

(2011) 08 BOM CK 0167

In the Bombay High Court

Case No : Writ Petition No. 3834 of 2009

Ruturaj Phand since minor, through his guardian Prakash
Phand and Sanyuja, since minor through her guardian Kishor
Navande

APPELLANT

Vs

The State of Maharashtra, The Secretary, Maharashtra State
Board of Secondary and Higher Secondary Education, Joint
Director, Sports and Youth Service and The Maharashtra
Badminton Association

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 5 ALLMR 704 : (2012) 1 BomCR 685 : (2012) 1 MhLj 829

Hon'ble Judges : Nishita Mhatre, J;M.T. Joshi, J

Bench : Division Bench

Advocate : Sachin Deshmukh, for the Appellant; S.V. Kurundkar, Addl. Govt.
Pleader for Resp. No. 1 and 3, V.R. Sonwalkar and A.M. Phule, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—Rule. By consent, rule made returnable forthwith.

2. The issue involved in both these petitions is, whether the students, who appeared for the 10th standard and 12th standard examination i.e. Secondary and Higher Secondary Board Examinations in the State, are entitled to allocation of 25 additional marks for having participated in sports tournaments which are recognized by the authorities at the State, National or International level.

3. The policy for allocation of 25 marks additionally to such students, has been stipulated in a letter dated 4.6.2007 from the State to the Secretary, Maharashtra State Board of Secondary and Higher Secondary Education, Pune (for short "the Board"). The policy envisages that students, who participate in sports which are recognized by the associations and federations running the various sports, are entitled to 25 additional marks at the 10th standard and 12th standard Board examinations for having participated in such sports. A circular

was issued on 8.6.2008 by the Joint Director of Sports and Youth Services, indicating that such sports activities should be run by an organization which is registered with the Charity Commissioner under the Societies Registration Act 1860 and the Bombay Public Trust Act, 1950 and is also recognized by the Maharashtra Olympic Association. The association is expected to organize sports events at the District, State and International levels, besides complying with the other conditions incorporated in the communication dated 8.2.2008.

4. The Petitioners in both the petitions have participated in the Maharashtra State Junior Inter District and Junior State Open Badminton Championship, organized by the District Badminton Association which is affiliated to the Maharashtra Badminton Association. The Petitioners contend that they had appeared for the examination of the 10th standard in the year 2008 and are, therefore, entitled to the benefit of this policy decision of the State.

5. It appears that by letter dated 9.3.2009, the Secretary of the Maharashtra Badminton Association was informed by the Joint Director, Sports and Youth Services, Govt. of Maharashtra, Pune, that the list of participants in various tournaments submitted by it for allotting 25 additional marks to them was not in the prescribed format. A fresh list was directed to be submitted, as per the age group of the participants with a further stipulation that not more than five students be included for each age group. According to the Petitioners, the restriction to the allotment of 25 marks additionally only to five students who participated in the badminton tournaments, is arbitrary, unreasonable and contrary to the decision of the government contained in its letter dated 4.6.2007. The Petitioners have annexed a list of sports together with the number of participants in each sport who were entitled to the additional marks for the academic years 2007-08 and 2008-09. This list indicates that for badminton, only one person has been granted the benefit of 25 additional marks for the year 2007-08, whereas no one has been included for the year 2008-09. At the same time, for various other sports, the number of students who have benefited from the policy varies between 2 to 38.

6. On 11.5.2009, the Petitioners, through their parents/guardians, requested the Maharashtra Badminton Association to send the names of the Petitioners to the State and/or the Secondary and Higher Secondary Board, in order to ensure that they were awarded 25 additional marks for having participated in the badminton tournaments.

7. An affidavit has been filed by the Divisional Secretary, State Board of Secondary and Higher Secondary Education Board, Latur Division, Latur, indicating that the names of the Petitioners were not sent to the Board along with the necessary certificates through the school or junior college, by 28.2.2009 and, therefore, the Petitioners have not been allotted the additional marks.

8. The Maharashtra Badminton Association has also filed an affidavit, accepting the fact that the Petitioners in both the petitions have participated in the

individual State Open Badminton Championship-2008, held between 9th to 14th September 2008 at Latur. Thus, the fact that the Petitioners have participated in a State level badminton tournament is not disputed. However, it appears that because the Badminton Association was directed to furnish names only of five students for having participated in the badminton team championships at different levels, the Petitioners' names had not been included. There is no justification in the affidavit as to the inclusion of some names and exclusion of the Petitioners' names.

9. An affidavit has been filed on behalf of Respondent Nos. 2 and 3 by the Deputy Director of Sports and Youth Services, Aurangabad, in which he has stated that the allocation of the additional marks for participation in any tournament is restricted to a particular number of participants. The total strength of players participating in the badminton tournament has to be considered as five and not more and, therefore, the Petitioners were not accorded the benefit of the additional 25 marks. Reliance is placed by the affiant on the Govt. Resolution dated 12.11.1997 which indicates that the grant or aid given to the participants in the taluka level or the district level sports, was restricted and for badminton, it was restricted to five persons. On this basis, the affiant states that the Petitioners are not entitled to any benefit of the letter dated 4.6.2007 as the badminton association had not submitted their names.

10. Thereafter another affidavit has been filed by the Secretary, School Education and Sports Department, in which he has quoted the regulations framed by the Maharashtra Secondary and Higher Secondary Education Board. Regulation No. 99.5 reads as under;

99.5. Notwithstanding anything contained in Sub-clause 3 (above), a candidate who has actually participated in any sports or games held in India or abroad on State, National and International level in the same academic year, the limit of maximum 10 grace marks in a subject shall be extended up to 15 grace marks. Provided such a request is made by the candidate concerned through the respective head of the junior college, so as to reach to the divisional secretary of the divisional board concerned up to one month from the date of declaration of result. All such applications shall invariably be submitted in the prescribed form along with a certificate of district sports officer, to that effect to the divisional secretary of divisional board concerned.

The affiant has further stated that prior to the letter dated 4.6.2007 being issued, all additional marks were allocated in accordance with the regulations framed by the State Board. By the letter of 4.6.2007, the government informed the Board of the change in policy under which 25 marks were to be allocated additionally to eligible students, in stead of the marks which were allotted earlier. However, the students were expected to fulfill the stipulated norms mentioned in the aforesaid regulation. The affiant has stated that those students who fulfilled the norms and the procedure had been allotted 25 additional marks after 2007.

11. We have perused the letter annexed to the affidavit of the Secretary, School Education and Sports, dated 19.5.2007 which contains the proposal sent to the Government for approval by the Board for allotment of the additional marks. The relevant part of the proposal as translated in English is extracted below:

The State Government, after consideration on some facts/points has conveyed to the State Board to prepare and present revised proposal. Accordingly, the competent committees have reconsidered the proposal and approved to retain maximum 25 grace marks for the regular sportsman students who appear for S.S.C. & H.S.C. Exam. offering all the subjects as well the marks will be added in total marks a percentage.

1. 25 Marks should be added in the marklist of the sport man student who has passed in all the subjects. (e.g. Total marks 350+marks 25=marks 375)
2. As per the existing rules, failed sport man students should be given 25 marks. Necessary marks should be given in for passing and the rest of the marks should be shown in total marks as above.
3. Students should have their participation in sports in the same academic year [1 June to 31st March.].
4. The total percentage of the sportsman students will be maximum 100% after getting 25 marks.
5. 25 marks will be admissible to the institution and sports approved by Sports and Youth Welfare Directorate.
6. Even if a sport man student has participated in one or more sports at State, National or International level, he/she should be given maximum 25 marks.
7. The sports type should have rules as prescribed by the State Board.

The competent committees have approved to allot 25 marks to all the regular sports students who appear for HS.C. and S.S.C. Exam. in the year Feb/March 2007. Assuming the approval by the Government this rule is implemented from Feb./March 2007. So your immediate approval is requested.

Rule No. 52 & 99 from Board Regulation Act are applicable to the sport man students. If the Government sanctions proposal of allotting 25 marks for sportsman students (State and National level), considering the norms given above (1 to 7), the board will make necessary changes in the same.

Proposal presented for Govt. approval.

12. The aforesaid proposal has been accepted by the State in its communication dated 4.6.2007 to the Board the English translation of the material portion of which reads as follows:

I have been directed to inform you, with reference to above letters under references, that the Government has granted sanction to give and consider 25

marks in addition to total marks for the purpose of passing and for increasing percentage of the regular students who appear for SSC (10th Std.) and HSC (12th Std) examinations with all subjects and have participated in State, National and International level recognized the Sports competitions, subject to following conditions:-

1. This procedure will be implemented from February-March 2007 HSC and SSC exam.

2. Students satisfying terms and conditions mentioned in your letter dated 21.5.2007 will be eligible for such grace marks.

3. Additional marks are not to be considered for any award. The award should be given considering the marks obtained in subject and original total marks. Total subject marks and achievement.

13. The learned Advocate appearing for the Petitioners, has relied on the judgment of a Division Bench of this Court in the case of Sarjerao s/o Ramchau Tekale v. The State of Maharashtra and Ors. [Writ Petition No. 5267 of 2010 and other connected matters, decided on 20.7.2010]. The Court has held that the additional 25 marks are to be allotted to medal winners and participants, as well. It was further held that in the case of the sport, Taekwondo, the scheme did not contemplate extension of the benefit of 25 additional marks to only one participant from each weight group.

14. In our opinion, the contention of the State that the additional marks are to be allotted only to five participants in Badminton as the policy requires such restriction, is a bogey created by the State itself on a misreading and misinterpretation of its own policy. The restriction to five participants at the State level badminton tournament is qua the financial assistance which the State would give to such participants contained in a GR dated 12.11.1997. However there has been a change in policy thereafter which is delineated in the communication dated 4.6.2007. This letter makes no reference at all to the earlier policy contained in the aforesaid Government Resolution which envisaged the Sports policy of the State. The policy of the State with which we are concerned in the present petitions has been formulated by the Department of Education. The underlying object of allocating such additional marks appears to be to ensure that the student has a holistic and well rounded education, not merely based on academics. At the same time there would be an improvement in the standard of sports. In fact, the State has also extended this benefit to the students from ICSC and CBSC and other boards, by Government Resolution dated 16.7.2010. The resolution has been issued after the Advocate General for the State made a statement on 15.7.2010 before the Division Bench of this Court at its Principal seat in Writ Petition (Lodging) No. 1550 of 2010 that the benefit would be extended to students of other Boards as well.

15. There is no dispute that the Petitioners had participated in the Badminton Tournament and appeared in all subjects for the SSC examinations in the same

academic year. In these circumstances, in our opinion, the exclusion of the Petitioners from the benefit of the additional 25 marks for the 10th standard Board examinations held in March 2009, is illegal. The petitions are, therefore, allowed.

16. Rule made absolute in each petition, in terms of prayers (B) and (C). No order as to costs.