

(2005) 08 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1123 of 2004

Miss Harleen Singh

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Article 14
Jammu and Kashmir Certification of Outstanding Proficiency in Sports Rules, 1996 —
Rule 12, 2(A), 22, 23
Jammu and Kashmir Reservation Act, 2004 — Section 124, 23, 24, 24(2), 9

Citation : (2006) 3 JKJ 568

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Sunil Sethi, for the Appellant; B.S. Salathia, AAG, D.C. Raina Farooq Ahmed Natnoo, Vikram Singh and Ajay Gandotra, for the Respondent

Judgement

Permod Kohli, J.—Through the medium of this petition a direction is sought for quashing Govt order No. 163-GAD of 1996 dated 22-2-

1996, as amended subsequently vide Govt Order No. 253-GAD of 1996 dated 26-3-1996 and Govt Order No. 638-GAD of 2000 dated 5-6-

2000 and Govt Order No. 809-GAD of 2000 dated 12-7-2000 and a further direction in the nature of mandamus to provide preferential

treatment within the Sports Category to the Sports personnel, who have performed outstandingly viz those sports personnel who have secured

positions in National Championship or who have represented the country in the International meets etc. in the matter of admission to Professional

Colleges.

2. Petitioner has claimed that she has represented country in international meet and has won large number of medals and was adjudged the best

Junior Rhythmic Gymnast of the country in the year 2002. The grievance of the petitioner as projected in this petition relate to the non-

consideration of outstanding merit of the candidates belonging to Sports Category for admission to Professional Institutions in the existing guide-

lines notified vide Govt order No. 163-GAD of 1996 dated 22-2-1996 as amended from time to time.

3. According to the petitioner the Government order which regulate admissions to Sports Category do not provide any guideline for giving

preference to the persons who possess outstanding and exceptional proficiency in Sports and all the persons irrespective of the level of their

participation in the events whether international, national or as Junior or Senior level and without taking into consideration whether the person has

simply participated in the event and even when he/she was a non-playing member of the team are being treated alike. It is the case of the petitioner

that no distinction is made amongst the persons who have performed at international level or national level and earned medals and those who have

played at Senior or junior level or simply participated in any event. Further case of the petitioner is that even the person who was a reserve player

is pitted against a candidate who has performed at international level. Petitioner has placed on record the rules and guidelines as adopted by the

State of Punjab, Union Territory of Chandigarh, States of Kerala and Tamilnadu for providing preference to the persons belonging to Sports

Category. On being put to notice, the Sports Council in its reply has stated that the petitioner made a representation to the Sports Council and on

consideration of the representation, the Sports Council recommended to the Government vide its recommendation No. SC-1573/3962 dated 30-

9-2004 for examination and modification of the existing Government policy and for reviewing the criterion for reservation of seats for Outstanding

Sports Persons in Professional Colleges. The matter is under consideration of the Government.

4. This petition was filed on 28-10-2004 and notice issued on 2-11-2004 much ahead of entrance examination. State-respondent failed to file

reply. It was only in the month of July, 2005 that Board of Professional Examination issued Notification for holding Common Entrance Test that a

fresh CMP No. 427/05 came to be filed seeking further interim direction in the light of afore-said notification. An interim order staying declaration

of result of Sports Category was passed on 9-6-2005. On the same day respondent-State was directed to frame guidelines on the basis of recommendations of Sports Council. It is only on 26-7-2005 State filed reply. Even recommendation of Sports Council dated 30-9-2004 has been considered on 8-7-2005 pursuant to interim direction of this Court dated 9-6-2005.

5. Vide interim order dated 9-6-2005 this Court issued the following direction:

In view of the above, I direct that the Board of Professional Entrance Examinations shall proceed to make selection to the professional courses

pursuant to the Notification already issued. However, the result of the sports category shall not be declared. In the meanwhile the State-

respondents shall frame the guide lines as recommended by the Sports Council. This order is however, subject to objections from other side. List

on 7-7-2005. Objections may also be filed in the meanwhile to the main petition as also the CMP.

Pursuant to the interim direction, the Government has considered the recommendation of the Sports Council and rejected the same vide

communication dated 19-7-2005.

6. The reply has been filed by the Government through Deputy Secretary, General Administration Department. The stand of the Government as

per the objections filed by it is that the existing Government policy provide a detailed and comprehensive procedure for issuance of certificate to

the sport persons and the said Government order does not suffer from any vice. The representation of the petitioner was examined and deliberated

upon in the meeting held on 8-7-2007 where the representatives of Sports Council and Board of Professional Entrance Examination also

participated and after discussions it was found that in the existing rules there is no provision for grading sports persons as they are all treated as one

category and selection for professional courses is made essentially on the basis of merit obtained in the entrance examination. The Government is of

the opinion that any change in the system and gradation of sports persons or sports events would raise more complicated questions and introduce

an element of subjectivity in the whole process of reservation. It is further stated that if the existing system is altered sports persons with very low

merit may qualify for admission just on the basis of performance in sports

whereas sports persons with superior academic merit may be left out.

7. This petition was admitted to hearing and taken up for final disposal with the consensus of the learned Counsel for the parties in view of the urgency involved.

8. I have heard the learned Counsel for the parties.

Mr. Salathia has produced the record wherein consideration was accorded to the recommendation of the Sports Council.

9. The Sports Council in its reply has given the background of the existing Government Policy of reservation in Sports Category. The State Government had earlier framed rules for providing reservation in the Sports Category as notified vide the Government order No. 1215-GAD of 1992.

These Rules came to be challenged in SWP No. 867/ 1993 titled Ankur Mahajan v. State, where-upon a Committee was constituted vide Govt

order No. 405-GAD of 1995 dated 13-6-1995 and on the basis of the recommendations of the Committee the present rules, namely, the Jammu

and Kashmir Certification of Outstanding Proficiency & Sports Rules 1996 were notified vide Govt order No. 163-GAD of 1996 dated 22-2-

1996 as amended from time to time.

10. As far as the reservation in Sports Category is concerned, it is provided vide Notification SRO 126 dated 28-6-1994. Part IV of these rules

deal with the reservation to various categories. Rule 22 deals with the reservation in Professional Institutions. This Rule provide reservation to (a)

Scheduled Caste; (b) Scheduled Tribes; (c) Socially and Educationally Backward Classes. In addition to reservation as specified in Rule 22 further

reservation is provided under Ruler 23 for the following categories:

(a) Children of Defence Personnel

(b) Children of para-Military Forces and State Police personnel;

(c) Candidates possessing outstanding proficiency in sports.

11. While this SRO 126 issued in exercise of the powers conferred by Section 124 and other relevant provisions of the Constitution of Jammu and

Kashmir, was in operation, the State Government enacted the Jammu and Kashmir Reservation Act, 2004 (Act No. XIV of 2004), which was

made applicable with effect from 23-3-2004, the date of its publication in the

Government Gazette. Under this Act also the provisions have been made for providing reservation in Professional Institutions and Section 9 deals with the Reservation in Professional Institutions, which is quoted here-under:

9. Reservation in Professional Institutions- (1) The Government shall reserve seats in the Professional Institutions for candidates belonging to reserved categories and such other classes and categories as may be notified from time to time.

Provided that the total percentage of reservation shall in no case exceed 50%.

(2) The Government shall prescribe the percentage for each category in admission in the Professional Institutions:

Provided that different percentage may be prescribed for different courses.

Provided further that 50% of the seats in each category including open category for admission to MBBS and BDS shall be selected from amongst

female candidates belonging to such category.

Provided also that the seats in any reserved category, which cannot be filled for want of candidates belonging to that category shall be filled from

amongst the candidates belonging to open merit category.

Section 23 of J&K Reservation Act empowers the Government to make Rules to give effect to the provisions of the Act, whereas Section 24

deals with the Repeal and Saving. Both these Sections are noticed here-under:

23. Framing of Rules -- The Government may make Rules to give effect to the provisions of the Act.

24. Repeal and saving -- (1) All rules, notifications and orders corresponding to the provisions of the Act shall, in so far as they are inconsistent

with any provision of the Act, stand repealed.

(2) Notwithstanding such repeal-

(i) anything done or any action or any order issued under the rules, notifications or orders, so repealed, shall be deemed to have been done, taken

or issued under the corresponding provisions of the Act;

(ii) the reservation in appointment or promotion against available vacancies and for admission in Professional Institutions provided under the

repealed rules, notifications and orders, shall continue to be in force till a notification under the provisions of the Act is issued.

12. Section 24(2)(ii) save the existing Rules and Notifications in force till such time the new Rules are framed under the provisions of this Act. By virtue of the afore-said saving clause, read with Section 9 of the Jammu and Kashmir Reservation Act, 2004, SRO 126 continued to remain in operation till such time the new Rules are framed. The State Government issued Govt order No. 163-GAD where-under the provisions have been made for carrying out the reservation of 2% for candidates possessing outstanding proficiency in Sports. This Govt Order has been amended from time to time so as to define the outstanding proficiency in Sports and Sports/ events which are required to be taken into consideration for providing reservation under this category. Rules notified vide this Govt. order are not statutory in nature and are in the nature of administrative guidelines.

Relevant extract of Govt. order is reproduced as under:

Consequently upon the directions of the Hon'ble High Court in writ petition No. 867 of 1993 titled Ankur Mahajan v. State and Ors. and in supersession of Government order No. 1215-GAD of 1992 dated 30-12-1992, the Government hereby makes the following rules for grant of certificate in favour of candidates possessing outstanding proficiency in sports:

1. Short title and commencement: -- (1) These rules may be called Jammu and Kashmir Certification of Outstanding Proficiency in Sports Rules, 1996 (2). They shall come into force with immediate effect.

2. Definitions: In these rules unless the context otherwise required:

(A) Candidates possessing Outstanding Proficiency means:

(i) A person who has represented India at the Olympic Games/ SAARC Games/ Common Wealth Games/ Asian Games or other officially recognized test matches/ world cup competitions in any of the games/ sports mentioned in Schedule-I annexed hereto; or

(ii) A person who has participated and secured one of the first three positions in the individual events or was a member of the team which obtained

first or 2nd position or has participated twice or more in the same discipline in the National Championship for junior or senior events in any sports

or games as mentioned in the Schedule-I annexed to these rules for such of the courses there the prescribed qualification is 10+ 2. Provided that

for selection to such of the courses where prescribed qualification is Matric, participation in sub-junior National events shall be sufficient.

13. Admittedly, Gymnastic is also one of the sports listed in Schedule-I of the List of Games/ Sports for the purposes of Rule 2(A) of Govt order

No. 163-GAD of 1996. Rule 2(A) deals with the candidates possessing outstanding proficiency in Sports. Under Clause (i) A person who has

represented India at the Olympic Games/ SAARC Games/ Common Wealth Games/ Asian Games or other officially recognized test matches/

World Cup Competitions in any of the games/ Sports mentioned in Schedule-I is considered to be a candidate possessing 'Outstanding Proficiency

in Sports'. Under Sub-clause (ii) a person who has participated and secured one of First three positions in the individual events or was a member

of the team which obtained first or second position or has participated twice or more in the same discipline in the National Championship or Junior

and Senior events in any spots or games as mentioned in the Schedule-I, is also considered a person possessing proficiency in Sports. Therefore,

irrespective of the achievements of a candidate or the level of the game, all candidates are treated alike. This is the primary concern expressed in

this petition.

14. As far as the Sports Council is concerned, this is an expert body and in its wisdom had recommended for review/ amendment in the existing

Government Policy/ Rules. It is useful to mention the recommendations of the Sports Council (vide communication No. SC 1573/3962 dated 30-

9-2004):

xxx, it is submitted that the categorization/ gradation of sports persons as it exists in the State of Punjab has been gone through minutely. Whereas

the Government of Punjab has devised a mechanism for gradation of sports persons on the basis of their achievements in the

Domestic/National/International Competitions, it has not defined how this gradation is given Weightage to the sports at the time of admission in

Professional Colleges.

Since in the J&K admission in Professional Colleges is conducted by Board of Professional Entrance Examinations (BPRR), it would be

appropriate if the Board is also consulted as to how the Weightage should be given to outstanding sports persons on the basis of their

achievements at the National/ International level).

15. Pursuant to the interim direction dated 9-6-2005 these recommendations of

the Sports Council were considered by the Committee consisting of Secretary, General Administration Department' Special Secretary, ARI; and Secretary, J&K Sports Council. Record produced reveal that Dy.

Secretary, GAD (L) made the following notings in paras 18 & 19:

18. The petitioner has raised a very important point in his writ petition thereby asserting that as per the existing rules as aforesaid a person who has

simply been a member of the team is entitled to the certificate for purposes of SRO 126. In other words there is no difference between a person,

who has secured first, second or third position and the one who was simply a member of team. Thus, this goes directly against the person who may

seek aforesaid positions in individual events. Sports Council has also appreciated this aspect and has apprised Hon'ble Court thorough objections

that vide Communication dated 30-9-2004 the matter has been taken up with the Government which needs consideration by the Government,

Board of Professional Entrance Examination and the Sports Council. Perhaps on appreciation of this Statement the Hon'ble Court vide its interim

order has directed the respondents to frame guidelines as recommended by the Sports Council.

19. This is an important issue otherwise as per the Court directions results are not to be declared by the Board of Professional Entrance

Examination. The objections to the writ petition can also not be filed unless and until the issue is resolved as proposed by the Board. Similarly other

issue with regard to debarring a sportsperson from coming in the open merit if he otherwise qualify for that needs to be discussed with Board of

Professional Entrance Examination as under rules, a sports category candidate who qualify in open merit cannot be denied his berth as such,

irrespective of the fact whether he belongs to sports category. In short, intention of the petitioner is that there should be some Weightage for

persons who secure Ist three positions as compared to a person who simply participates in the event and sometimes may be a waiting player.

Para 29 of the notings on file refers to holding of meeting and reads as under:

29. In the light of the afore-said direction of the Hon'ble High Court, the issue was discussed/ examined in a meeting taken by the Principal

Secretary, GAD on 8-7-2005, particularly on a note furnished by the Jammu and Kashmir Sports Council vide their communication dated 6-7-

2005. The meeting was also attended by the following:

1. Secretary, GAD
2. Special Secretary, ARI
3. Secretary, J&K Sports Council.

16. The relevant paragraph is para 32 of the Note-Sheet, which is prepared and signed by one Mr. M.A. Bukhari, Special Secretary (Adm) on 8-

7-2005, where-after para 37 deals with the final decision and this note is signed by Principal Secretary, GAD on 10-7-2005. Both these paras

read as under:

32. The events have also been shown in the Annexure to Government Order. All the candidates who have been awarded certificates by the

competent authority out of these categories are eligible for consideration for selection to professional institutions in the State under Sports category

as prescribed in the rules. The Selection amongst these eligible candidates would depend upon the inter-se merit of the candidates and not on the

level of achievement in the event participated. Any consideration purely on the classification/gradation of events and ignoring the merit would only

result in compromising with the quality of admissions to such institutions. Since all the eligible candidates have been treated as one class, the

selection has to be purely on the basis of the merit alone. Further, any gradation or classification of events may not be without subjectivity and as

such the basic purpose of providing the concession to the category for admission in professional colleges would be defeated.

37. Kind attention is invited to note paras 27-36. This case has arisen out of writ petition OWP No. 1123/04 filed by Miss Harleen Singh before

the Hon'ble High Court claiming superior benefit on the grounds that she has participated in International Sports events. The reservation in

Professional Colleges for outstanding performance in sports is governed by Government order No. 163-GAD of 1996 dated 22-2-1996 as

amended from time to time. According to the existing dispensation, certificates for outstanding performance in sports events are issued by the J&K

Sports Council on the basis of records available with them and certified/ verified by various Sports Associations of the Country. In the existing

rules there is no provision for grading sports persons. They are all treated as one category and selections for professional courses are made

essentially on the basis of merit obtained in the Entrance Examination. Any change in the system and gradation of sports persons or sports events would raise more complicated questions and introduce an element of subjectivity in the whole process of reservations. It is quite probable that if the existing system is altered sports persons with very low merit may qualify for admission just on the basis of performance in sports whereas sports persons with superior academic merit may be left out. The existing system is time tested and has been followed many years. Therefore, there is no rationale or compulsion to change the existing system. We may advise the Sports Council to file objections/ statements before the Hon'ble High Court on these lines. If Hon'ble High Court gives any directions these can be considered and a view taken. It is also not possible or even desirable to enhance the reservation quota for Sports persons as the reservation cannot in any case exceed 50% which will be violative of the existing law on the subject.

17. This was followed by the communication dated 19-7-2005 from the Special Secretary to Government to the Secretary, Sports Council, the relevant extract of the letter is as under:

During the discussions, it has been felt that the reservation of Professional Colleges for outstanding performance in sports is governed by Government Order No. 63-GAD of 1996 dated 22-2-1996 as amended from time to time. According to the existing dispensation, certificates for outstanding performance in sports events are issued by the J&K Sports Council on the basis of records available with them and certified/ verified by various Sports Associations of the Country. In the existing rules, there is no provision for grading sports persons. They are all treated as one category and selections for professional courses are made essentially on the basis of merit obtained in the Entrance Examination. Any change in the system and gradation of Sports persons or Sports events would raise more complicated questions and introduce an element of subjectivity in the whole process of reservations. It is quite probable that if the existing system is altered sports persons with very low merit may qualify for admission just on the basis of performance in sports whereas sports persons with superior academic merit may be left out. The existing system is time tested and has been followed many years. Therefore, there is no rationale or

compulsion to change the existing system. It is also not possible or even desirable to enhance the reservation quote for Sports persons as the reservations cannot exceed 50% which will be violative of the existing law on the subject.

The record do not reveal the deliberations of the Committee.

18. It is settled proposition of law that to frame law/ rules is the prerogative of the State, be it by way of an enactment by the principal-legislature

or by delegated legislation or by exercise of the transitory powers of the Governor u/s 124 of the Constitution of Jammu and Kashmir. There is no

dispute about the factum of reservation having been provided under SRO 126 of 1994 and subsequently by the Jammu and Kashmir Reservation

Act 2004, which has adopted SRO 126 till the new Rules are framed. Rule 23 makes a reservation for ""candidates possessing outstanding

Proficiency in Sports"". This reservation is 2% of the available vacancies. Again in terms of Rule 24, 50% reservation is for female candidates. The

existing Government Policy as per the rules though define different categories of Sports Persons and the games which are recognized for purposes

of grant of benefit of reservation, however, the Government order do not in any manner provide any guideline, basis or criterion for assessing the

inter-se merit of the candidates who claim the benefit of reservation under the Sports category as a person possessing 'outstanding proficiency in

sports'. The Government order only provide the events and the participation of the candidates at various levels right from Junior Level to

International events. It also does not specify the period which should be relevant for the purposes of granting consideration to a candidate as an

'outstanding sports person' for purposes of grant of admission to professional institutions. The stand of the Government is that all persons,

irrespective of the level or game or the event in which they have participated and position attained are alike and are to be considered in the same

category/ class and it is the merit achieved in the entrance examination which is primarily based upon their academic performance which decide the

question of admission to the Professional Institutions under the Sports Category. According to the State, if the Rules are altered and any gradation

is made amongst the persons claiming the benefit under the Sports Category or any Weightage is provided, it will introduce an element of

subjectivity in the whole process of reservation and also result in granting benefit to a person with very low merit who may qualify for admission

just on the basis of performance in sports.

19. The question which requires the consideration is what is the purpose of providing reservation. Is it a reservation of the candidates who have

achievements to their credit in Sports or the reservation for excellence in academic.

20. Rule 23 of SRO 126 provide reservation for candidates possessing 'Outstanding Proficiency in Sports'.

The word "outstanding" has been defined in Encarta Dictionary, which reads as under:

1. unusually excellent: excellent, and superior to others in the same group or category ~ outstanding work.

2. not yet resolved: not yet paid, resolved, or dealt with. ~ outstanding debts

3. jutting out: jutting outward or upward

4. STOCK EXCHANGE publicly sold: publicly issued and sold as securities.

The word 'Proficiency' has been defined in Websters Dictionary, which reads as under:

Proficiency" -- the State or quality of being proficient.

The word "Proficient" has further been defined as:

Proficient"- Having or showing effective command in an act, skill, study etc.

21. The use of the words, "Outstanding" and "Proficiency" for the candidates belonging to the Sports category clearly indicate the legislative intent

of the rule making authority that the reservation is for such of the Sports Persons who have excelled in sports and have remarkable and creditable

achievements to their credit. If any person(s) whosoever has/have participated in any sport/ event as specified in Schedule-I is to be provided

consideration and his/ their academics are to be given the preference then the reservation loses its significance, relevance and purport for which the

reservation is made. From the Rules itself, it is evident that paramount consideration is the 'Outstanding performance and achievements' in sports

and the academics take a back seat. If the academics are to be preferred then there is no question of reservation for the persons belonging to

sports category or for that matter any other category. Therefore, the stand of the

respondent-State that the merit in the entrance examination is the primary consideration goes contrary to the spirit of the reservation itself. Providing reservation does not mean scarifying the academics at all but its predominant character cannot be abandoned. The object and purport of reservation to Sports person is in the nature of a compensation to the sports person who has devoted time and energy for acquiring proficiency in Sports and earned name for himself, the Institution, the State and the Country to which he belongs. Therefore, what is to be rewarded is excellence in sports by providing reservation. This obviously means the best amongst the persons for whom reservation is made.

22. Now the related and incidental question that arises for consideration is how a distinction is to be made between the candidates who have

played Sports at various levels. Government Order No. 163-GAD itself provide basis for that. In the meaning attached to the expression

'Outstanding Proficiency in Sports"', the first category of the persons who are indicated under Clause-(I) are the persons who have participated at

various international events viz Olympic Games/ SAARC Games/Common Wealth Games/ Asian Games or other officially recognized test

matches/ World Cup competitions in any of the games/ sports mentioned in Schedule-I. The next category of the persons provided in Clause (ii) is/

are person/persons who has/have participated and secured one of first three positions in the individual events or was a member of the team which

obtained first or 2nd position or has participated twice or more in the same discipline in the National Championship or Junior and Senior events in

any sports or games. How can the persons belonging to different categories be treated alike and at the same level when their achievements are

clearly distinct and distinguishable, having participated at different levels. A person who has participated in International level cannot be equated

with a person who has participated in Junior or Senior level in a national event. Similarly a person who has participated at National Championship

cannot be equated with a person who participated in a junior or senior level or even a person who was simply a member of the team but never

actually played the game in the event/ competition. How such a person can secure a march over an international player on the basis of his better

academic or merit in the entrance test. If the entrance test is to be given

precedence over the achievements in the Sports then this itself is selection primarily on the basis of academic merit or merit in the entrance test and there is no purpose of reservation for the proficiency that too outstanding proficiency in sports.

23. I have carefully perused the rules which are invogue in the States of Punjab; Kerala and Tamil Naidu. As far as the State of Punjab is

concerned there are four categories. Grade-A mentions the Sports persons of international standing i.e. those who have represented the Nation in

the international tournaments/competitions/championships in Olympic Games, World Cup, Asian Games, Commonwealth Games, Davis Cup,

Test/ One day Cricket Matches. Grade-B defines the sports persons who have participated and achieved positions in the tournaments like Ist, 2nd

and 3rd positions in the International Tournaments for Senior and Junior organized by International Federation of that discipline and where at least

10 countries have participated other than those mentioned in grade-A and other events which are organized by various national organizations of

Sports and participated by various countries even at the national level or various States/ Universities. Under Grade-C, persons with achievements

of Ist, 2nd and 3rd position at State Championship for Senior and Junior Level organized by Punjab Sports Department/ Punjab Olympic

Association and position holders of Inter District State Championships organized for Senior and Juniors under the Banner of Punjab Olympic

Association/ Punjab Sports Department/ State Sports Associations. Rule 12 of the Punjab Rules further provide that no certificate shall be graded

after five years have lapsed in issuance of the certificates for the purposes of admission in Professional Colleges.

24. Petitioner has also placed on record the rules in operation in the States of Kerala and Tamilnaidu. In the State of Kerala out of 1000 marks,

500 marks are for entrance examination and 500 for merit in sports. 50% of the total seats in Sports Merit list are set apart for the individual

events and 50% for team events. This means that for admission to professional institutions 50% weightage is to be given for proficiency in Sports

and 50% to academic i.e. entrance examination. As far as the State of Tamil Naidu is concerned there is a grading like Category-A and Category-

B on the basis of international level and national level achievements respectively

and again the national level achievements are divided into various games and level of participation. The admission is made only on the basis of inter-se merit for the sports achievements and academics are not given any weightage. It is useful to quote the guidelines, which provide reservation. Selection of candidates under quota for eminent sports persons:

1. The purpose of this quota is to recognize and give weightage to the sports eminence of the candidates and hence marks for sports achievements

alone will be considered in ranking the candidates. The candidates are expected to show good performance in sports, if selected.

25. Mr. Salathia, learned Counsel for the respondents-State submits that what should be the criterion for according admission in Sports category

be left to the wisdom of the State and Court should not venture in the same. There is no dispute with this proposition of law. It is primarily the

prerogative of the State to make rules and provide quota for any class or category if permissible under law. But once the State has provided the

quota and reservation for a particular class on the basis of a valid classification, can it be permitted to frustrate the same by adopting a method

which not only renders the purpose redundant, but is irracionale, arbitrary and is also capable of arbitrary use of the same. The judicial review is

permissible to the limited extent. In a case where the rules provide quota/ reservation for grant of admission to a particular class of people but do

not provide effective, valid and rationale guidelines and/or guidelines made are capable of frustrating the very object sought to be achieved by

providing such reservation, the Constitutional Court like the High Court can definitely exercise its power of judicial review. In *Union of India (UOI)*

and *Another Vs. S.B. Vohra and Others*, , the Apex Court while examining the scope of judicial review observed as under:

28. The broad principles of judicial review as have been stated in the speech of Lord Diplock in *Council of Civil Service Unions v. Minister for the*

Civil Service i.e. illegality, irrationality and procedural impropriety, have greatly been overtaken by other developments, as for example, generally

not only in relation to proportionality and human rights but also in the direction of principles of legal certainty, notably legitimate expectations.

29. In *R. v. North and East Devon Health Authority ex p Coughlan*, the Court of Appeal held that a health authority which promised a small

number of residents in a care home for the severely disabled that it would be their home for life was not entitled to frustrate the legitimate

expectation they had generated by closing the home as this would be an abuse of power.

30. Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is

considered to be the basic feature of the constitution. The Court in exercise of its power of judicial review would zealously guard the human rights,

fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over

property and assets of various kinds which would be expended on building hospitals, roads and the like or overseas aid, or compensating victims

of crime.

26. Further the Apex Court in case Delhi Development Authority and Another Vs. UEE Electricals Engg. (P) Ltd. and Another, enumerated the

grounds for judicial review of administrative action. What was noticed in the said judgment is as under:

11. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review.

The first ground is 'illegality' the second 'irrationality' and the third 'procedural impropriety'. These principles were highlighted by Lord Diplock in

Council of Civil Service Unions v Minister for the Civil Service.

27. The parameters for judicial interference in an administrative action have further been considered and defined by the Apex Court in case

Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, as under:

9. While the discretion to change the policy in exercise of the executive power, when not trammled by any statute or rule is wide enough, what is

imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done

arbitrarily or by any ulterior criteria. The wide scope of Article 14 and the requirement of every State action qualifying for its validity on this

touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State

and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the

extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of

arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered

on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle

emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

28. Applying the principles enumerated in the above decisions of the Apex Court what emerges is that the judicial interference is permissible where

the administrative action be it by way of a policy decision, or guideline regulating admission to the Professional Institutions or for other purposes is

irrational, illogical, suffers from vice of arbitrariness and affects any right of a person even if it is not a fundamental or a statutory right. Irrationality

or arbitrariness of the administrative action/ policy can be adjudged only by examining its implication on the rights of an individual or a class of

persons.

29. In the present case the reservation or quota is provided for the candidates possessing ""Outstanding Proficiency"" in Sports and if a candidate

possessing ""Outstanding Proficiency"" in Sports i.e. having better achievements in sports is denied the benefit on the basis of academics, the very

object of the quota or reservation is frustrated. As said above this does not in any manner mean that academics have no relevance, particularly for

admission to professional institutions like MBBS or Engineering, where the candidates have to deal with the human beings and society at large. The

academics however, cannot be given the paramount consideration and the sports a back-seat. It should be other way-around. Sports is to be

given paramount and primary consideration and academics requisite relevance so as to maintain some minimum standard. It is for the State to

adopt a valid and rationale criterion for the purpose. However, the Court definitely can give suggestions for State's consideration where action is

found to be irrational, un-reasonable and is capable of being exercised in arbitrary manner so as to defeat some body's right, affecting his/ her

achievements in any field, education or any other sphere of life. The mere fact that the impugned Govt order treats a person who has played at

international level, and a person who has played or simply participated in an event at junior or senior level in some State level event or even a national level event alike speaks of un-reasonableness, irrationality and arbitrariness. If a person with lesser merit is allowed to speed across another with much higher excellence in that category, it definitely defeats his right not based upon any rationale and reasonable basis, even if such preference is on some other count not much significant and relevant for adjudging his merit in the category. As noticed above different guidelines are operating in different States, State may adopt any one of such guidelines, which it considers to be appropriate and more suitable. In absence of that minimum merit can be provided in the entrance examination for the category persons and then weightage should be given on the basis of achievements in sports depending upon the performance/ proficiency of the candidates at international, national and other levels. Higher achievement/level has to be given more weightage. Either grading can be provided or weightage for various achievements at various levels which should be added to the academic merit in the entrance examination. Rationality can also be achieved by giving preference to candidates belonging to category (i) of Rule 2(A) of Govt Order No. 163-GAD and if no person from this category is available or any reserved vacancy is still available, by switching over to category 2 (A) (ii) in the same order in which, it is prescribed. Rules may also provide some percentage for category (i) of Rule 2-A and some percentage for 2-A (ii) or of such like other valid and rationale criterion which does not frustrate the object of reservation. It should not be lost sight of that reservation is for candidates who have excelled in sports and devoted more time in National/ State interest and brought-laurels to his/their institutions/State and country.

30. In view of above, this writ petition is disposed of with the following directions:

(iii) the respondent-State is directed to modify/ alter Govt order No. 163-GAD as amended from time to time suitably in the light of observations

made above so as to give weightage for excellence in sports and a candidate having achievements at higher level be given preference than the

achievements at lower level;

(iv) Let the decision be taken in this regard within a week's time and the merit of the candidates who have applied in sports category be re-

arranged, based upon such amended rule/ guideline and the selection be made accordingly.

31. Record produced be returned to Mr. B.S. Salathia, AAG. Result of Sports Category be declared accordingly.