

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 169 OF 2014

DISTRICT : MUMBAI

Shri Nitin Ashok Chavan,)
Residing at E-2/8, Marol Police Camp,)
Marol, Andheri [E], Mumbai 400 059.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Cooperative Department,)
Mantralaya, Mumbai 400 032.)
2. The Director,)
The Directorate of Youth Services)
& Sports, Maharashtra State,)
Central Building, Pune 411 001.)
3. The Divisonal Sub-Registrar,)
Cooperative Societies [Audit],)
Mumbai Division, 6th floor,)
Kokan Bhavan, CBD, Belapur,)
Navi Mumbai.)

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4. Ronny William Fernandes,)
395, Nana Peth, Near Gyani Motors,)
Pune 411 002.)...**Respondents**

Shri N.V Bhutekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for Presenting Officer for the Respondents no 1 to 3.

Smt Punam Mahajan, learned advocate for Respondent no. 4.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 03.05.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri N.V Bhutekar, learned advocate for the Applicant, Shri A.J Chougule, learned Presenting Officer for Presenting Officer for the Respondents no 1 to 3 and Smt Punam Mahajan, learned advocate for Respondent no. 4.


2. This Original Application has been filed by the Applicant challenging his rejection from the Sports person category for the post of Auditor Grade-II on the

establishment of the Respondent no. 3. He has also challenged the selection of the Respondent no. 4 on that post.

3. Learned Counsel for the Applicant argued that an advertisement was issued by the Respondent no. 3 in December, 2011 for recruitment to the post of Auditor, Grade-II. The Applicant applied for the post reserved horizontally for Sports person from open category and was selected for the post. By order of the Respondent no. 3 dated 7.3.2012, he was appointed as Auditor, Grade-II. The Sports Certificate of the Applicant was sent by the Respondent no. 3 to the Respondent no. 2 for verification. The Respondent no. 2 held that the Applicant was not eligible to be selected from Sports category and the Respondent no. 3 informed the Applicant accordingly by letter dated 31.5.2012. His appointment was cancelled by letter dated 6.6.2012. The Applicant filed O.A no 653/2012 before this Tribunal and by order dated 7.2.2013, the Original Application was allowed and the Applicant was held eligible to be selected from Open Sports person category for the post of Auditor, Grade-II. The Respondent no. 4 filed O.A no 12 of 2013 before this Tribunal and the Respondent no. 2 filed R.A 23/2013 in O.A 653/2012. By order dated 24.12.2013, Original Application no 12 of 2013 and R.A no 23/2013 in O.A no 653/2012 were allowed, mainly on the ground that 'Throw ball' was not recognized by the Indian

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Olympic Association as informed by them by letter dated 11.7.2011. Learned Counsel for the Applicant argued that there are two G.Rs regarding reservation of posts from Sportsperson category in Government service, viz., G.R dated 30.4.2005 and G.R dated 14.7.2009. As per G.R dated 30.4.2005, game of 'Throw ball' is included as a game recognized by the Indian Olympic Association (IOA). In the G.R dated 14.7.2009, it is provided that competition organized by State Organization of a Sport which is affiliated to the National Organization of that sports, which in turn is affiliated to Indian Olympic Association will be considered valid for the purpose of reservation of Sportsperson. Learned Counsel for the Applicant argued that by G.R dated 30.12.2013, the Respondent no. 1 has directed that competition held after February, 2011 by Sports Federations recognized by the Indian Olympic Association will be held valid if the proposal of verification was received before 28.2.2014. The Original Application no 12/2013 and R.A no 23/2013 were decided on 24.12.2013, before this G.R dated 28.2.2014 came to be issued. As per this G.R, the Applicant is eligible to be considered for appointment as Sports person and as he was more meritorious than the Respondent no. 4, the Applicant is entitled to be appointed as Auditor, Grade-II. The Applicant filed Writ Petition no 430 of 2014 before Bombay High Court challenging the order of this Tribunal dated 24.12.2013 in R.A no 23/2013. By order dated 12.2.2014, Hon'ble



High Court disposed of this Writ Petition along with another Writ Petition no 434/2014 with liberty to file fresh Original Application before this Tribunal in view of the subsequent G.R dated 30.12.2013. The order of the Tribunal dated 24.12.2013 should not come in the way to decide the entitlement of the Petitioner based upon the new circular and in accordance with law. The Applicant, thereafter filed this O.A no 169/2014. He filed Misc Application no 82/2014 in O.A no 169/2014. By order dated 26.2.2014, the Misc Application was ordered to be heard along with the Original Application. The Applicant filed Writ Petition no 2198 of 2014 before Hon'ble High Court challenging the order dated 26.2.2014. Hon'ble High Court passed the following order:-

“2. The present Writ Petition is against “interlocutory order whereby the Misc Application in question is rejected as the prayers in the main Original Application are the same. The statement is made by the learned Counsel appearing for the parties that the Original Application is part heard and pending for admission.

3. Therefore, by keeping all points open, we are inclined to dispose of the present Writ Petition. However, Learned Tribunal to consider the case, basically prayer clause (a) so made in the




Miscellaneous Application in accordance with law, while hearing the Original Application.”

4. Learned Counsel for the Applicant prayed that this Original Application may be allowed as the Applicant is eligible to be considered from Sports-quota as per G.R dated 30.12.2013. He also cited judgments of Aurangabad Bench of Hon'ble Bombay High Court in W.P no 2169/2015 and others dated 25.2.2015 setting aside order declaring as invalid the Sports certificate issued to persons by the Maharashtra Throwball Association, Nagpur.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 to 3 that the Applicant did not submit his Sports Certificate for Verification in time. As a result, his candidature was cancelled.

6. Learned Counsel Ms Mahajan for Respondent no. 4 argued that the Applicant is not eligible for appointment from Sports category as he does not fulfill the conditions of G.R dated 30.4.2005. Learned Advocate Ms Mahajan stated that as per para 4(c) of the G.R dated 30.4.2005, a person who had obtained first, second or third rank (or won gold, silver or bronze medal) in an individual or team event in a recognized game in a competition organized by a Sports Association affiliated to Maharashtra Olympic Association or organized by



Maharashtra Olympic Association itself is eligible to be considered from Sports category. Learned Advocate Ms Mahajan stated that Maharashtra Throwball Association is not affiliated to Maharashtra Olympic Association. G.R dated 14.7.2009 made a provision that the competition organized by a State Sports Organization which is affiliated to the National Sports Federation of that Sport, which in term is affiliated to Indian Olympic Association will be held valid and the condition of affiliation of the Sports Organization at State Level with Maharashtra Olympic Association will not be compulsory. Learned Counsel for the Respondent no. 4 argued that Maharashtra Throwball Association is affiliated to Throwball Federation of India, but the Throwball Federation of India was not affiliated to the Indian Olympic Association in 2010 or thereafter. It was only recognized. Learned Counsel for the Applicant argued that this Original Application is liable to be rejected on this ground alone.

7. We find that para 4(c) of the G.R dated 30.4.2005 reads as follows:-

“क) गट -क व ड साठी अर्हता:-

सदर पदांसाठी त्या त्या खेळांच्या वैयक्तिक अथवा सांघिक क्रीडा स्पर्धांमध्ये किमान राज्य अजिंक्यपद स्पर्धांत प्रथम, द्वितीय व तृतीय स्थान प्राप्त करणारा किंवा सुवर्ण, रौप्य किंवा कांस्य पदक प्राप्त करणारा खेळाडू.

राज्य अजिंक्यपद स्पर्धा या सदर खेळांच्या महाराष्ट्र ऑलिम्पिक असोसिएशनशी संलग्न असलेल्या अधिकृत राज्य संघटनेने आयोजित केलेल्या असाव्यात अथवा महाराष्ट्र

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ऑलिम्पिक असोसिएशनने स्वतः आयोजित केलेल्या असाव्यात. किमान प्राविण्यापेक्षा उच्च स्तरावरील क्रीडा प्राविण्य मिळविणा-या उमेदवारास प्राधान्य असावे. वैयक्तिकरित्या किंवा आमंत्रित स्वरूपाचा स्पर्धामध्ये भाग घेतलेल्या खेळाडूंचा यासाठी विचार करता येणार नाही.

राष्ट्रीय छात्रसेनेमध्ये (NCC) अंडर ऑफिसरची रॅक मिळवून राष्ट्रीय छात्रसेनेच्या राष्ट्रीय स्पर्धामध्ये पदके प्राप्त केलेली व्यक्ती.”

The G.R dated 14.7.2009 has widened the scope of this G.R as can be seen from the following provisions of this G.R viz.,

“ तसेच ज्या खेळाची नोंदणीकृत राज्य संघटना त्यांच्या अधिकृत राष्ट्रीय संघटनेशी संलग्न असेल, तसेच सदर राष्ट्रीय संघटनेला इंडियन ऑलिम्पिक असोसिएशनने संलग्नता दिलेली असल्यास, अशा राज्य संघटनेच्या स्पर्धेतील राज्यस्तरीय विजेत्यांनाही खेळाडू आरक्षणाचा लाभ देण्यात येईल. त्यासाठी संबंधित राज्य संघटनेला महाराष्ट्र ऑलिम्पिक असोसिएशनची संलग्नता हा निकष अनिवार्य रहाणार नाही.”

Every where the word “संलग्न” is used which is ‘affiliation or affiliated’ in English. The Respondent no. 4 in para 3 of his affidavit in reply dated 24.3.2014 has stated as follows:-

“3. At the outset, it is submitted that the 5% reservation for the Sports persons was introduced for the first time by the Government Resolution dated 30.4.2005, for getting the benefit of the reservation of 5% the competition has to be conducted by a Authorized State Organization which is affiliated to the Maharashtra Olympic Association or it should be conducted by the


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Maharashtra Olympic Association. The scope of this Government Resolution dated 30.4.2005 was further widened by the Government Resolution dated 14.7.2009 by including the competitions organized by the registered State Organization which is affiliated to Indian Olympic Association. Therefore, the affiliation to Indian Olympic Association either through the Maharashtra Olympic Association or Authorized National Organization is essential. It will be pertinent to note that Throw ball Federation of India was not affiliated to Indian Olympic Association which is clear from the letter dated 14.10.2010 issued by the Indian Olympic Association and which is annexed on Page No. 58, to this Original Application. Thus if the Throw Ball Federation of India was not affiliated to Indian Olympic Association in 2010 or thereafter, the Petitioner cannot get the benefit of the 5% reservation for Sports category under the Government Resolution dated 30.4.2005 and 14.7.2009. The Petitioner is therefore also not covered by the Government Resolution dated 30.12.2013. The Petitioner's Sports Certificate is not a valid Sport Certificate and the same cannot be treated as a valid Sport Certificate under the Government Resolution dated 30.12.2013."



The Applicant has filed a common affidavit in rejoinder dated 9.9.2014 to the affidavit in replies filed by the Respondents no 2 to 4. There is specific mention of the affidavit in reply of the Respondent no. 4 in para 2. In para 18 of the rejoinder the Applicant has stated as follows:-

“18. At the outset, I say and submit that respondent no. 4 is trying to mislead and confuse by words “affiliation and recognition”. the government Resolution dated 30th April, 2005 states that the State Organization has to be affiliated to Maharashtra Olympic Association. However, the Government Resolution dated 14th July, 2009 states that competition conducted by the State Organization, which is affiliated to its National Federation and the same National Federation is recognized by Indian Olympic Association, the winners of the said competition are eligible for the benefit under the Government Resolution of 2005. In the present case, 25th Senior State Level Throw Ball Championship was organized by Maharashtra State Throw Ball Association, Nagpur, which is affiliated to Throw Ball Federation of India, which was recognized by Indian Olympic Association. Thus as per Government Resolution of 2005 and Government Resolution of 2009, I am entitled for the benefit under the Sports reservation.”




There is a clear admission that Maharashtra State Throw Ball Association, Nagpur is affiliated to Throw Ball Federation of India which is recognized by the Indian Olympic Association. The moot question is whether the words affiliation and recognition convey the same meaning. In para 4 (C) of G.R dated 30.4.2005, there is provision that competition should be organized by a State Level Sports Organization affiliated to Maharashtra Olympic Association or it should be organized by Maharashtra Olympic Association itself. Similar provisions are there in para 4(A) for eligibility for Group 'A' posts where the Sports event should be organized by International Organization of that Sports affiliated to International Olympic Association itself. In para 4(B), for Group 'B' posts, Sports event should be organized by a National Sports Organization affiliated to Indian Olympic Association or by the Indian Olympic Association itself. There is a clear hierarchy in this G.R. For Group 'A' & Group 'B' posts, para 4(A) and 4(B) also provide that Sports tournaments/events/competitions organized by recognized (मान्यताप्राप्त) Sports Association at International or National Level are also eligible for benefits under the G.R dated 30.4.2005. Analogous provision is not there in para 4(C). It is seen that words 'affiliated' (संलग्न) and 'recognized' (मान्यताप्राप्त) have been used deliberately and cannot be said to convey the same meaning. In G.R dated 14.7.2009, widening the scope of para 4(C) of G.R dated 30.4.2005, the word used is 'affiliated' (संलग्न) and


not recognized (मान्यताप्राप्त). It is clear that the State Government has taken a conscious decision that in so far as State Level Sports Championship is concerned, the event should be organized by a State Level Sports Organization, affiliated to a National Organization of that Sports, which in turn is affiliated to the Indian Olympic Association. The Applicant has annexed Exhibit-L which is the affidavit in reply of the Respondent no. 2 in O.A no 653/2012. In para 3.1 of the affidavit, the Respondent no. 2 (who is Respondent no. 2 in the present O.A) has stated that:-

“The provision also prescribed as the said tournament has to be organized by the authorized National Association affiliated to the Indian Olympic Association.”

The said affidavit has annexure R-5, which is a letter from the Indian Olympic Association dated 14.12.2010, which categorically stated that Throw Ball Federation of India was not affiliated to Indian Olympic Association. In another letter dated 22.7.2010, annexed to affidavit of the present Applicant dated 19.12.2012 in O.A no 653 of 2912, it is stated that Throw Ball Federation of India is recognized by the Indian Olympic Association. (emphasis supplied).



8. We have perused our order dated 24.8.2015 in O.A no 967/2010 in this context. It appears that there are two Sports Association for Throw Ball in Maharashtra viz. Maharashtra State Throw Ball Association, Nagpur and Maharashtra State Amateur Throw Ball Association, Nagpur. There are two Federations of at National Level also, one at Kota-Rajasthan with Shri Goswami as Secretary-General, which is recognized by the Indian Olympic Association, while another at Bangalore is not recognized by the Indian Olympic Association. This judgment is quoted for the limited purpose to show that Indian Olympic Association did not grant affiliation to National Throw Ball Federation, and only recognized it. From all these documents, it is quite clear that National Throw Ball Federation, to which Maharashtra State Throw Ball Association, Nagpur was affiliated was not affiliated to the Indian Olympic Association. As per G.R dated 14.7.2009, any medal won in any event organized by Maharashtra State Throw Ball Association will not make a candidate eligible for employment from Sports category under G.R dated 30.4.2005. The Applicant is relying on Sports Certificate issued by the Maharashtra State Throw Ball Association, Nagpur, which is at Exhibit 'A'. This Certificate shows that Maharashtra State Throw Ball Association, Nagpur is affiliated to Indian Throw Ball Federation (भारतीय थ्रोबॉल महासंघ) which is recognized by Indian Olympic Association.



9. This issue of affiliation vis-à-vis recognition was not considered by this Tribunal while deciding O.A no 653/2012, though it was raised by the Respondent no. 2 in R.A 23/2013, it was not specifically considered. Hon'ble Bombay High Court in Writ Petition no 430 and 434 of 2014 by judgment dated 12.2.2014 has granted liberty to the present Applicant to file this Original Application. As the Applicant is not eligible to be considered from Sports category, he cannot be granted any relief. It is not necessary to consider other issues raised in this Original Application.

10. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 03.05.2016
Dictation taken by : A.K. Nair.