्यानच्या कालावधीत अर्जासोबत जोडलेल्या प्रमाणपत्राच्या पडताळणी करण्याकरिता भरती प्राधिकरणाने संबंधित विभागीय उपसंचालक क्रीडा व युवक सेवा यांचेकडे पत्राव्यवहार करावा. विभागीय उपसंचालक यांनी संबंधित खेळाच्या संघटनेच्या कागदपत्रांच्या आधारे विभागाच्या विभागीय उपसंचालक यांनी पडताळणी करावी. त्यानुसार पात्र अथवा अपात्रतेबाबत संबंधित भरती प्राधिकरणाने निर्ण घ्यावा. तथापि ६ महिन्यांनंतर माहिती संकेतस्थळावर अपलोड झाल्यानंतर प्रमाणपत्राची पडताळणी संबंधित भरती प्राधिकरणाने संकेतस्थळावरील माहितीशी करण्यात यावी.
- (xii) क्रीडा प्रमाणपत्राची पडताळणी करण्यासाठी संबंधित विभागास आयुक्त/ संचालक क्रीडा व युवक सेवा, पुणे यांच्याकडे पत्राव्यवहार करण्याची आवश्यकता नाही. प्रमाणपत्राबाबत काही शंका असल्यासच आयुक्त/संचालक क्रीडा व युवक सेवा, पुणे यांच्याकडे विचारण करावी.”

As per Clause 5 of the said G.R. the Deputy Director is required to verify the Sports Certificate and if at all the certificate is considered invalid then the concerned candidate under Sub clause (v) of Clause 5 can file 1st appeal and 2nd appeal before different authorities. However, if it is validated then the papers will be submitted further to the concerned Department. Clause 6 states that the required procedure is to be followed and steps are to be taken by the Government Department. Thus 5% reservation is available only for the direct recruits and in promotions. It is a horizontal reservation. As per Sub clause (ix) of Clause 6 valid certificate approved by the Deputy Director is to be enclosed along with the application.

13. While scrutinizing the documents the Department (M.P.S.C.) is required to verify and ascertain about the validity of the certificate. As per Sub clause (xi) of Clause 6 the information of the candidate is uploaded on the web-site within the period of 6 months. During that period the M.P.S.C. is required to correspond

with the office of Deputy Director in respect of scrutiny of validity of the certificates. Thereafter, the M.P.S.C. should take decision about eligibility or non-eligibility of the said candidates. Sub clause (xii) of Clause 6 further states that if any doubt is raised then the Commissioner or Director, Sports and Youth, Pune is to be contacted and enquiry is to be made to him.

14. Learned C.P.O. has rightly pointed out that the letter was written by the concerned Department i.e. Under Secretary, G.A.D. dated 27.10.2021 about the verification of the Sports Certificate of the Applicant, Jayashri Govind Naik. Pursuant to letter dated 26.11.2021 the Respondent-Commissioner has found that as per G.R. dated 16.10.2017 in Appendix A-1, All India Federation Cup Cross Country Championship is not recognized and not incorporated for giving 5% reservation. It was mentioned that the Inter-Divisional National Sports Competition were conducted independently and it cannot be considered and it directed the Deputy Director to verify the position. The Deputy Director, therefore, on verification has given decision which is under challenge. Thus, it cannot be said that the Respondent-Commissioner of his own has directed the Deputy Director to verify the documents. The G.A.D. has power to ask the scrutiny committee to verify and pursuant to that the action is taken by the Commissioner Sports. Thus, challenge given to the competence of reviewing power of the administrative authority is not sustainable. It is necessary to make it clear that it is neither a case of fake/bogus Sports Certificate nor a case of fraud by the applicant. Earlier her Sports Certificate was declared as valid and she is appointed as Child Development Project Officer in reserved category of Sportsman since January, 2020 and has been working since then. Thus, the decision of cancellation of validity of her Sports Certificate should not affect her earlier service. We find that

in the earlier process there was no fault or any mistake on the part of the applicant and therefore, she may continue on the said post. The cancellation of validity to operate qua her further appointment or selection as Naib Tahsildar in this recruitment process.

15. Under such circumstances, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 11.11.2022
Dictation taken by : A.K. Nair.