
(2002) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 770/01

Novy Gupte

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Jammu and Kashmir Certification of Outstanding Proficiency in Sports Rules, 1996 — Rule 261

Citation : (2002) KashLJ 298

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : V.K.Magoo, Sunil Sethi, Seema Shehkar, R.Bharti, D.C.Raina,
Advocates appearing for the Parties

Judgement

1. The non selection of the petitioner for MBBS Course in the Sports Category and selection of respondents No. 4 and 5 is subject matter of challenge in this petition.

2. Petitioner submits that she is a Sports person, having outstanding Sports profile. According to her she has participated in number of events at

National level. It is submitted that she was awarded certificate of merit for participation in sports events even at State level. According to the

petitioner she is not only extraordinary sports person, but has good academic record to her credit. Further fact which is pleaded is that in terms of

the Reservation Rules of 1996, there is a reservation for outstanding sports persons. This benefit is extended to those who fulfill the guidelines and

the requirement of the Rules known as ""Jammu & Kashmir Certification of Outstanding Proficiency in Sports Rules, 1996"".

3. The events which enable a person to have the advantage and benefit of the

rules hereinabove are specified in the rules and more particularly in

Rule 2 (A) (i). Petitioner submits that she was granted Silver Medal in Senior National Roller Scatting Championship at Faridabad in Dec. 2000.

For this reliance is being placed on Annexure C. This certificate for facility of reference, which has been issued by the Sports Council is being

reproduced below:

FORM II TO GOVERNMENT ORDER NO. 163GAD of 1996 Dated 22.02.1996.

Valid for the Session 20012002. Certificate of possessing outstanding proficiency in Sports in terms of Govt. order No. 163GAD of 1996 dated

22.02.1996. I, Secretary, Sports Council, J&K Govt. on screening of the application, by the Committee after being satisfied hereby grant

certificates of possessing outstanding proficiency in sports to Kum Novy Gupta D/o Dr. Suraj Gupta, R/o 60 Lower Gumat, Jammu. Tehsil Khas

District Jammu having participated in Roller Skating game/games at the National level, making her entitled to claim the benefit for admission to

professional institutions under the sports category.

Sd/ Secretary,

Sports Council,

J&K Government.

4. Petitioner submits that the Sports Council i.e. respondent No. 3 issued a certificate in favour of private respondents also. According to the

petitioner these certificates are based on record which is not in existence. It is submitted that so far as respondent No. 4 is concerned she was

awarded certificate of proficiency in Sports on the basis of her participation in National Sports Festival for Women held at Hissar (Haryana). This

according to the petitioner is not recognized by the Rules of 1996. It is submitted that those sports persons, who have secured 1st, 2nd and 3rd

position in the events have to participate in more than one event. It is accordingly submitted that respondent No. 4 was not eligible to get a

certificate. With regard to respondent No. 5, it is submitted that she was granted certificate for participation in two events, namely 29th Senior

National Handball Championship from 13th to 18th Feb. 2001 held at Chandigarh and 22nd Junior Girls National Handball Championship from

13th to 18th Feb. 2001 held at Chandigarh and 22nd Junior Girls national

Handball Championship from 11th to 16th Nov. 1999 at Bilaspur

(H.P.). It is submitted that respondent No. 5 has not participated in either of these"" events and these certificates are based on false premises. It is

submitted that so far as the events which took place from 11th to 16th Nov. 1999 is concerned, the petitioner was appearing in Higher Secondary

Part I Examination. She was present in Jammu. For this reliance is being placed on Annexure E. It is accordingly submitted that this respondent

could not be present at Jammu and at Bilaspur simultaneously. In this regard a FIR came to be lodged. This was on 10.09.2001. It is in these

premises stated that respondent No. 5 could not be granted the certificate in question.

5. Respondent No. 3 Sports Council has filed the objections. It is stated that this authority has the competency to issue certificate of outstanding

proficiency in Sports. This can be done in terms of clause 2(a) (ii) of the rules. This respondent has not given any specific reply viz a viz the

allegation of respondent No. 5 having not participated in both the events and being present at both the places; as these assertions have material

bearing. It would be apt to notice what has been stated by respondent No. 5 in reply to para 9(b) (c) of the writ petition: Para 9(b) (c) of writ

petition reads as under:

b). That similarly certificate which has been granted to respondent No. 5 is also illegal for the reason that show has been granted certificate for

participation in two events namely, 29th Sr. National Handball Championship from 13th to 18th Feb. 2001 held at Chandigarh and 22nd Junior

Girls National Handball Championship from 11th to 16th Nov. 1999 at Bilaspur (HP.) It is submitted that respondent No. 5 had not participated

in either of the events and the issuance of certificate to her is illegal and a criminal act on the part of respondent No. 3 for the reason that

respondent No. 5 at the time of 29th Sr. National Handball Championship i.e. 13th to 18th Feb. 2001 was not held at Chadigarh but at Jammu

and had applied to the Principal of her school for issuance of a certificate on 13.02.2001, copy of application filed by private respondent is

enclosed herewith and marked as Annexure D for the kind perusal of this Hon'ble Court, c) Similarly, she had not participated in the Junior

National Championship held with effect from 11th to 16th Nov. 1998 for the

reason that she was appearing in Hr. Sec. Part I examination during the period which examination was held from 11th to 18th Nov. 1999, a copy of her attendance and the date sheet of the examination from 11th Nov. to 18th Nov. 1999 is enclosed herewith and marked as Annexure E for the kind perusal of this Hon'ble Court.

6. Reply of respondent No. 3 to the above said paras of writ petition is as under :

b) That in reply to the averments contained in grounds d) b) to (d) so far as it pertains to the grant of certificate to respondent No. 5 are

concerned, the same are not denied and the rest of the contents of the para wherein the authority of the answering respondents has been

challenged are specifically denied because the answering respondent exercised such powers as are vested in strictly in terms of the procedure and

the mandate provided in Govt. order No. 163GAD of 1996 and it is submitted that the alleged facts as disclosed in this part of the para were

never brought to the notice of the answering respondent prior to the date the certificate was issued in her favour by any one including the petitioner

herein.

7. It is however further submitted that the answering respondent in order to notify the public of the transpercy notified the list of eligible and

ineligible candidates with reasons calling for grievances or objections which appeared in leading dailies of the States and no objections were filed

by the petitioner within the prescribed time. Thus, it is in this view of the matter the petitioner is not entitled to maintain the petition solely on this

account.

8. It is however, further submitted that the answering respondent was within its right to issue the said certificate to respondent No. 5 in view of the

certificates of participation submitted when applied for the issuance of the certificate under reference, However, the answering respondent came to

know that some report has been lodged with the Crime Branch Jammu for seeking investigation into the facts as detailed in the paras, the

answering respondent on receipt of communication from Crime Branch is cooperating with the Investigating Agency in this regard. However, in

terms of the Rule 5 of the SRO, the petitioner is well within its right to seek the relief of cross checking of the certificates issued to respondents 4

and 5 from the competent authority on the basis of grievance stated in the

petition.

9. A perusal of the above would indicate that the allegation of the petitioner that respondent No. 5 could not be present at both the places is not

being denied and as a matter of fact it is urged that a criminal case came to be registered. This was at the instance of one Dr. Surya Gupta. This

First Information Report does make mention of the fact that respondent No. 5 has obtained a certificate by practising fraud. These acts do fall

within the mischief of sections 420, 467, 468 and 471 of the Penal Code. Reply given by the respondent No. 5 is also being noticed. It is

submitted that respondent No. 5 did participate in the 22nd Junior Girls Handball Championship held at Bilaspur in the State of Himachal Pradesh.

It is submitted that this respondent was selected by the selection committee and the date sheet was received by the petitioner at Jammu and only

one date clashed. It is stated by this respondent that she did not accompany the J&K Team on 11.11.1999. She states that she took part in the

examination which was to be conducted on 11.11.1999. After taking examination, she proceeded to Bilaspur in the State of Himachal Pradesh.

She took part in the event on 12th Nov. 1999 evening. This match according to the petitioner was slated for evening. After taking part in the sports

event, she again came to Jammu. She appeared in the examination held on 13.11.1999. This was to commence at 10.30 AM. After taking part in

the examination she again went to Bilaspur. She was accompanied by one of her relatives. The further fact is that this court took note of the stand

taken by respondent No. 5 and passed an interim order on 18.12.2001. This court directed that the issue be examined. A direction was given to

hold an enquiry. In pursuance to the orders passed by this court an enquiry has since been held. The Enquiry Officer has summarized the

allegations and also taken note of the fact about all the dates on which this respondent was to appear in the examination at Jammu. Examinations

were to be held on 11th, 13th, 16th, 18th and 20th of Nov. 1999. The Enquiry Officer was of the view that on the face of it, it would be very

difficult for any one to be physically present at two places when two places are separated by a distance of 290 Kms. However, the final opinion

which has been expressed is that it was humanly not impossible for the respondent to appear in the examination while participating in the sport

event on 12.11.1999 as the examination was to commence at 10:30 a.m. and the fact that there was enough time to leave for Bilaspur as the Bus

leaves Jammu at 2.45 p.m. and also leave Bilaspur for Jammu at 6 p.m. daily. It has accordingly been concluded that it was not impossible for

respondent No. 5 to appear in the examination and also attend the sports event at Bilaspur.

10. The question is not whether it was humanly possible or impossible for respondent No. 5 to appear in her examination and also take part in the

sports events, but the question which was required to be gone into was whether in fact this has so happened. As per the report, the Bus leave

Jammu at 2.45 p.m. for Bilaspur and the bus which leaves Bilaspur leaves at 6 p.m. every day. The Question was not that the bus used to ply daily

but the findings ought to have been record are as to whether the bus actually left or not on the dates in question. The Enquiry Officer should have

examined the Log Book of the vehicle of Himichal Pradesh State Road Transport Corporation. This has not happened in this case. Again there is

nothing in the record to indicate that respondent No. 5 furnished any ticket by which she claims to have travelled alongwith one of her uncle. There

is nothing on the record to indicate as to where her uncle stayed at Bilaspur. These are some of the areas where findings have been recorded.

Therefore, it would be very difficult to place reliance on a report which leaves much to be imagined. However, even if, the report as it is to be

taken into consideration, then it becomes apparent:

i). That respondent No. 5 did not accompany the. J&K Team on 1.1.11.1999. This was because on this date she was to appear in the

Mathematics paper;

ii). That after taking examination she left by 2.45 p.m. bus which reached Bilspur in the morning and thereafter she took part in the game event. The

game event was slated in the evening on 12.11.1999;

iii). That after taking part on. 12.11.1999, in the match in the evening, this respondent boarded the bus which was to leave Bilaspur at 6 p.m. and

reached Jammu on 13.11.1999.

11. It is this explanation which is highly doubtful. If the match for 12th Nov was slated in the evening and if it so happened and if the bus was to

leave Bilaspur at 6 p.m., how this was coordinated in a matter which leaves

much to imagination. How much time was taken in taking part in the game, how much time was taken to leave the campus and to reach the Bus Stand has not been indicated. A story has been propounded which according to the Commissioner of Inquiry is plausible. However, leaving of the Campus after attending the game on 12th Nov. and boarding a bus which was to start at 6 p.m. is highly doubtful.

12. Respondent No. 5 submits that she took part in the examination on 13th Nov. 1999 and again left Jammu for Bilaspur for taking part in the games event.

13. The matches in which the J&K Team was to participate as per the Commissioner of Inquiry were slated for 12th and 13th Nov. 1999

evening. As to how respondent No. 5 after taking part in the examination on 13th Nov. 1999 was able to reach Bilaspur on that very day is a

matter about which there is no explanation. With a view to get out this situation a story has ' been put forwarded that respondent No. 5 was not

supposed to take part in the team for playing match on 13th Nov. 1999. If this was the situation then what for did respondent No. 5 returned to

Bilaspur when after 12th Nov. she did not take part in any game event. Again it was not physically possible for respondent No. 5 to leave Bilaspur

in a bus which was to depart at 6 p.m. This is because game event was in the evening and the examination at Jammu was on 13.11.1999. In a

nutshell as per the respondent she participated in an event which took place on 12.11.1999. I am of the opinion that the story as put across is not

believable. In any case when benefit is to be given for participation in a game event then it has to be established that the concerned sports person

took part in the entire event. In this case respondent No. 5 even if her story is accepted, participated on 12th Nov. 1999 but could not participate

on 13th Nov. 1999 as it was impossible for her to reach there. So the story put forward is that she was exempted for this sports event. The entire

stand taken by this respondent and the record prepared by the Sports Council requires further examination and this would be done by the court

where the criminal case is pending disposal. For the event which took place at Chandigarh the finding of Commissioner of Inquiries are as under:

As for the senior (Women) National Championship held at Chandigarh from 13th Feb. to 18th Feb. 2001 the basic ""evidence"" on which the

allegation has been based is too flimsy to provide sufficient substance for a detailed probe. The only evidence provided the application signed by Manisha and her classmates is not enough to prove that she did not participate in the event. Some other documents carry her name among the players representing the state even as she didn't play in any game. But her physical presence somewhere other than the venue Chandigarh in this case has not been a point of contention here. It is document v/s many other documents in which there is no escape from taking character of the complaint into consideration. Nothing is available on record to prove that Munisha Kohli could not have signed the application on the morning of 12.02.2001 as she claimed and then gone to Chandigarh as part of the J&K team. The first match was fixed for 14.02.2001 and in any case she did not figure in any fixture.

14. This is again not a firm finding. It is thus concluded :

(i). that respondent No. 5 could take benefit of the sports event and reservation had she participated in the entire event. She at the most attended

on 12th Nov. 1999. This is doubtful as the game event was in the evening and she could not leave Bilaspur and travel 290 Kms to reach Jammu on

13th Nov. 1999. Again she did not attend the opening and closing ceremony. The participation for one day cannot be treated as good and

sufficient for according the benefits of rules of 1996. A sports person must attend the entire event. Therefore, even if the story put forward by

respondent No. 5 is taken as plausible even then this respondent cannot be said to have taken part in the entire events and this factor is good

enough to conclude that she was not entitled to claim any benefit.

(ii). that participation of respondent No. 5 at Chandigarh is also not fully established.

(iii). that respondent No. 3 has not taken any positive stand.

15. So far as respondent No. 4 is concerned that this respondent took part in the National Sports Festival held at Hissar. As per the petitioner this

is not recognized by Rules of 1996. According to the petitioner a person who secures 1st, 2nd or 3rd position in the event has to participate in

more than one event. As this respondent had not taken part in more than one event and as she has not secured 1st, 2nd or 3rd position, therefore,

the benefit of rules of 1996 could not be accorded to her. The requisite

averments are continued in para 9 (c). Sports Council respondent No. 3 has not denied these allegations. However this respondent No. 4 has enumerated the sports events to her credit. It is accordingly contended by her that she has taken part in more than one sports event and therefore, the certificate issued to her was valid. As indicated above the sports council has not taken by positive stand in this regard. It was for the respondent No. 3 to examine the matter. Therefore, this respondent No. 3 is directed to examine this matter.

16. This writ petition is accordingly allowed and disposed of with the following directions:

(i) that so far as respondent No. 4 is concerned respondent No. 3 would examine the stand taken by her in the counter affidavit and see to it as to

whether on that basis she was entitled to a certificate in terms of Rules of 1996.

(ii). that so far as respondent No. 5 is concerned her participation in the sports event is only for one day. this cannot be treated as participation in

the entire game event. Her participation even on 12th Nov. 1999 is doubtful. Therefore the certificate issued in her favour cannot be said to be

issued in accordance with Rules of 1996. Participation on a single day would not amount to participation in the entire game event. This observation

is independent of the observation that the story put forward by respondent No. 5 that she was shuttling between Jammu and Bilaspur and again

from Bilaspur to Jammu. When she knew that she was not to participate in the event after 13th Nov. 1999 then there was no necessity to go back

to Bilaspur after attending the examination on 13th Nov. 1999. The Commissioner of Inquiry has not examined the record of Himachal Pradesh

State Road Transport Corporation. The question is not when the bus used to leave but the question was as to whether actually the bus left or not

on the said relevant dates. This has not been examined. Therefore, the certificate issued in favour of respondent No. 5 is based on facts which are

not plausible.

(iii) that in view of the conclusions at serial No. (ii) indicated above the denial of admission to the petitioner for MBBS course is held to be bad.

She deserves to get admission for the said course. She would be so admitted forthwith.

(iv). that the respondent authorities are left free to accommodate the private

respondents under rules. This is a matter on which the decision has to be taken by the respondents.

(v). that so far as the petitioner is concerned it is held that she has wrongly been denied admission. Let she be given admission in MBBS course forthwith.

(vi). that report of Commission of Enquiry as furnished by counsel for the petitioner taken on record as C/1 Original record was also made available and is made part of their proceedings. Disposed of accordingly C.M.P. shall stand disposed of accordingly.