

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT PETITION No.28501 of 2021

% 26.06.2023

Between:

Ragula Naresh Yadav & 4 others

Petitioners

VERSUS

State of Telangana & another

Respondents

! Counsel for Petitioners : Mr. Baglekar Akash Kumar

^ Counsel for the respondents: A.Sanjeev Kumar,
learned Special Government
Pleader attached to the
office of learned Additional
Advocate General.

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? Cases referred

¹ (1989) 2 Supreme Court Cases 145

² (2002) 4 Supreme Court Cases 154

³ (2016) 13 Supreme Court Cases 153

⁴ (2017) 9 Supreme Court Cases 1

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.28501 of 2021

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Baglekar Akash Kumar, learned counsel for the petitioners and Mr. A.Sanjeev Kumar, learned Special Government Pleader attached to the office of learned Additional Advocate General representing the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioners have assailed legality and validity of G.O.Ms.No.74 of the Youth Advancement, Tourism & Culture (Sports) Department of the Government of Andhra Pradesh dated 09.08.2012 insofar it excludes para sports from the two percent (2%) reservation provided to sportspersons in direct recruitments to all Government Departments as an incentive to sportspersons.

3. Five petitioners have joined together and have instituted the present proceeding seeking the aforesaid relief. Though they suffer from various forms and degrees of disabilities, they are sportspersons playing different sports under the category “para sports”.

4. The immediate trigger for the challenge is the notification dated 16.09.2021 issued by the 2nd respondent providing for direct recruitment to the post of Junior Panchayat Secretary, in which recruitment was contemplated completely under the sports quota to give effect to the aforesaid sports quota under G.O.Ms.No.74.

5. Petitioners are athletes participating in various sporting events as para athletes. Since they suffer from various forms of disabilities, their grievance is that Government of Telangana while extending the benefit of reservation to the extent of 2% to sportspersons have excluded para sports from such reservation which is not at all just and fair. It is in the above context, challenge has been

made to G.O.Ms.No.74 dated 09.08.2012 as being arbitrary and unreasonable; thus, violative of Article 14 of the Constitution of India.

6. Notice in this case was issued on 12.11.2021. Thereafter both the respondents have filed counter affidavits.

7. In the counter affidavit of respondent No.1, it is stated that Para Sports Association of Telangana had submitted representation to the Government of Telangana for inclusion of para sports in G.O.Ms.No.74 dated 09.08.2012. Reference was made by the representationist to Section 30(1) of the Right of Persons with Disabilities Act, 2016 and sought for extension of the benefit of 2% reservation to para sports i.e., persons with disabilities partaking sporting activities through the sports quota. It is stated that presently Government of Telangana is implementing 3% reservation to disabled persons i.e., for visually handicapped, hearing impaired and for orthopaedically handicapped. Inclusion of para sports in the list of sports disciplines as enumerated in

G.O.Ms.No.74 dated 09.08.2012 is a policy decision to be taken by the Government of Telangana and that the same was under active consideration of the Youth Advancement, Tourism and Culture (Sports) Department, Government of Telangana.

8. This Court in the hearing held on 29.12.2022 referred to the above statement made by respondent No.1 in the affidavit and ordered that since the matter was under active consideration of the State, the result of such active consideration be informed to the Court on the next date.

9. Thereafter, respondent No.2 filed affidavit. Stand taken in the affidavit is that notification dated 16.09.2021 has been issued for direct recruitment to the post of Junior Panchayat Secretary in the Government Departments in the State of Telangana under the sports quota which was pursuant to order of this Court dated 27.12.2019 passed in C.C.No.714 of 2019 in W.P.No.46869 of 2018. It is also stated that *vide* G.O.Ms.No.107, General Administration

Department (Services.D), Government of Telangana, dated 27.07.2018, amendments have been introduced in Telangana State and Subordinate Service Rules, 1996 by insertion of Sub-Rule (20) in Rule 2 thereof defining the expression “Meritorious Sportsman”. “Meritorious Sportsman” has been defined to mean individual who has participated in the disciplines or obtained medals mentioned in Annexures-I and II to G.O.Ms.No.74 dated 09.08.2012 or as may be revised by the Government from time to time. It is stated that as the recruiting agency, respondent No.2 is bound to follow the recruitment process and procedure prescribed by the Service Rules issued by the Government from time to time. Only those candidates who are eligible as per notification dated 16.09.2021 would be entitled to submit applications seeking employment under direct recruitment. It is contended that there is no error or infirmity in the impugned notification dated 16.09.2021.

10. In the hearing held on 08.06.2023, this Court referred to the proceedings dated 29.12.2022 and recorded

the submissions of the learned Assistant Government Pleader appearing for the respondents who sought for time, as according to her, the matter is still under active consideration of the Government. In the order dated 08.06.2023, we had made it clear that if by the next date, nothing tangible is placed before the Court, Court may consider passing necessary order(s).

11. In the hearing today, Mr. A.Sanjeev Kumar, learned Special Government Pleader submits that despite his best efforts, he could not obtain requisite information from the respondents.

12. Learned counsel for the petitioners submits that para sports or para athletes form a separate class of sportspersons. Therefore, they were required to have been included in G.O.Ms.No.74 dated 09.08.2012. Non-inclusion of such para sports/para athletes amounts to hostile discrimination against sportspersons who are categorized under the heading "Para Sports".

13. Adverting to the decisions of the Supreme Court in **Deepak Sibal v. Punjab University**¹, learned counsel for the petitioners submits that excluding para sports from the benefit of sports quota would amount to a clear case of discrimination. That apart, such exclusion would not satisfy the test of intelligible differentia to justify such exclusion. He has also referred to the decision of the Supreme Court in **Sansar Chand Atri v. State of Punjab**² to contend that in the facts of that case, Supreme Court had directed that all the ex-defence service personnel should be treated as a class separate from other candidates for the purpose of recruitment under the Punjab Recruitment of Ex-Servicemen Rules, 1982 and within the class of ex-defence service personnel, no differentiation or discrimination could be made unless such differences were real and substantial. Following on the above principle, he submits that there cannot be any real and

¹ (1989) 2 Supreme Court Cases 145

² (2002) 4 Supreme Court Cases 154

substantial distinction or difference between sportspersons and para sports.

13.1. Finally, learned counsel has referred to the decision of the Supreme Court in **Rajeev Kumar Gupta v. Union of India**³ and contends that though the question as to what post under the State should be reserved for what category is a matter of policy choice of the State, nonetheless such a policy must stand the test of Articles 14 and 16 of the Constitution of India. He submits that while excluding para sports from the benefit of G.O.Ms.No.74 dated 09.08.2012, respondents have exhibited manifest arbitrariness which is a good ground for interference by the Court under Article 226 of the Constitution of India. Referring to paragraph 95 of the decision of the Supreme Court in **Shayara Bano v. Union of India**⁴, he contends that all legislations as well as notifications and government orders can be interdicted by the Court if any constitutional infirmity is found therein. He

³ (2016) 13 Supreme Court Cases 153

⁴ (2017) 9 Supreme Court Cases 1

asserts that when it is not fair, reasonable, discriminatory, non-transparent etc., such legislation, notification or government order would be manifestly arbitrary and that would be a good ground for interference by a constitutional court.

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. We may at the outset advert to G.O.Ms.No.74 dated 09.08.2012. Preamble to the said G.O.Ms. says that the same has been introduced as an incentive to sportspersons extending reservation of 2% to meritorious sportspersons in direct recruitments to Government departments/undertakings/grant-in-aid institutions etc. at all levels. It is stated that as per G.O.Ms.No.84 dated 04.05.2000, Government had declared sports policy for better performance of sportspersons in the field of sports. It was ordered therein to extend sports reservation of 2% in future direct recruitments to all Government departments, amongst

other incentives. Following the same, Vice Chairman and Managing Director of Sports Authority of Andhra Pradesh, Hyderabad had submitted proposals on 07.09.2004, 20.07.2006 and 04.11.2008. In accordance with the sports policy adopted by the Government of Telangana following bifurcation of the composite State of Andhra Pradesh and creation of the new State of Telangana, Government of Telangana directed that recruitments at all levels would have sports quota reservation of 2% for meritorious sportspersons in all posts of State Government departments, educational institutions, local bodies, corporations, boards, authorities, grandhalaya samsthas, market committees and other establishments which are funded or aided by the State Government where direct recruitment is one of the methods of appointment. The notification introduced by G.O.Ms.No.74 dated 09.08.2012 declares that in pursuance to the sports policy introduced *vide* G.O.Ms.No.84 dated 04.05.2000 providing for 2% sports reservation in direct recruitments to Government services etc., certain guidelines were issued for

such appointments. Guideline (ii) is relevant and the same reads as under:

- “(ii) The performance of the individual in having obtained medals/participation in disciplines for deciding a meritorious sportsperson, against two percent (2%) sports quota as mentioned in Annexure-II to this order, shall be the criterion, keeping in view the participation in recognized sports disciplines as per Annexure-I to this order, or as may be revised by the Government from time to time.”

16. As per guideline (ii), it is stated that performance of an individual obtaining medals or participation in disciplines for deciding a meritorious sportsperson, against the 2% sports quota as mentioned in Annexure-II shall be the criterion, keeping in view the participation in recognized sports disciplines as per Annexure-I to the said order or as may be revised by the Government from time to time. Thus, guideline (ii) says that for availing the benefit of 2% reservation under the sports quota, an individual should have obtained medals or has record of participation in sports disciplines as per Annexure-I. Annexure-II mentions about

the priorities of sporting events for recruitment under the 2% sports quota.

17. Annexure-I mentions the list of recognized sports disciplines for the 2% reservation in direct recruitments to Government departments etc. The disciplines are as under:

- “(1) FOOTBALL
- (2) HOCKEY
- (3) VOLLEYBALL
- (4) HANDBALL
- (5) BASKET BALL
- (6) TENNIS
- (7) TABLE TENNIS
- (8) SHUTTLE BADMINTON
- (9) KABBADI
- (10) ATHLETICS
- (11) SWIMMING
- (12) GYMNASTICS
- (13) WEIGHTLIFTING
- (14) WRESTLING
- (15) BOXING

- (16) CYCLING
- (17) ROWING
- (18) SHOOTING
- (19) FENCING
- (20) ROLLER SKATING
- (21) SAILING/YATCHING
- (22) ARCHERY
- (23) CRICKET
- (24) CHESS
- (25) KHO-KHO
- (26) JUDO
- (27) TEAKWANDO
- (28) SOFTBALL
- (29) BODY BUILDING (Uniform Services like Police, Excise etc).”

18. Pausing here for a moment, what we notice in Annexure-I is a list of recognized sports disciplines which an individual would have to play to avail the 2% reservation under the sports quota. Guideline (ii) makes it clear that this list is amenable to revision from time to time by the Government. Though Annexure-I contains the list of sports disciplines, it does not say or *per se* exclude para

sportspersons or athletes playing the above sports disciplines from the benefit of 2% reservation under the sports quota. It is quite clear that the above sports disciplines can be played not only by any individual as a sportsperson but also by para athletes.

19. Before we revert back to Annexure-I, we may briefly glance at Annexure-II which indicates the order of priority for short listing meritorious sportspersons depending upon the achievement and the sporting event.

20. Reverting back to Annexure-I, we are of the view that the list of recognized sports disciplines mentioned therein are capable of including para sportspersons participating in any of those sports disciplines. Therefore Annexure-I to G.O.Ms.No.74 dated 09.08.2012 is capable of being read in a manner to include para sportspersons so as to bring them within the umbrella of eligible sportspersons for availing the benefit of 2% reservation to sportspersons in direct recruitment to Government services etc. This would be an

inclusive rather purposive interpretation which will enhance the cause for which the policy decision to grant the benefit of reservation to sportspersons in direct recruitment to Government services was conceived of.

21. We feel that such an interpretation of Annexure-I to G.O.Ms.No.74 dated 09.08.2012 would also be in consonance with the objective of Rights of Persons with Disabilities Act, 2016 (briefly referred to hereinafter as 'the Act'). One of the principal objectives of the said Act is to provide for full and effective participation and inclusion in society of persons with disabilities.

22. Section 20 of the Act provides that there shall be no discrimination against any person with disability in employment. Sub-Section (1) of Section 20 of the Act says that no Government establishment shall discriminate against any person with disability in any matter relating to employment. Mandate under Sub-Section (2) is that every Government establishment shall provide reasonable

accommodation and appropriate barrier free and conducive environment to employees with disability.

23. As per Section 21 Sub-Section (1) of the Act, every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of the Rights of Persons with Disabilities Act, 2016 (already referred to hereinabove as 'the Act').

24. Section 29 of the Act deals with culture and recreation. As per Section 29 of the Act, the appropriate Government and the local authorities shall take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others which include –

- (a) facilities, support and sponsorships to artists and writers with disability to pursue their interests and talents etc.

25. Insofar Section 30 of the Act is concerned, it deals with sporting activities. As per Sub-Section (1), the

appropriate Government shall take measures to ensure effective participation in sporting activities of persons with disabilities. Sub-Section (2) says that the sports authorities shall accord due recognition to the rights of persons with disabilities to participate in sports and shall make due provisions for inclusion of persons with disabilities in their schemes and programmes for the promotion and development of sporting talents. That apart, Sub-Section (3) of Section 30 of the Act mandates the appropriate Government and the sports authorities to take various measures as enumerated therein.

26. In fact under the scheme of the Rights of Persons with Disabilities Act, 2016 i.e., the Act, the appropriate Government is required to take steps for identification of posts for the purpose of reservation of persons with disabilities under Section 33 of the Act and under Section 34 of the Act to provide for reservation to persons with disabilities in Government establishments; such reservation being not less than 4%.

27. Therefore, the interpretation which we feel should be accorded to Annexure-I would be in tune with the statutory requirement of the Rights of Persons with Disabilities Act, 2016.

28. Coming back to Annexure-II, the medals won and participation in the various sporting events as mentioned therein should also include similar sporting events meant for para sportspersons or para athletes.

29. We therefore direct and clarify that Annexure-I to G.O.Ms.No.74 dated 09.08.2012 would include para sports as an additional sports discipline or para sports generally in respect of the enumerated 29 sports disciplines. We further declare and clarify that Annexure-II to G.O.Ms.No.74 dated 09.08.2012 would be read as including any para sporting event of equivalent status and importance as mentioned in the sporting events in Annexure-II. If Annexures-I and II to G.O.Ms.No.74 dated 09.08.2012 are read in the above manner, we are of the view that grievance of the petitioners

and sportspersons belonging to the para sports fraternity would be redressed.

30. Accordingly, we direct the respondents that while making direct recruitments to Government establishments etc., benefit of G.O.Ms.No.74 dated 09.08.2012 would stand extended to sportspersons belonging to the para sports category and participating in para sporting events of equivalent importance as mentioned in Annexure-II. This interpretation of G.O.Ms.No.74 dated 09.08.2012 would be applicable to all Government departments and to all recruitments to Government establishments, including to Notification No.2560/CPR&RE/B2/2017 dated 16.09.2021, if no recruitment under the sports quota has taken place in terms of the said notification till date.

31. Writ Petition is ordered accordingly. However, there shall be no order as to costs.

32. Miscellaneous applications pending, if any, in this writ petition shall stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 26.06.2023

Note: L.R. copy to be marked.
(B/o.)
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