

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.722/2018.** (D.B.)

Shivprasad Nivrutti Khillare,  
Aged about 25 years,  
Occ-Nil,  
R/o C/o Umra Shamsoddin,  
Washim.

**Applicant.**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of School Education & Sports,  
Mantralaya, Mumbai-400 032.
- 2) The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-400 032.
- 3) The Director of Sports and Youth Services,  
(M.S.), Pune.
- 4) The Dy. Director of Sports and Youth Services,  
Nagpur Region, Nagpur.
- 5) The Commissioner of Police,  
Nagpur.

**Respondents**

---

Shri A.A. Syed, the learned counsel for the applicant.  
Shri A.P. Potnis, the learned P.O. for respondents.

---

**Coram:-Shri Shree Bhagwan, Member (A) and**  
**Shri Anand Karanjkar, Member (J)**

---

**JUDGMENT**

(Delivered on this 29<sup>th</sup> day of April 2019.)

**Per:- Member (A)**

Heard Shri A.A. Syed, the learned counsel for the applicant and Shri A.P. Potnis, the learned P.O. for the respondents.

2. In pursuance of the advertisement published on 24.2.2017 published by respondent No.5 inviting application to fill up the posts of Police Constables, the applicant applied for the said post by way of direct recruitment under 5% sports quota (240 vacancies). The applicant is a sports person and has achieved remarkable achievement in sports. Vide G.R. dated 1.7.2016, it is specifically mentioned that the sports persons need to file verification certificate issued by Dy. Director of Sports and Youth Services to claim reservation under the sports quota. Accordingly, the applicant had applied for issuance of the said certificate to respondent No.4, but the it did not issue any certificate in favour of the applicant. It is also stated for getting the said certificate, the respondents No.4 demanded bribe amounting to Rs. 10,000/- from each candidate. It is also stated that applicant qualified in the physical and written examination and he was the highest scorer amongst the candidates.

Lastly on 22.3.2017, the applicant got verification certificate. The other candidates who have secured less marks were selected whereas the applicant was not and thereby deprived of his legitimate claim of being selected and appointed. This Tribunal in O.A. 699/2017 partially allowed the O.A. and directed the respondent authorities to consider the claim of the applicant and applicant was directed to forward his representation to the respondent No.5. Accordingly the applicant has sent his application to the respondent No.5, but the same was rejected. Hence, the applicant was constrained to file this O.A. for redressal. In support of his case the applicant has filed so many relevant documents and the judgments of this Tribunal.

3. Reply affidavit has been filed on behalf of respondent Nos. 3 and 4 and the respondents have refuted the claim of the applicant in toto.

4. The applicant has filed the judgments of the Hon'ble Apex Court to prove his claim. The Hon'ble Supreme Court in **Charles K. Skaria and Ors. Vs. Dr. C.Mathew & Ors reported in AIR 1980 Supreme Court 1230.** We are reproducing below the para no. 20 of the said Judgment.

*“There is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:*

*(4)(b) : 10% to Diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or specialities.*

*13. Certificates to be produced :- In all cases true copies of the following documents have to be produced:-*

*xx xx xx*

*(k) Any other certificates required along with the application.*

*This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has*

*been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned*

*in the prospectus, but still above board, is to make procedure not the handmade but the mistress and form not as subservient to substance but as superior to the essence.”*

5. In above Judgment Hon'ble Apex Court has pointed out that having certificate is more important than getting it verified.

6. The Principal Bench of MAT, Mumbai Bench has passed orders in O.A.Nos. 610/2017, 204/2018 & 635/2018 on 19/11/2018. The order in O.A. No. 635/2018, regarding provisions of G.R. dated 01/07/2016 para nos. 4 (V), the detail observations have been made in para no. 11 and 12 of the Judgment, which are reproduced below:-

“11. *Finding on Questions:-*

*Question No. (1). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must obtain the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of opportunity of being a candidate for public employment?*

*Findings : (a) In so far as first question is concerned, this Tribunal has decided O.A 610/2017 and held that imposition of a condition, compliance whereof is exclusively within the domain of the executive and is beyond the control of candidate cannot be made a hurdle in the way of a individual of becoming a candidate for public employment.*

- (b) *Denial of candidature to a citizen in the matter of public employment on account of failure to comply with a condition which is beyond his physical control, human limits and is a matter of authority and domain of public authorities, can never be imposed. Imposition of such condition result in violation of fundamental Rights of equal opportunity of consideration in the matter of public employment, is utter violation of Articles 14 & 16 of the Constitution of India.*
- (c) *This Tribunal holds for the reasons recorded in O.A 610/2017 and O. A. 204 of 2018 decided today, that the imposition of condition of possession of certificate by a candidate before the last date fixed for making application cannot apply to the candidates whose claim for verification or vetting of the Sports Certificate is pending before the authorities and the candidate is not responsible for the delay and the blame is not attributable to the candidate.*
- (d) *In view of the said discussion and findings, Question No. 1 is answered against the authorities and in favour of the Government.*
- (e) *Therefore, applicant is held entitled for consideration of his claim on his own merit and in accordance with the recruitment rules.*

*Question No. (2) On facts, has the applicant made out a case of his eligibility on account of failure to possess validation, delay in grant whereof is not attributable to him.*

*Findings : The details as to how the applicant had participated, his Certificate had been validated and Respondent no. 2 took more than two months' time are admitted facts.*

7. The applicant applied for the post of Police Constable in response to the advertisement dated 24.2.2017 (A-1) under sports quota. In the said advertisement, there were total 12 posts for sports quota. Out of which, 2 posts were reserved for SC category. Applicant applied for this post and also applied for getting sports certificate to the Deputy Director of Sports and Youth Services, Nagpur Region, Nagpur vide his letter dated 16.3.2017. The period for submitting online application was from 24.2.2017 to 17.3.2017 (P.17). However, in reply filed by respondent No.5, para 4 at page 79, it is submitted that last date for submitting online application was 20.3.2017. The applicant was allowed to appear in the examination and as per Annexure A-6, he has secured 178 marks at Sr. No.1 of provisional select list + wait list of SC candidates. Vide Annexure A-6, it appears that he is at Sr. No.1 of this list under the category of SC sports. Aggrieved by the decision of the respondents, the applicant

approached this Tribunal by filing O.A. No.699/2017. The Division Bench of this Tribunal delivered the judgment on 27.4.2018 and following order was passed:-

“The O.A. is partly allowed. We direct the petitioners (applicants) to file representation with respondent No.5 on or before 15<sup>th</sup> May 2018. If such representations alongwith necessary copies of documents are furnished by the applicants, we expect that the respondent No.1 shall consider the same representations by conducting due scrutiny, as may be deemed fit and proper so as to decide the claim of the applicants before giving effect to the final select list. No order as to costs.”

8. Consequent to that judgment, the applicant submitted representation dated 27.4.2018 (A.11). In response to the order of this Tribunal, applicant's representation was decided vide letter dated 3.8.2018 (A.12). In the said letter, it appears that it was explained to the candidates that since the sports validity certificate from the Dy. Director of Sports and Youth Services, Nagpur Region, Nagpur was received on 6.4.2017, he has been declared ineligible. As per the said order of this Tribunal, it was given on 16.7.2018 and was passed on 3.8.2018 (A.12).



9. Main contention is about the G.R. dated 8<sup>th</sup> July 2017 (A-2) para 4 (v). The learned counsel for the applicant has relied on the judgment passed by Principal Bench of this Tribunal at Mumbai in O.A. No.2004/2008 and a subsequent judgment passed by this Bench in O.A. No. 780/2018. In both these judgments, the provisions of the G.R. dated 8.7.2017 (A-2), para 4 (v) has been clarified.

10. The learned counsel for the applicant has also invited our attention to Annexure A-4 where one Mr. Shubham Arun Dhongde submitted his sports certificate on 15.3.2017 and he got verification on 20.3.2017 (A-4). Also another candidate Mr. Sumit Gajanan Bhute submitted his application on 15.3.2017 and got verification on 20.3.2017.

11. In view of above discussion, following observations are made:-

“The Hon’ble Supreme Court in **Charles K. Skaria and Ors. Vs. Dr. C.Mathew & Ors reported in AIR 1980 Supreme Court 1230.** We are reproducing below the para no. 20 of the said Judgment.

*“There is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the*

*candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:*

*(4)(b) : 10% to Diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.*

*13. Certificates to be produced :- In all cases true copies of the following documents have to be produced:-*

*xx xx xx*

*(k) Any other certificates required along with the application.*

*This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned*

*in the prospectus, but still above board, is to make procedure not the handmade but the mistress and form not as subservient to substance but as superior to the essence.”*

5. In above Judgment Hon'ble Apex Court has pointed out that having certificate is more important than getting it verified.

6. The Principal Bench of MAT, Mumbai Bench has passed orders in O.A.Nos. 610/2017, 204/2018 & 635/2018 on 19/11/2018. The order in O.A. No. 635/2018, regarding provisions of G.R. dated 01/07/2016 para nos. 4 (V), the detail observations have been made in para no. 11 and 12 of the Judgment, which are reproduced below:-

"11. *Finding on Questions:-*

*Question No. (1). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must obtain the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of opportunity of being a candidate for public employment?*

*Findings : (a) In so far as first question is concerned, this Tribunal has decided O.A 610/2017 and held that imposition of a condition, compliance whereof is exclusively within the domain of the executive and is beyond the control of candidate cannot be made a hurdle in the way of a individual of becoming a candidate for public employment.*

*(b) Denial of candidature to a citizen in the matter of public employment on account of failure to comply with a condition which is beyond his physical control, human limits and is a matter of authority and domain of public authorities, can*

*never be imposed. Imposition of such condition result in violation of fundamental Rights of equal opportunity of consideration in the matter of public employment, is utter violation of Articles 14 & 16 of the Constitution of India.*

(c) *This Tribunal holds for the reasons recorded in O.A 610/2017 and O. A. 204 of 2018 decided today, that the imposition of condition of possession of certificate by a candidate before the last date fixed for making application cannot apply to the candidates whose claim for verification or vetting of the Sports Certificate is pending before the authorities and the candidate is not responsible for the delay and the blame is not attributable to the candidate.*

(d) *In view of the said discussion and findings, Question No. 1 is answered against the authorities and in favour of the Government.*

(e) *Therefore, applicant is held entitled for consideration of his claim on his own merit and in accordance with the recruitment rules.*

Question No. (2) *On facts, has the applicant made out a case of his eligibility on account of failure to possess validation, delay in grant whereof is not attributable to him.*

*Findings : The details as to how the applicant had participated, his Certificate had been validated and Respondent no. 2 took more than two months' time are admitted facts.*

12. In view of above discussion in foregoing paras, we proceed to pass the following order:-

**ORDER**

- (i) The O.A. is allowed.
- (ii) The respondent No.5 is directed to consider the applicant for appointment in the said category in subsequent vacancy on same terms and conditions as it was in advertisement dated 24.2.2017.
- (iii) No order as to costs.

(A.D.Karanjkar)  
Member (J)

(Shree Bhagwan)  
Member (A)

Dt. 29.4.2019.

pdg