



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.332 OF 2020

Deepak Asaram Pawar,
Age: 25 years,
Occ: nil, R/o Ambedkar Nagar,
Chambhar Galli, Ward no. 16,
Mehkar, Dist. Buldhana.

: PETITIONER

...VERSUS...

1. State of Maharashtra,
through its Secretary,
Department of School Education
and Sports, Mantralaya,
Mumbai 400032.
2. Deputy Director of Sports and
youth Services, Amravati Division,
Amravati. Divisional Sports Complex,
Morshi Road, Amravati 444 603.
3. Sant Gadgebaba Amravati University,
through It's Registrar,
Amravati.

: RESPONDENTS

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Petitioner in-person.

Mr. N.R. Patil, Assistant Government Pleader for Respondent Nos.1 and 2.
Mr. V.V. Dahat h/f. Mr. J.B. Kasat, Advocate for Respondent No.3.

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CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **11th FEBRUARY, 2026.**
PRONOUNCED ON : **13th MARCH, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The present petition initially sought quashing of communication dated 24/10/2019 and subsequently sought declaration that “Body Building” is a species of Gymnastics and thus eligible for 5% reservation in Government and Semi Government Class ‘A’ to ‘D’ posts. After due amendment, it further prays for quashing and setting aside the Government Resolution dated 01/07/2016 issued by the respondent No.1 as also a letter dated 21/03/2023 issued by the respondent No.1 through Deputy Secretary.

3. Facts emerging from the petition are as under :

The petitioner at the relevant time was a student and was pursuing Master in Arts (M.A.) from Sant Gadge Baba Amravati University. The respondent No.1 issued a Government Resolution on 30th April 2005 whereby 5% of the posts in Class ‘A’ to ‘D’ of the Government and Semi Government institutions were kept reserved for players from the sports quota. In the said list, attached as an appendix, game of “Body Building” is mentioned as eligible for reservation. Thereafter on 18/11/2006, there was a new eligibility criteria for appointment to group ‘D’ and group ‘C’. On 20th September 2013 a Government Resolution was issued by the

State of Maharashtra mentioning specifically therein that those players, who had competed and secured first, second or third position or have been awarded gold, silver or bronze medal in inter universities competition in individual or team sports would be eligible for 5% reservation.

4. Thereafter, the government chose to issue another Government Resolution on 01/07/2016 by superseding all the earlier Government Resolutions in that regard. As per clause 2(b) (vi), of the said G.R. there is a reference of All India Inter Universities Sports Meet and the second column further states that the player of State of Maharashtra while representing the University, if he has obtained first, second or third rank or obtained gold, silver or bronze medal would be eligible. Clause 3(Aa) further lays down a condition that the Inter University competition should be organized by Inter Universities Sports Board. Schedule (A) of the said Government Resolution which is framed as per clause (2) of the said Government Resolution spells out various games/sports which are held to be eligible for the appointment in Group (A) and Group (B) posts. It is worthwhile to mention that for Group (B) posts, the eligibility is securing first, second or third rank in All India Inter Universities Competition. However, a note below eligibility for group (B) is the bone of contention in the present

matter. The said note states that only those games which are held in Olympics, Asiad and Commonwealth games as also games of Chess, Kabaddi and Kho-Kho would be included in the said eligibility. In other words, as per the said note only those sports persons/ players, who are playing games which are played in Olympics, Asiad and Commonwealth games as also playing Chess, Kabaddi and Kho-Kho would only be eligible to avail the 5% reservation. It is this Government Resolution and more particularly the note which specifically limits the competitions as stated above is principally challenged in the present petition.

5. We have heard petitioner in-person, Mr. N.R. Patil, learned Asstt. Government Pleader for the respondent Nos.1 and 2.

6. The petitioner has pointed out various grounds as raised in the petition. He submits that the action of the State in limiting the games only to those which are held in the said competitions is absolutely bad-in-law and shows colourable exercise of power. He further submits that the Government of India and many other States since have approved 'Body Building' as sport, the State of Maharashtra ought to have done so. He takes us through various notifications of the Government of India as well as other States to buttress his submission. He further submits that in the first Government Resolution dated 30th April 2005, 31 games were

recognized as eligible for 5% Government quota, wherein admittedly game of 'Body Building' was finding its place. It is his submission that the intention behind the policy is to encourage students to opt for the above games. By taking us through the said Government Resolution, it is the submission of the petitioner that in the year 2013 Inter Universities students securing first, second and third position at national level were also entitled to claim benefits of 5% reservation without making distinction between Olympic games and other games notified in the Government Resolution dated 30th April, 2005. He further submits that the change in criteria as has been done by the Government Resolution dated 01/07/2016 and limiting it to games recognized in Olympic, Commonwealth and Asian Games is not based on intelligible differentia and has no nexus with the object sought to be achieved, which is to compensate or encourage sport persons in the State. In his submission, three Indian games as incorporated in the Government Resolution dated 01/07/2016 is a special class and the game of 'Body Building' being in the earlier list is equally placed. Thus, in his submission there a discrimination and, therefore, consequent violation of Article 14 of the Constitution of India. He submits that the classification and making special class in favor of

Chess, Kabaddi and Kho-Kho and now Mallakhamb also is without any logic. It is, therefore, his submission that the note below Annexure A violates fundamental rights and specifically Article 14 of the Constitution of India. He relies on a judgment of Allahabad High Court reported in **Amit Chaudhary Vs. State of U.P. and others, 1999(4) AWC 3230.**

7. Per contra, the learned Assistant Government Pleader submits that inclusion of the games which are recognized or are held in Olympics, Asiad and Commonwealth games is a matter of policy and, therefore, no judicial review is permissible unless the same is shown to be *ex facie*, arbitrary. He further submits that the issue more or less stands concluded by judgment of the Full Bench of this Court in **Umesh Devaji Burande Vs. State of Maharashtra, 2022 (2) Mh.L.J. 296** wherein it was specifically held that there is no legally enforceable right based upon the principles of promissory estoppel and legitimate expectation in respect of the policy framed under the Government Resolution dated 30th April, 2005 since its supersession by the Government Resolution dated 01/07/2016 is in larger public interest.

8. In this background, we have appreciated the contention canvassed by the learned counsels for the parties. A Full Bench of this Court was constituted by the Hon'ble the Chief Justice

as an earlier Co-ordinate Bench in **Umesh Burande's** case, **Writ Petition Number 4832/2018** while considering the effect of Government Resolution dated 01/07/2016 in the background of earlier Government Resolution dated 30th April, 2005 and judgment of another Co-ordinate Bench in **Sandeep Tandale Vs. State of Maharashtra, Writ Petition Number 4409/2019**, felt that the principles of promissory estoppel and legitimate expectation were required to be considered in the matter of withdrawal of benefits of the earlier policy.

9. Perusal of the said judgment of the Full Bench would reveal that the rephrased questions are reproduced in para 11 :

“11. At the outset, we feel that the questions referred to need to be rephrased. We therefore, rephrase the questions as under :-

(1) Whether a legally enforceable right can be claimed based upon the principles of promissory estoppel and legitimate expectation in respect of the policy framed under the Government Resolution dated 30/4/2005, which has been superseded by the Government Resolution dated 1/7/2016?

(2) Whether the Government Resolution dated 1/7/2016 is retrospectively applicable?

Ans : (Question No.1)

A legally enforceable right cannot be claimed based upon the principles of promissory estoppel and legitimate expectation in respect of the policy framed under the Government Resolution dated 30/4/2005 as its superseding by the Government Resolution dated 1/7/2016 is in larger public interest.

Ans : (Question No.2)

The Government Resolution dated 1/7/2016 is not retrospectively applicable.”

10. However, the Full Bench in para 32 has recorded a finding that there is no challenge in the petition to the change in policy on the basis of any discrimination or violation of Article 14 of the Constitution. The Full Bench relying upon judgment of the Hon'ble Apex Court in **The State of Jharkhand and others Vs. Brahmaputra Metallics Ltd. Ranchi and another, (2023) 10 SCC 634** (hereinafter referred to as “Brahmaputra Metallics”) held that the principle of promissory estoppel necessarily requires that there is a promise on the basis of which party concerned must have acted to its prejudice and that the doctrine of legitimate expectation cannot be claimed as a right in itself but can be used only when the denial of legitimate expectation leads to violation of Article 14 of the Constitution. Thus, as stated above, since there was no ground regarding violation of Article 14 in this background the Full Bench recorded a finding that there cannot be any legally enforceable right only on the basis of promissory estoppel and legitimate expectation. Thus, in our view, the Full Bench also states that if there is a ground and challenge to the policy on the ground of violation of Articles 14, doctrine of legitimate expectation and promissory estoppel may give rise to a legally enforceable right.

11. As held in **Brahmaputra Metallica**, wherein the Hon'ble Apex Court after exhaustively considering the entire law regarding doctrine of promissory estoppel and legitimate expectation has stated that at times both these doctrines are used interchangeably but that is not a correct usage because legitimate expectation is a concept much broader in scope than promissory estoppel. By referring to all earlier judgments on this issue and more particularly judgment in **National Buildings Construction Corporation Vs. S. Raghunathan and Ors.**, reported in 1998 SCC (L&S) 1770 the Hon'ble Apex Court held that the doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its departments in administering the affairs of the country are expected to honor their statements of policy or intention and treat the citizen with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in the context that the doctrine of legitimate expectation was evolved which has today become a source of substantive as well as procedural rights. Furthermore, in the same judgment relying on an earlier judgment in **Union of India Vs. Lieutenant Colonel P.K.**

Chaudhary reported in **2016 (4) SCC 236**, the Hon'ble Court held as under :

“41. In Union of India vs Lt. Col. P.K. Choudhary 32, speaking through Chief Justice T S Thakur, the Court discussed the decision in Monnet Ispat (supra) and noted its reliance on the judgment in Attorney General for New South Wales vs. Quinn 33. It then observed:

"This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.”

12. In another judgment of **Monnet Ispat and Energy Limited Vs. Union of India**, reported in **(2012) 11 SCC 1**, the Hon'ble Apex Court held that for application of the doctrine of promissory estoppel there has to be a promise based on which the promisee has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation the primary considerations are

reasonableness and fairness of the State action. In another judgment reported in **Food Corporation of India Vs. Kamdhenu Cattle Feed Industries** reported in (1993) 1 SCC 71, the Hon'ble Apex Court held as under :

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a

necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

13. Thus, the principle of law as emerging from the said judgments is that the doctrine of legitimate expectation cannot be claimed as a right in itself but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution. In the same judgment of *Brahmaputra Metallics* (supra), the Hon'ble Apex Court observed as under :

"The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement

grounded in public interest. This conception of state power has been recognized by this Court in a consistent line of decisions. As an illustration, we would like to extract this Court's observations in National Buildings Construction Cororation (supra):

"The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice."

14. Another aspect which needs to be considered is that another Full Bench of this Court in **Tapti Oil Industries and others Vs. State of Maharashtra**, reported in MANU/MH/0263/1984 has held that the doctrine of promissory estoppel is available even against an executive action of the State. It further went on to hold that it is not necessary for invoking the doctrine of promissory estoppel to trace the right to any action of the Government under a legislative enactment. If certain representations are made by the State Government the question as to whether those representations are made in the exercise of the executive power or not is not relevant and if the promisee has acted on those representations and altered his position then it will not be permissible for the State to

decide from its promise or representation to the prejudice of the person who has acted on that promise.

15. The legal position regarding Government Resolutions as executive actions is well settled by the Hon'ble Supreme Court. In **P.H. Paul Manoj Pandian Vs. P. Veldurai, (2011) 5 SCC 214**, the Court has elaborately discussed their nature, scope and limitations under Article 162 of the Constitution. The relevant observations in paras 45 to 47 read as under :

“45. Departmental circulars are a common form of administrative document by which instructions are disseminated. Many such circulars are identified by serial numbers and published, and many of them contain general statement of policy. They are, therefore, of great importance to the public, giving much guidance about governmental organisation and the exercise of discretionary powers. In themselves they have no legal effect whatever, having no statutory authority. But they may be used as a vehicle in conveying instructions to which some statute gives legal force. It is now the practice to publish circulars which are of any importance to the public and for a long time there has been no judicial criticism of the use made of them.

46. Under Article 162 of the Constitution, the executive power of the State extends to matters with respect to which the State Legislature has power to make laws. Yet the limitations on the exercise of such executive power by the Government are twofold; first, if any Act or law has been made by the State Legislature conferring any function on any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can

the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor.

47. *Once a law occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to prescribe in the same field by an executive order. However, it is well recognised that in matters relating to a particular subject in absence of any parliamentary legislation on the said subject, the State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the executive. But, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the conditions of eligibility for receiving any advantage, privilege or aid from the State.”*

16. The controversy involved in the present matter has to be adjudicated in the light of these authoritative pronouncements.

17. As stated supra, the principal ground of challenge in the petition is that there was a legitimate expectation in the mind of the petitioner that he being playing the game of ‘Body Building’ which finds a place in the list of Sports as per the Government Resolution dated 30th April, 2005 and further continued in

Government Resolution dated 18/11/2006 and 20th September, 2013 will be getting a job in the said quota. It is an admitted position on record that that the petitioner secured third position in in All India University Best Physique (Male) tournament held at Calicut University organized by the Association of Indian Universities.

18. Before proceeding further the preamble which is aim and object of the policy as per the Government Resolution dated 30th April, 2005 has to be looked into. Clause (2) of the said Government Resolution states that the age of player who has interest in sports and pursuing sports and the period of academic pursuits is overlapping and, therefore, it becomes difficult for him to pay attention towards both these aspects. It further states that since a player pursues the sports seriously and therefore cannot excel in academic pursuits which result in deprivation of the government jobs putting them to serious inconvenience. It further states that in that view of the matter the guardian/parents of the players do not see sports as a career which entails them to discourage their wards from participation. This was the aim and intention of the Government policy. Same Government policy has been refined in further Government Resolutions dated 18/11/2006 and 20th September, 2013 albeit limiting the eligible players. Even

the introduction to the Government policy in question contained in Government Resolution dated 1/7/2016, repeats the said preface which spells out the aim and object of the said policy. Even the list of sports as enumerated remains the same. It is only the limiting of such sports which are held in Olympic, Asiad and Commonwealth Games has given rise for filing the present petition.

19. It is also admitted position on record that game of Chess, Kabaddi, Kho-Kho, and now Mallakhamb also have been included subsequently in the said list. It is worthwhile to mention here that inclusion of all these four games is subsequent to the said Government Resolution. In this regard, as stated by the State Government in its reply, the games of Kabaddi, Kho-Kho, Chess, and Mallakhamb have neither been included in Olympics, Asiad or Commonwealth nor they are affiliated with Indian Olympic Association and Maharashtra Olympic Association. Thus, it is clear that even the games which are not fulfilling the criteria have been included by the Government subsequently.

20. The petitioner has rightly submitted that inclusion of these few Indian games and non-inclusion of the game of 'Body Building' affects his fundamental rights. We are in agreement with the argument of the petitioner in-person that the basis of classification and limiting the games which are included only in

Olympic, Asiad and Commonwealth Games is not based on any intelligible differentia and is not having any nexus with the object of the said policy which is to encourage students to participate in sports activities. Further conferment of the *Arjuna Award* by the Government of India is a formal recognition of excellence in the field of sports. It is conferred upon individuals who have achieved outstanding performance in disciplines recognized by the Ministry of Youth Affairs and Sports. The inclusion of bodybuilders among the recipients of the Arjuna Award clearly indicates that the Central Government, through its competent authority, acknowledges “Body Building” as a legitimate and recognized sport. Once such recognition is accorded at the national level, any contrary view taken by the State authorities such as excluding Body Building from the list of recognized sports for the purpose of reservation benefits would be inconsistent, arbitrary, and devoid of reasonable justification. The State cannot, in absence of any cogent or rational basis, disregard the sport which has been accorded recognition by the highest sporting authority of the nation. Thus, it is also clear that said note is not based on intelligible differentia since at the same time it creates rights in favour of few Indian games excluded in Olympic as stated above and the game like ‘Body Building’ is

treated differently though similarly situated. When we hold so, we are also aware of the fact that many States have recognized the game of 'Body Building' as a sport and, therefore, it follows that the action cannot be also sustained on that ground. Thus, it is clear that the petitioner has chosen 'Body Building' as his career and started doing exercise for Body Building since 2013 driven by the reason that since 2005 to 2016 the game of 'Body Building' was entitled to 5% reservation for persons securing first, second, and third rank in competition held by the All India Inter University Sports Board conducted by the Association of Indian Universities.

21. Taking this clue further, the petitioner was having a legitimate expectation that he will get an opportunity of securing Government job as per the promise given by the Government of Maharashtra vide Government Resolution dated 30th April, 2005 and further on 20th September, 2013 since the game of 'Body Building' was not excluded in the year 2013. Testing this fact on the touchstone of settled principles of law, we find that the inclusion or limiting the reservation only to those games which are recognized or played in Olympics, Asia, or Commonwealth Games is contrary to the aim and object of the policy of the Government of promotion of sports. The said exercise is directly in breach of the said Government policy. Furthermore, at one point of time limiting

the games to said sports events mentioned supra but adding Indian games such as Chess, Kabaddi, Kho-Kho, and Mallakhamb is without any reasonable nexus with the object sought to be achieved as mentioned above. Thus, in other words, it can be said that the action is arbitrary and since arbitrariness is an antithesis of law, the said action violates Article 14 of the Constitution of India.

22. Furthermore, there is no reasonable basis to exclude the game like 'Body Building' which was in fact included in the initial policy. It, therefore, follows that the petitioner had a legitimate expectation that he would secure job if he is qualified as per the said policy and has dedicated his precious years of life in it. Thus, there was a legitimate expectation and as stated supra the action of the State in limiting the games but at the same time adding some games without any rationale or logic behind it has led to arbitrariness resulting in violation of Article 14 of the Constitution of India.

23. It is a settled principle of law that class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privileges conferred and the persons not so favored, no reasonable

distinction or substantial difference can be found justifying the inclusion of one and exclusion of the other from such privilege. In the present case also, we could not find any reasonable justification for inclusion of certain games and exclusion of game like 'Body Building'.

24. It is, therefore, clear that the said note is violating the fundamental rights of the petitioner. As also, he being legitimately expecting a job gives rise to a legally enforceable right. As is clear from the abovesaid discussion exclusion of certain games and limiting it to the games being held at Olympics, Asiad, or Commonwealth is a matter of policy, but in view of reasons stated supra, the same, in our opinion, is arbitrary.

25. At this stage, we put on record the sincere efforts put by the petitioner, who appeared in-person before us and argued his case with compassion. It was only with his proper assistance as also the assistance of the counsels appearing for the respondents including Assistant Government Pleader that we could go through the matter with comparative ease. We, therefore, pass the following order :

ORDER

- (i) The writ petition is allowed.
- (ii) The respondent No.1 is directed to include the

game of “Body Builders” in the Government Resolution dated 01/07/2016 in the note found below Schedule ‘A’ within four weeks from the date of this judgment.

- (iii) It is hereby held and declared that the “Body Building” is a species of Gymnastics and is eligible for 5% reservation in Government and semi-Government Class ‘A’ to ‘D’ posts.
- (iv) The communication dated 24/10/2019 issued by the respondent No.2 is quashed and set aside and the letter dated 21/03/2023 issued by the respondent No.1 is also quashed and set aside.
- (v) It is further directed that the respondents should complete the procedure with respect to the petitioner as per Government Resolution dated 01/07/2016 after addition of the game of “Body Builders” as stated in clause (ii), within four weeks thereafter.

26. Rule is made absolute in above terms.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)