

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th August, 2011.

+ **W.P.(C) 6008/2011**

% **PUNJABI UNIVERSITY****Petitioner**
Through: Mr. S.D. Salwan & Mr. Neeraj
Choudhary, Advocates.

Versus

UOI & ORS. **Respondents**
Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported
in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The Court is called upon to exercise the power of judicial review over the decision of the respondents Union of India (UOI) and Association of Indian Universities (AIU) of conferring the Maulana Abul Kalam Azad (MAKA) trophy, to be given to overall top performing university in Inter University Tournaments of the preceding year, for the year 2009-2010 to the respondent no.3 Guru Nanak Dev University. The petitioner claims that the

petitioner and not the respondent no.3 Guru Nanak Dev University is the overall top performing university in Inter University Tournaments for the year 2009-2010.

2. The Ministry of Youth Affairs and Sports (MYAS) in the guidelines for selection for the said trophy has provided:-

- (i) For AIU to invite applications and claims from all Universities and to prepare a statement of marks by a stipulated date; no claim from any University/College beyond stipulated cut-off date is to be entertained;
- (ii) For AIU to scrutinize the applications, compute and prepare a statement of marks with the help of members from Indian Olympic Association (IOA), Sports Authority of India (SAI) and prominent sports persons/Arjuna Awardees/Padma Shree having knowledge of university sports;
- (iii) For AIU to submit statement of marks and other relevant records before the Selection Committee constituted by MYAS;

- (iv) For the Selection Committee to recommend to MYAS a list of three Universities ranking top in sports for award of trophy for the preceding year;
- (v) For the Selection Committee to consist of, an eminent sportsperson as Chairperson and of three Olympians, three Arjuna Awardees, three Dronacharya Awardees as members and with Deputy Secretary (Sports) as Member Secretary;
- (vi) For the university securing the first position to be conferred the trophy and a cash prize of ₹10 lacs;
- (vii) For the calculation of marks to be done based on marks criteria provided;
- (viii) For negative marks for wrong claims and wrong complaints;
- (ix) For MYAS to announce the winner of the award of the trophy;
- (x) For the decision of the Government to be final and binding on all.

3. MYAS, vide its letter dated 26th August, 2010 intimated of the selection of the petitioner for the MAKATrophy for the year 2008-2009 and selection of respondent no.3 Guru Nanak Dev University for the MAKATrophy for the year 2009-2010.

4. The petitioner earlier filed W.P.(C) No.5803/2010 in this Court impugning the decision for award of MAKATrophy for the year 2009-2010 to the respondent no.3 Guru Nanak Dev University. It was the claim of the petitioner that while computing its marks, 4775+6749 marks had been wrongfully deducted.

5. This Court while disposing of the said writ petition vide judgment dated 4th March, 2011 observed that it did not wish to examine the details of the claims made by the petitioner but *prima facie* found that there was no rational basis for deducting the marks relating to yachting event in the computation of marks of the petitioner. The petitioner had claimed wrongful deduction for sports of not only Yachting but also Kabaddi, Asian Roller Sports and Tug of War. Accordingly, the question of computation of marks was referred back to the Selection Committee which had earlier taken the decision in the meeting held on 14th August, 2010. It was further directed that re-computation of marks in relation to the aforesaid four

events be not restricted to the petitioner only but be undertaken for all the Universities that made a claim for MAKATrophy for the year 2009-2010. The Selection Committee was accordingly directed to undertake the exercise and meet within ten days of the order and the final decision on the MAKATrophy for the year 2009-2010 was directed to be announced within two weeks thereafter. Liberty was given to the party remaining aggrieved to seek appropriate remedies in law. The Trophy in the meanwhile was directed to be kept with MYAS till it announced its decision relating to the year 2009-2010.

6. MYAS has vide letter dated 27th June, 2011 to the petitioner and the respondent no.3 Guru Nanak Dev University intimated that in accordance with the directions of this Court, the Scrutiny Committee re-examined the marks of all the Universities and, the respondent no.3 Guru Nanak Dev University had emerged as the overall winner University for the year 2009-2010. It is further recorded in the letter that MYAS has accepted the re-examination of the marks by the Scrutiny Committee and declared the respondent no.3 Guru Nanak Dev University as overall winner University for the award of Trophy for the year 2009-2010. The Trophy was also, under cover of this letter handed over to the respondent no.3 Guru Nanak

Dev University with immediate effect for the balance period i.e. upto 28th August, 2011.

7. Aggrieved therefrom the present writ petition has been filed on 17th August, 2011 and has come up before the Court today. Barely eight days remain of the term for which the Trophy is to remain with the respondent no.3 Guru Nanak Dev University. The writ petition is accompanied with an application for interim relief to stay the letter dated 27th June, 2011 (supra).

8. The petition having been filed after nearly two months of the award of the Trophy to the respondent no.3 Guru Nanak Dev University and merely eight days before the expiry of the term for which the Trophy is to so remain with the respondent no.3 Guru Nanak Dev University, it has at the outset been enquired from the counsel for the petitioner as to whether in the peculiar circumstances aforesaid, the said delay from 27th June, 2011 till today in instituting the petition, is not sufficient to dismiss the petition as barred by laches. It has further been asked as to what has happened to the proverbial sportsman spirit and whether, the petitioner having already deprived the respondent no.3 Guru Nanak Dev University from enjoying the said Trophy for nearly the whole of the year for which it would have remained with them, the sportsman spirit did not lie in the petitioner at least

now when barely eight days remain, not re-agitating the matter.

9. The counsel for the petitioner has of course contended that the petitioner has a very good case; the respondents UOI and AIU have not complied with the directions dated 4th March, 2011 of this Court in the earlier writ petition preferred by the petitioner and that upon the petitioner succeeding, it will go down in the annals as the winner of the Trophy for the year 2009-2010. He contends that it entails an important right of the petitioner and even if the petitioner has not had the benefit of enjoying the Trophy, upon succeeding in the petition, the name of the petitioner will be etched there on as winner/holder of the Trophy for the year 2009-2010.

10. The question which arises is, whether this Court should allow itself especially at this stage, to be drawn into the controversy aforesaid. Entertaining the petition would certainly take away the gleam from the respondent no.3 Guru Nanak Dev University of owning the Trophy for the remaining eight days also. I have wondered, whether in the event of the petition failing, any amount of compensation would be sufficient to restore the said gleam. In my opinion, no.

11. It is a settled principle of law that in exercise of powers under Article

226 of the Constitution of India, this Court can refuse to exercise jurisdiction even when the petitioner may have a claim in law. The Supreme Court in ***Chandra Singh Vs. State of Rajasthan*** AIR 2003 SC 2889 held that issuance of a writ is a discretionary remedy and that the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India may not strike down an illegality although it would be lawful to do so and in a given case, may refuse to extend the benefit of discretionary relief to the applicant. It was so reiterated in ***ONGC Ltd. v. Sendhabhai Vastram Patel*** (2005) 6 SCC 454. Similarly, in ***Taherakhatoon Vs. Salambin Mohammad*** (1999) 2 SCC 635 even at the time of the dealing with the appeal after grant of special leave, it was held that the Court was not bound to go into the merits and even if entering into the merits and finding an error, was not bound to interfere if the justice of the case on facts does not require interference or if the relief could be moulded in a different fashion. This Court has echoed the same views in ***Filmistan Exhibitors Ltd. v. N.C.T., thr. Secy. Labour*** 131 (2006) DLT 648 by holding that even if there is a violation of law, this Court is not bound to exercise discretionary jurisdiction and in ***Babu Ram Sagar Vs. Presiding Officer, Labour Court*** MANU/DE/9235/2006 by refusing to interfere in

exercise of discretionary powers inspite of holding the reasons given by the Labour Court to be not convincing.

12. I am further of the opinion that if the power of judicial review were to be extended to in matters such as these also, it would adversely affect the sports. This Court cannot appropriate to itself a position as of a Super Umpire or a Super Referee. If the powers were to so extend, then there would be no limit to the extent to which the Court will be called upon to exercise the same. The decision as to whom to award the Trophy, though based on an elaborate procedure still remains a decision as of a Referee or an Umpire in a Sport and the Court ought not to exercise domain over the same. Similar doubts were raised in *Law v. National Grey Hound Racing Club Ltd.* [1983] 1 WLR 1302 where it was held that if such matters are made to fall within the public law then “Where should we stop”. The majority Judgment in *Zee Telefilms v. UOI* 2005 (4) SCC 649 also found merit in the argument that if sporting bodies as Board for Control of Cricket in India (BCCI) were to be amenable to Writ Jurisdiction it would open the flood Gates of litigation under Article 226 and 32 of Constitution of India 1950. (See para 34 of the Judgement)

13. No doubt this Court on an earlier occasion did exercise the

jurisdiction. The petitioner had however filed the earlier petition on the same day when the decision awarding the Trophy to respondent no.3 Guru Nanak Dev University was announced and it appears that under interim orders in that petition, the Trophy was not allowed to be conferred on the respondent no.3 Guru Nanak Dev University. However now, as aforesaid, the position is different.

14. One cannot also lose sight of the fact that the guidelines for selection for the Trophy make the decision of the MYAS to be final and binding. The petitioner made a claim for the Trophy agreeing to the guidelines which provide for the decision of the Government to be final and binding on all. Considering the nature of the claim, the decision of MYAS is found to be final and not interfere able even in exercise of powers under Article 226 and binding on the petitioner especially when there are no allegations of *mala fide* or bias. As aforesaid, there is an elaborate procedure for selection, with the Scrutiny Committee of AIU invites applications and claims, computes and prepares a statement of marks with the help of members of IOA, SAI and prominent sportspersons and the same is submitted to the Selection Committee constituted by MYAS and which Selection Committee as aforesaid also comprises of eminent sportspersons. Such experts having

applied their mind, not only once but twice and having reached a conclusion that the respondent no.3 Guru Nanak Dev University deserves the Trophy for the year 2009-2010, the self-imposed limit of judicial interference prohibits this Court from looking further into the matter.

15. The counsel for the petitioner, has from the documents on record also urged that there are obvious mistakes in the computation done. It is however a settled principle that a mere mistake is not sufficient for this Court to exercise powers under Article 226. The Authority/Body whose decision under the Rules/Guidelines has been conferred finality and against whose decision no appeal is permitted, even if makes a mistake, such mistake is no ground for the powers under Article 226 to be exercised. A Six Judge Bench of the Apex Court as far back as in ***Hari Vishnu Kamath v. Syed Ahmad Ishaque*** AIR 1955 SC 233 held that Certiorari will not issue as the cloak of an appeal in disguise. It exists to correct error of law where revealed on the face of an order or a decision or irregularity or absence of or excess of jurisdiction where shown. It was further held that for a Writ of Certiorari to be issued, it should be something more than a mere error. Again, in ***Damoh Panna Sagar Rural Regional Bnak and Anr v. Munna Lal Jain*** AIR 2005 SC 584 it was held that this court would not interfere

with the decision unless it is illogical or suffers from procedural impropriety or shocks the conscience of the court in the sense that it is an defiance of logic or moral standards; the court would not go into the correctness of the choice open to the person vested with the power to make such choice and the court should not substitute its decision over that of the said person. The scope of Judicial Review is limited to deficiency in decision making process and not the decision. In the present case, neither is there anything shocking the conscience of the court nor any error pointed out in the decision making process. It is the decision which is said to be erroneous and which adjudication is outside the ambit of exercise of powers of Judicial Review.

16. I am of the opinion that in matters relating to sports, Judicial Review is entertain able only on charge of bad faith in declaring the winner and not on the charge of an error of Judgment in declaring the winner. This has been evolved as the principle, though in cases seeking Judicial Review of decisions of umpire and Referee made on the sports field but I see no reason to not apply the same to decision though not made on the sports field but of the like nature.

17. It was held as far as back in 1945 in the case of ***SHAPIRO v. Queen County Jockey Club*** 184 Misc. 295 [53 N.Y.S.2d 135], that in more than

one sense officials such as Referees/umpires are truly judges of the fact and their decisions should receive great credence and consideration than the complaints of a disgruntled loser or a wager. It was further held that where there is no charge of bad faith against the steward, Judges/Referee or other officials of the sports, it can't ordinarily be the duty of the court to substitute its decision for that of those persons who were specifically charged with the duty of determining the winners. There is nothing to suggest that in India the position is any different or that it was intended to impose upon the courts any duty of decision in such matters. Similarly in ***Michael Discenza, v. The New York City Racing Association, Inc*** 134 Misc.2d 3 (1986) it was held that fear of a lawsuit for damages by anyone disappointed by decision of the Referee/umpire as a result of good faith determination rendered pursuant to broad discretion necessarily granted to such official would have a drastic inhibiting effect on their exercise of discretion and their professional judgment; that the decision of such officials who are otherwise well qualified must be final and binding. It was held that in the absence of a showing of fraud, collusion, gross abuse of discretion or a palpable abuse of authority amounting to illegality, interference by the courts cannot be invited. The Supreme Court of Georgia in ***Georgia High School***

Association V .Waddell et al 248 Ga. 542, 285 S.E.2d 7 (1981) went to the extent of saying that courts of equity are without authority to review decisions of Referee and umpires because those decisions do not present judicial controversy. I do not see the position of the Scrutiny Committee and the Selection Committee in the present case to be any different.

18. The counsel for the petitioner has urged that this Court had directed that the decision of the Scrutiny Committee will be communicated to the Selection Committee as per the prescribed procedure but the same has not been done. However as aforesaid, the letter dated 27th June, 2011 records that re-examination/re-calculation of the marks by the Scrutiny Committee has been accepted by the competent authority in the MYAS and which competent authority can be nothing but the Selection Committee. There is thus no merit in the said argument also.

19. I am also of the opinion that the shadow of the dispute as to claimant of the 2009-2010 Trophy should not be allowed to lurk over the events for the current year or over the conferment of the Trophy for the year 2010-2011 and which undoubtedly will be the result if the present petition is to be entertained.

20. In the end I can but express a hope that the sportspersons continue to participate in the sports in the legendary spirit and do not equate competitive sports to legal battles in Courts. "Win or lose you will never regret working hard, making sacrifices, being disciplined or focusing too much. Success is measured by what we have done to prepare for competition." Said the American explorer John Smith

21. Though the counsel for the petitioner had towards the fag end sought leave to apply for contempt for non-compliance of the directions contained in the order dated 4th March, 2011 but having not found any case for defiance of the earlier order of the court and in the light of the above, no case for granting such liberty also is made out.

22. There is thus no merit in the petition; the same is dismissed. No order as to costs.

CM No.12139/2011 (for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 19, 2011/bs.