

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

Judgment reserved on June 30, 2014

Judgment delivered on July 03, 2014

+ W.P.(C) 3914/2014 & CM No. 7890/2014

AMIT KUMAR DHANKHAR

..... Petitioner

Through: Mr.Arun Bhardwaj, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Sapna Chauhan, Advocate
with Mr.Abhijeet Negi, Adv. for
R-1

Mr.Parth Goswami, Advocate
with Mr.Hemant Phalpher, Adv.
for R-2

Mr.Rahul Khurana, Advocate for
Mr.Anil Grover, Advocate for R-3

Mr.Pradeep Dewan, Sr. Advocate
with Ms.Anupama Dhingra and
Mr.Rahul Jain, Advocates for R-4
with Mr.Vinod Tomar, Assistant
Secretary for R-4

Mr.Surender Chauhan, Adv. for
R-5 with R-5 in person

+ W.P.(C) 3943/2014 & CM No. 7935/2014

JOGINDER KUMAR & ORS

..... Petitioner

Through: Mr.Rahul Mehra, Advocate
with Ms.Roma Bhagat,
Advocate

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Nishant Gautam,
Advocate for R1/UOI
Mr. Parth Goswami, Advocate
with Mr. Hemant Phalpher,
Adv. for R-2
Mr. Pradeep Dewan, Sr.
Advocate with Ms. Anupama
Dhingra, Mr. Surender
Chauhan and Mr. Rahul Jain,
Advocates for R-3 with
Mr. Vinod Tomar, Assistant
Secretary for R-3

+ W.P.(C) 3955/2014 & CM No. 7954/2014

RAJNEESH DALAL

..... Petitioner

Through: Mr. Raj Kumar Rajput,
Advocate with Mr. Ajit
Rajput, Advocate

Versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. A.K. Gautam, Advocate
for R-1
Mr. Parth Goswami, Advocate
with Mr. Hemant Phalpher,
Adv. for R-2
Mr. Pradeep Dewan, Sr.
Advocate with Ms. Anupama
Dhingra, Mr. Surender
Chauhan and Mr. Rahul Jain,
Advocates for R-3 with

Mr.Vinod Tomar, Assistant
Secretary for R-3

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. This batch of three writ petitions involves a challenge to the inaction of a National Sports Federation (NSF) in the country i.e. Wrestling Federation of India (WFI) for not selecting Wrestling team for Commonwealth Games 2014 in accordance with the National Sports Code ('Code' in short) as formulated by the Ministry of Youth Affairs and Sports, Government of India.

2. The parties, more particularly, the respondents shall be referred to as per their position in the memo of parties in W.P.(C) No. 3914/2014, which would be, respondent No. 1 (Ministry of Sports), respondent No. 2 (Indian Olympic Association), respondent No. 3 (Sports Authority of India), respondent No. 4 (Wrestling Federation of India), respondent No. 5 (Mr. Vinod Kumar, Chief Coach).

3. The aforesaid Code was a subject matter of a writ petition [W.P.(C) No. 2310/2012] filed by the Indian Olympic Association (OIA) wherein the competency of the respondent No. 1, Union of India to formulate the same was challenged as being beyond its Executive power. This Court, while holding the competency of respondent No. 1 in para 86, has held as under:

“86. For the foregoing reasons, it is held that the petitioners’ contentions are rejected. The Court reiterates its conclusions that international sports and regulation of NSFs,

and IOA, in respect of the matters which are the subject of these proceedings, falls within Entry 97 of the First List to the Seventh Schedule to the Constitution of India. The Central Government can insist upon adherence to these provisions, without the aid of legislation. It is also held that the Sports Code does not violate the freedom under Article 19(1)(c) of the Constitution. Neither are its provisions arbitrary. The tenure restrictions impugned in this case can and are insisted upon as a part of the public interest in efficient and fair administration of such NSFs. This Court also specifically notes the letter/notice dated 20.09.1975, which forms part of the Sports Code, as modified by the later letter of 01.05.2010, to the following extent:

“i. The President of any recognized National Sports Federation, including the Indian Olympic Association can hold the office for a maximum period of twelve years with or without break:

ii. The Secretary (or by whatever other designation such as Secretary General or General Secretary by which he is referred to) and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, may serve a maximum of two successive terms of four years each after which a minimum ‘Cooling off period of four years will apply to seek fresh election to either post.

iii. The President, the Secretary and the Treasurer of any

recognized National Sports Federation, including the Indian Olympic Association, shall cease to hold that post on attaining the age of 70 years.

iv. The other provisions in respect of the tenure limit as contained in the letter of 1975 mentioned above shall remain as it is.

v. The above dispensation will come into operation with immediate effect.”

This regulation (subject to any subsequent amendments) should, till appropriate legislation is framed by Parliament, bind the parties and all NSFs as a condition for recognition, aid and crucially, for the use of the term “India” by any team in International Olympic sporting event.”

4. This Court has purposefully, referred to the judgment in the aforesaid writ petition to show the relevancy/binding nature of the Code, at least, insofar as the respondent No. 4 (Wrestling Federation of India) and respondent No. 2 (Indian Olympic Association) are concerned.

SPORTS CODE

5. With a view to adopt good governance practices by National Sports Federation including Indian Olympic Association, for a healthy development of sports in the country, the respondent No. 1 issued comprehensive guidelines in the years 1975, 1988, 1997 and 2001. Post 2001, several major initiatives were taken by the Government, which included declaration of the NSF availing the government grant as public authority under the Right to Information Act, 2005, introduction of

annual recognition for NSF, implementation of age and tenure limits in respect of office bearers of NSF, Anti-doping Rules, holding of fair and transparent elections in the NSF. All these notifications/orders/instructions/circulars issued post 2001, have been amalgamated with necessary modifications as one comprehensive Code called as National Sports Development Code of India (NSCI), 2011 which was enforced with immediate effect.

6. Suffice to state, selection procedures of national teams for participation in major international events have also been formulated. The Code contemplates the role and responsibility of the; (a) Ministry of Youth Affairs and Sports, Govt. of India (respondent No. 1) to include determining the eligibility conditions for recognition of National Sports Federation; (b) NSF; responsible and accountable for overall management, direction, control, regulation, promotion, development of sponsorship, for which, they are recognised by concerned International Federation; (c) Sports Authority of India; to provide necessary support for identifying the sports persons including the provisions of infrastructures, equipments and such other assistance, as may be agreed to.

7. The Code also includes a system of annual recognition of the NSF with automatic renewals subject to submission of documents such as annual sports, audited accounts, details of national championship etc.

8. The Code also provides, in order to be eligible for assistance and for continuing the recognition of the Government, the National Sporting Organizations must also require to adopt impartial and transparent selection procedure. Para 10.5 of the Code (page 108 of W.P.C. 3743/2014) stipulates as under:

“For proposal at “No cost to government”, National Federation will not be required to obtain prior approval of the Government unless it is a major, multi-discipline international sports events like Asian Games/Commonwealth Games and Olympic Games. The selection procedure as laid down in the guidelines shall apply”.

9. Para 10.6 of the Code (page 108 of W.P.C. 3943/2014) stipulates as under:

“For proposal “At Cost to the government”, National Federations should forward proposals in the prescribed proforma (Annexure VI) to the Ministry of Youth Affairs and Sports at least three months prior to the event along with selection committee minutes. These proposals should be in consonance with the LTDP already approved. Generally speaking, and subject to the availability of funds and the standards achieved by the team, the Government will clear all proposals which have been previously agreed upon in the meetings between the MYAS and the NSF at the time of LTDP discussions.”

10. On September 18, 2008, guidelines were issued by the Ministry of Youth Affairs and Sports for efficient management of coaching camps, selection of Coaches, selection of Athletes etc. These guidelines have been made part of the Code as Annexure XXI. Para 3 of the said letter dated September 18, 2008, stipulates as under:

“(i) The selection of sportspersons for participation in major international events shall be the responsibility of

National Sports Federations (NSF) concerned, and Government and the Sports Authority of India, will not have direct involvement in the selection process, except to ensure that it is fair and transparent.

(ii) The selection criteria/norms shall be clearly communicated by the NSFs to all concerned vis., players, coaches, Government Observers etc. well in advance and be put up on the website of the NSF concerned and also be forwarded to SAI and the Ministry to be put up on their respective websites.

(iii) In case of measurable event, the minimum qualifying norms may be fixed and announced along with the notice for Selection Trials and be put up on the website of the NSF concerned and also be forwarded to SAI and the Ministry to be put up on their respective websites.

(iv) The holding of the selection trials should be announced at least one month in advance of dates of the trials.

(v) In team events the Selection Trials should be held two months in advance and in the case of contact games, the selection trials should be held at least one month in advance of the competition event.

(vi) The selection shall be done by a Selection Committee, consisting of the President of the NSF as the chairman, the National coach and eminent ex-sportspersons, preferably Arjuna awardees. There shall be no Government Observer/SAI nominee, as member, in the Selection

Committee.

(vii) The NSFs shall send invitation to the Government Observer, for attending the selection trials, and the selection committee meetings, as an Observer, atleast 15 days in advance, which shall further be followed up on personal basis. The Government Observer must send his/her report, directly to SAI and the Ministry, without delay.

(viii) The national coach shall evaluate the progress and performance of each player on regular basis and submit the report to the selection trials, only in exceptional cases with due justification.

(ix) The athletes who were not in the coaching camp organized prior to the Selection may be allowed to participate in the selection trials, only in exceptional cases with due justification.

(x) The proceedings of the Selection should spell out in detail, the selection criteria, the past performance of the players, and their performance in the selection trials.

(xi) The team once finalized for a particular event shall not be changed under any circumstances, unless warranted by unavoidable situations with due justification and the changes shall be informed to all the concerned.

(xii) NSFs shall keep the performance of each athlete on its website. This should be updated at least once a month along with rankings, if applicable.

(xiii) The athlete once selected for a team, shall be treated

with utmost dignity. In case of any doubt arising, the athlete has to be taken into confidence. Proper appeal mechanism shall be put in place, to ensure proper and timely redressal of their grievance.”

THE FACTS:

W.P.(C) 3914/2014

11. The petitioner Amit Kumar Dhankhar's case is that he is an Asian Gold Medallist and World Police Gold Medallist in Freestyle Wrestling in 65 kg category. In July 2014, at Glasgow (England), Commonwealth Games-2014 are to be held wherein Wrestling is one of the sporting events, in which, India would be participating by sending Wrestlers in various categories including 65 kg Freestyle Wrestling. It is his case that without holding trials, names will be forwarded by the respondent No. 4 to the respondent No. 2, which then would forward the names to the Commonwealth Games Committee, latest by June 2014. It is his case that if the trials are not held, the same will result in sending all such players who have not competed with each other and in turn, would bring a bad name to the nation. According to him, it is the Ministry of Sports, Govt. of India, which is responsible to ensure that best talent is selected to represent the country. He would highlight his credentials, at least from the year 2009, in the following manner:

Sr.No.	Date	Medal	Venue	Events
12	17-20 Nov 2009	Bronze	Jalandhar	Senior Commonwealth Free Style Wrestling Championship
13	06-10 April 2010	Gold	Pune	58 th All India Police
14	25-28 Dec 2010	Bronze	Ranchi	55 th Senior Free Style Wrestling Championship
15	12-26 Feb 2011	Gold	Ranchi	34 th National Games

16	02-06 March 2011	Gold	Jammu	59 th All India Police
17	06-07 Aug 2011	Gold	Melbourne (Australia)	Commonwealth Wrestling Championship
18	23-25 Dec 2011	Gold	Hyderabad	45 th Senior Wrestling Championship
19	13-16 April 2012	Gold	Jalandhar	Shaheed Bhagad Singh International Wrestling Tournament
20	18-22 April 2013	Gold	New Delhi	Senior Asian Wrestling Championship
21	19 June 2013	Gold	Kolkata	58 th Senior Wrestling Championship
22	1-10 Aug 2013	Gold	Ireland	World police games
23	4-7 Dec 2013	Gold	South Africa	Commonwealth Wrestling Championship
24	23-27 April 2013	5 th	Kazakistan	Asian Wrestling Championship

12. The respondent No. 4 (Wrestling Federation of India), in its counter affidavit, had taken a stand that the present petition has become infructuous inasmuch as respondent No. 2 (Indian Olympic Association), after the receipt of the list of the wrestlers selected by the respondent No. 4, has sent the list in seven weight categories on June 11, 2014 to the Commonwealth Games Committee (CGC). The said list cannot be changed unless a good cause is shown such as injury or sickness of a wrestler. It is its stand that in fact, it is the discretion of the CGC to accept or not to accept the change in the list of participants. It is the case of respondent No. 4 (WFI) that the team of wrestlers selected, would after attending the Training Camp at Minsk, Belarus, starting from July 09, 2014, shall leave for Commonwealth Games at Scotland. Insofar as this petitioner (Amit Kumar Dhankhar) is concerned, it is the case of the respondent No. 4-WFI that in last four international events which have taken place in 2014, he has participated in the 70 kg category of wrestling. That apart, it is its case that the trials were held on February 18, 2014 for selection of wrestlers for Senior Freestyle Indian Wrestling

team for participation in 2014 World Cup held at Los Angeles from 14-16 March, 2014 and pursuant to the trials, the petitioner was selected for 70 kg category and pursuant to the said selection, he participated in the tournaments held in Colorado Springs, USA during the period January 29, 2014 to February 02, 2014; World Cup Wrestling Tournament at Los Angeles, USA from March 16 to March 18, 2014; Senior Asian Free Style Wrestling Championship from April 22 to April 27, 2014 at Kazakhstan; World Class International Tournament held at Italy between May 28 to June 01, 2014. The petitioner Amit Kumar Dhankhar, fearing his poor performance, did not participate in either 65 kg or 70 kg category at Italy.

13. The respondent No. 4's case is that the FILA, which is the apex body for sports events, modified the category from January 01, 2014. Consequent upon the said modification, the existing category of 66 kg was removed and a category of 65 kg was created, the next category being 70 kg. It is the case of the respondent No. 4 that in the three international events referred to above, the petitioner did not play well as in none of them, he could reach to Quarter Final. The respondent No. 4 states that following seven wrestlers have been selected to represent India in the Commonwealth Games, 2014, for which list has already been sent :

	<i>"Name</i>	<i>Weight category</i>
i)	<i>Mr.Amit Kumar</i>	<i>57 kg.</i>
ii)	<i>Mr.Bajrang</i>	<i>61 kg.</i>
iii)	<i>Mr.Yogeshwar Dutt</i>	<i>65 kg.</i>
iv)	<i>Mr.Sushil Kumar</i>	<i>74 kg.</i>
v)	<i>Mr.Pawan Kumar</i>	<i>86 kg.</i>

vi) *Mr.Satyavert Kadian* 97 kg.

vii) *Mr.Rajeev Tomar* 125 kg.”

14. Against the 65 kg category, one wrestler namely Yogeshwar Dutt has been selected. The respondent No. 4 has stated that there is no comparison between Yogeshwar Dutt and the petitioner so far as their performance and achievement is concerned. Yogeshwar Dutt is a Broze Medallist in the last Olympic Games held at London. He is also the recipient of the Rajiv Gandhi Khel Ratan, Arjuna Award and also been conferred Padam Shree award in the year 2013. It is the case of the respondent No. 4 that the FILA Rules does not permit any weight tolerance inasmuch as in Asian Championship of 2009, Mr. Sushil Kumar, whose name was included in 66 kg category could not participate in the said category as his weight was beyond 150 gms., or so.

15. Insofar as the allegations made by the petitioner Amit Kumar Dhankhar that no trials have been held, it is the case of the respondent no. 4 that the trials are done periodically i.e. once in 3 or 4 months or so. There is no hard and fast rule that before any competition, trials must be held without exception. It is logically not possible to hold the trials before every tournament. Participation in the trials is a very complicated issue for the participants. The participants have to adjust their weight according to the category and invariably, they are required to either reduce or increase their weight to match their category. It is the case of the respondent No. 4 that repeated trials also adversely affects the performance of wrestlers inasmuch as he cannot concentrate in his performance and preparation for the tournament. Once trials are done and evaluation of wrestlers is made on the basis of their achievements

and current performance, the Selection Committee, while acting in a fair and transparent manner, selects the wrestlers for next following events and a change of wrestlers is made only if it is called for. It is also the case of the respondent No. 4 that the last trials were held on February 18, 2014 at Sonapat wherein, trials were held for 65 kg as well as 70 kg category. The petitioner offered himself in trials in 70 kg category and not in 65 kg category. The selections have been made for the Commonwealth Games, 2014 keeping in view the performance of the wrestlers at the said trials and their current performance in the camp which is underway since November, 2013. It is the case of respondent No. 4 based on the judgment of this Court in *W.P.(C) 5034/2010, titled Shumel Vs. Union of India and Ors.* and connected writ petitions decided on August 02, 2010, no interference is called for in the selection of the team which is based on the performance, and the selection of players should be left to the experts. The respondent No. 4 also relied upon the judgment of this Court in *W.P.(C) 7170/2010, titled Neha Rathi Vs. Union of India and Ors.*, decided on November 10, 2010, wherein this Court, has held that there is no rule to necessarily hold selection trials and the selection of wrestlers on the basis of their past performance does not call for fresh trials.

16. The respondent No. 1, Ministry of Youth Affairs & Sports, Govt. of India has also filed its affidavit. Suffice to state, that the respondent No. 1 has taken a stand that it does not interfere in the day to day functioning of the respondent No. 4 (WFI) including selection of players and teams to represent in international tournaments, which is the responsibility of respondent No. 4 (WFI) and it does not have a direct involvement in the selection process. Similarly, Indian Olympic

Association, the respondent No. 2 has averred that on April 28, 2014, an email communication was received from the Sports Entries Coordinator, Organizing Committee, Glasgow Commonwealth Games, intimating the deadline for the submission of the final entries for each sport i.e. June 11, 2014. The Indian Olympic Association has sent reminders to all sports federations from whom entries were not received. The entries for all weight categories for men and women were received from respondent No. 4 (WFI) vide email dated June 11, 2014, wherein, 14 names have been listed as their entry for the games. The entries for all the sports, were sent before the deadline time on June 11, 2014 and a confirmation was also received from the Organising Committee, Commonwealth Games, 2014, confirming the receipt of the entries for all sports. An email dated June 18, 2014 was received from the Sports Entries Coordinator, Organising Committee, Glasgow Commonwealth Games, providing the Indian Olympic Association, Sports Entries Athlete Replacement Request Forms and Athlete Replacement Policy/Procedures wherein various conditions have been outlined for the withdrawal and replacement of athletes after sending the final names of players by any Commonwealth Games Association. The change, according to the respondent No. 2 (IOA), is the discretion of Commonwealth Games Federation Executive Board which is decided by them on a case to case basis after consultation with the concerned International Federation.

W.P. (C) 3943/2014

17. This petition has been filed by the three petitioners, inter alia, seeking a prayer for derecognising the respondent No. 4 (WFI) for violation of the Code, with a further direction to the Indian Olympic

Association not to forward the names of any players without selection trials for the forthcoming Commonwealth Games, Glasgow, 2014 and for direction to the Wrestling Federation of India to hold trials for upcoming Commonwealth Games in terms of the Guidelines issued on September 18, 2008. It is their case that they have been participating in the national and international events in 125, 57 and 97 kg categories. They were invited to participate in Coaching Camps organised by respondent No. 4 (WFI) in order to prepare for the forthcoming Commonwealth Games, 2014. The petitioner No. 1 Joginder Kumar had to leave the camp midway for medical reasons and he did so by informing the authorities and by supplying a medical certificate. He has also submitted his Fitness Certificate thereafter. It is also the case of the petitioners that prior to this contingent, all contingents have been finalised on the basis of selection trials which have been conducted by the respondent No. 4 (WFI) and which has also been announced in the Times of India's Article dated May 28, 2014 that they would be conducting selection trials from 15th to 20th June, 2014. Instead of holding trials, they have held selection trials for women on June 15, 2014 in Lucknow. The respondent No. 4 (WFI) is under a mandate in terms of the past practice, to hold the selection trials to ensure free, fair and transparent selections in terms of the Code which is mandatory as declared by Division Bench of this Court. It is their case that the trials are particularly significant and important as few months prior to this, the International Wrestling Federation has reshuffled the weight categories by increasing the weight in 5 out of 7 categories and reducing the weight in one of the seven categories.

18. The stand of the respondent No. 4-Wrestling Federation of India in

this writ petition is almost on the same lines as taken in W.P.(C) No. 3914/2014.

19. The respondent No. 4 (WFI) has also taken a stand that on February 18, 2014, trials were held for selection of wrestlers for Senior Freestyle Indian Wrestling Team for World Cup held at Los Angeles and for 2014 Senior Free Style Wrestling Asian Championship from 22 to 24 April 2014 at Kazakhstan. The said trials were held in the presence of Selection Committee to select wrestlers in the 8 categories. After watching the performance, a team was selected which included the name of Amit Dhankhar, one of the petitioners in 70 kg category. The petitioner No. 1 Joginder Kumar did not participate in the trial as he was absent on the pretext of physical injury. The petitioner No. 2 Rahul Aware participated in the said trials in the category of 57 kg weight and he lost the trial to Amit Kumar, who has been selected in his place. The petitioner No. 3 Mausam Khatri and Mr. Rajeev Tomar were relieved from Doping Charges by NADA. Taking into account the past performance, trials were held for petitioner No. 3 Mausam Khatri and Mr. Rajeev Tomar along with trials for Greco Roman Style on April 02, 2014. In the said trials, petitioner No. 3 Mausam Khatri lost to Mr. Satyavarat Kadyan who has been selected. It is also the stand of the Wrestling Federation of India that the NADA team came to the ongoing training camp at Sonapat on June 21, 2014 to conduct the Dope test on the participants, whose dope has not so far been conduct. Mr. Amit Dhankhar and petitioner No. 3 Mausam Khatri and Mr. Ajit were present in the camp but, they refused to submit themselves for Dope Test.

20. Insofar as Joginder Kumar, petitioner No. 1 is concerned,

according to the respondent No. 4 (WFI), he did not attend the camp for 5 months from January to May 2014. According to the Code, an athlete, who did not participate in the coaching camp prior to selection cannot be allowed to participate in the selection trials, except in exceptional cases with due justification. In the absence of petitioner No. 1 Joginder Kumar in the camp, it was necessary to bring another wrestler to the training camp in 125 kg category. It is the case of the respondent No. 4 (WFI), that it is impermissible to allow wrestlers, who have not attended the training camp to participate in the selection trials, much less an international event. Further, it would be inappropriate for the respondent No. 4 (WFI) to replace a wrestler who has been training himself for the specific weight category for over 7 months or to ask him to undergo fresh trials. A comparative statement has been filed, reflecting the contention of petitioner No. 1 and of Rajeev Tomar. The petitioner No. 2 lost to Amit kumar in 55 kg category in the selection trials held on February 18, 2014 at Sonapat. Despite losing to Amit Kumar, who is also an Olympian and a Silver Medallist of 2013 Senior World Wrestling Championship, Budapest, the respondent No. 4 (WFI) gave another chance to petitioner No. 2 for participation in International Wrestling Tournament held at Italy from 29.05.2014 to 01.06.2014. However, just before the team was to leave for Italy, the petitioner submitted an application on May 26, 2014 expressing his inability to participate in the event on the pretext of fitness. It appears that the petitioner No. 2 avoided to participate in the tournament fearing defeat. The respondent-WFI filed a comparative chart showing the merits of the petitioner No. 2 Rahul Aware and Mr. Amit Kumar, who have been selected in that category.

21. Insofar as the petitioner No. 3 is concerned, he is of 97 kg free style wrestler. After being relieved by NADA, he participated in the special selection trial held on April 03, 2014 and lost the bout to Mr. Satyavarat Kadyan, who has been selected. According to respondent No. 4 (WFI), he did not show good performance in recent times. It is the case of WFI that in the past also, the team consisting of winners in National Championship and on the basis of the performance in the International events and current performance, have been sent to many international tournaments. They would justify the trials in the women's category because of the inconsistent performance of the women wrestlers and also because of injury of Geeta Phogat. The respondent No. 1 (Ministry of Youth Affairs and Sports) and the respondent No. 2 (Indian Olympic Association) have reiterated the stand as taken by them in W.P.(C) 3914/2014.

W.P.(C) 3955/2014

22. The case of the petitioner in this writ petition is that he is a wrestler and has been participating and winning national and international wrestling tournaments in the 55 kg, 60 kg and 65 kg categories since the year 2006. He won Gold Medal, Silver Medal and Bronze Medal and participated each at National Wrestling Championship, National games, Commonwealth Games Wrestling Championship, International Wrestling Tournaments, Asian Championship. Now, he intends to participate in Olympic Wrestling in the category of 55-60 kg weight. According to him, the following are his achievements:

S.No.	Name of the Competition	Date of the Competition	Place	Weight Category	Position Secured
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1.	26 th Junior Boys National Wrestling Championship	28 th to 30 th May, 2006	Pune, Maharashtra	55 Kg Free Style	Bronze Medal
2.	27 th Junior Boys National Wrestling Championship	22 nd to 25 th May 2008	Puri, Orissa	60 Kg Free Style	Silver Medal
3.	54 th Senior National Men And Women Wrestling Championship	8 th to 11 th October 2009	Bhopal, M.P	60 Kg	Gold Medal
4.	55 th Senior National Men and Women Wrestling Championship	25 th to 28 th 2010	Ranchi Jharkhand	60 Kg	Silver Medal
5.	National Games	16 th to 26 th February 2011	Ranchi Jharkhand	60 Kg Free Style	Gold Medal
6.	Golden Grandprix International Wrestling Tournament Championship	1 st to 4 th March 2007	Tashkent Uzbekistan	55 Kg Free Style	Participated
7.	Shaheed Bhagat Singh International Wrestling Tournament	30 th October to 1 st November 2009	Julandhar India	60 Kg Free Style	Gold Medal
8.	Hargobind Singh International Wrestling Tournament	6 th to 7 th November 2009	Surrey Cananda	60 Kg Free Style	Silver Medal
9.	Commonwealth Wrestling Championship	17 th to 20 th December 2009	Julandhar India	60 Kg Free Style	Bronze Medal
10.	Dave Schultz Memorial International Wrestling Tournament	5 th to 8 th February 2010	Colorado Springs USA	60 Kg Free Style	9 th Position
11.	2 nd Shaheed Bhagat Singh International Wrestling Tournament	9 th to 12 th February 2011	Julandhar India	60 Kg Free Style	Gold Medal
12.	Asian Championship	19 th to 22 nd May 2011	Tashkent Uzbekistan	60 Kg Free Style	Participated
13.	Commonwealth Wrestling Championship	6 th to 7 th August 2011	Australia	60 Kg Free Style	Gold Medal
14.	World Cup Wrestling Championship	15 th to 16 th March 2014	Los Angles California USA	65 Kg Free Style	Participated

23. According to him, the selection for the Commonwealth Games 2014 to be held in Glasgow in July 2014 has to be by holding selection trials. He would also state that because of the change in the weight requirements suggested by the international body, coupled with the fact that there is no well established precedent by reason of past performance to establish how the combatants will perform in the new weight

categories. In other words, it is his case that because of introduction of new weight categories, selection trials are even more imperative.

24. The stand of the respondent No. 4 (WFI) in its counter affidavit is on similar lines as taken W.P.(C) Nos. 3914 & 3943 of 2014. That apart, it is the stand that the Federation selects only national winner wrestler for participation in the national coaching camps, but, since one wrestler in 66 kg weight category did not report in the national camp, the respondent No. 4 (WFI), in order to further promote the petitioner, despite his poor performance, after the year 2012, Copa Brazil Tournament held at Re Dio Janeiro (Brazil), gave an opportunity to the petitioner to attend National Camp in place of injured wrestler. The WFI has also taken a stand that the petitioner participated in the selection trials held on February 18, 2014 and was trained to participate in 2014 World Cup Wrestling Championship held at Los Angeles from March 14 to March 16, 2014, in Senior Asian Wrestler Championship held at Kazakhstan from April 22 to 27, 2014, but, in both the tournaments, his performance in 65 kg category was not upto the mark and the petitioner stood 12th position in Senior Asian Wrestling Championship & in World Cup. He won only one bout out of four. The national coach and foreign coach shortlisted one Mr. Bajrang in 61 kg weight category for Commonwealth Games 2014, who won Silver Medal in Senior Asian Wrestling Championship and again won Silver Medal in recently concluded International Tournament held in Italy from 30-31st May, 2014. The team having been finalized, the present petition is not maintainable. Suffice to state, the respondent No. 1 i.e. Ministry of Youth Affairs and Sports, Govt. of India and Indian Olympic Association (Respondent No. 2) have taken identical stands as taken in

the other two writ petitions i.e. W.P.(C) Nos. 3914 & 3943 of 2014.

THE SUBMISSIONS:

25. Mr. Raj Kumar Rajput, learned counsel appearing for the petitioner in W.P.(C) 3955/2014 would submit that the petitioner is in camp since January, 2014 at SAI Centre, Sonapat. He would highlight the achievements of the petitioner by taking me through Annexure P-1 of the writ petition to contend that as late as August 2011, the petitioner has won Commonwealth Wrestling Championship. He would state that earlier he has been participating in 60 kg category and because of the change in the weight category as suggested by international body, he has been preparing himself for getting selected in the 61 kg category. He would state, in terms of the Code, the selection trials are imperative before a team is selected. Unfortunately, the same have not been held. He would also state, such a selection trial must follow a criteria having been laid down by the respondent No. 4 (WFI) and put on the website. It is his submission that the writ petition has not become infructuous as the list sent is temporary and as per the instructions of the IOA, the list can be changed in accordance with the athlete replacement policy due to injury, illness and other special circumstance subject to approval by the Commonwealth Games Federation Executive Board (CGF). He would also state that the deadline for athlete replacement request is till 4.00 p.m. local time of July 22, 2014. He states that list of athletes prepared by the Selection Committee, which is alleged to have been sent by respondent No. 4/respondent No. 2 to the Commonwealth Games Committee is illegal, contrary to the Code and need to be recalled back and a fresh list, in terms of the Code, need to be prepared.

26. Mr. Rahul Mehra, learned counsel appearing for the petitioners in

W.P.(C) 3943/2014 would, at the outset, submit that the date of June 11, 2014 was not a sacrosanct date so as to send the list by that date. He would point out to the list sent by the respondent No. 4 (WFI) in the case of female wrestlers initially on June 10, 2014, had only five names (Annexure R3/23). Subsequently, in terms of email dated June 11, 2014, two new names were added. According to him, this list was in fact, sent to the Commonwealth Games Committee on June 15, 2014. He has also drawn my attention to paras 10.5 and 10.6 of the Sports Code, which have already been reproduced above, to contend that in view of these provisions, the selection trials, at least for major international sports events like Asian Games/Commonwealth Games/Olympic Games, are imperative. Since the Commonwealth Games are at “cost to the Government” (Tax Payers Money), the respondent No. 4 (WFI) should have forwarded the Minutes of the Selection Committee to the Ministry of Youth Affairs and Sports at least 3 months in advance. According to him, clause 3 of the guidelines issued vide letter dated September 18, 2008 are mandatory in nature. He has taken me to all sub-clauses under clause 3 to support his contention. According to him, the objective of these guidelines is to ensure fair and transparent selection. No criteria was ever communicated to the players, coaches, government observers nor has been put on website. The Commonwealth Games being a measurable event, the qualifying norms were to be fixed along with notice for selection trials. He would also state that the petitioner No. 1 Joginder Kumar has excellent credentials inasmuch as he won a Gold Medal in 120 kg Free Style Wrestling category in the Commonwealth Games Wrestling Championship held between 5th to 7th November, 2013 at Johannesburg, South Africa. That apart, he would state that he was a

Silver Medallist in the last Commonwealth Games held in Delhi in the said category. According to him, the gentleman selected namely Mr. Rajeev Tomar had serious doping charges against him, for which, he was debarred from participating in any of the wrestling matches. Rajeev Tomar could be relieved of the charges only recently in the year 2014. According to him, a special trial in Greco Roman Style was held for him on April 02, 2014, and the last Gold Medal was won by him was in the year 2009 in Commonwealth Wrestling Championship held at Jalandhar between September to December, 2009. He would state that if the criteria adopted by the respondent should be the basis, then, it was the petitioner No. 1 who was to be selected and not Rajeev Tomar. It is also his case that from January to May 2014, because of the injury suffered by him, he, under medical advise remained out of the camp. In May 2014, after fully recovering from the injury, he has submitted his medical fitness certificate, on which, according to him, no decision has been taken. According to him, it is not the case of the respondent No. 4 (WFI) that he has feigned his injury.

27. Insofar as petitioner No. 2 Mr. Rahul Aware is concerned, learned counsel would draw my attention to page 386 of the W.P.(C) 3943/2014 to submit that he is a Gold Medallist in 60 kg category and since December 2013, he is attending the camp at SAI Centre, Sonapat. In terms of the change in the weight category, the petitioner No. 2 would be qualified to participate in 61 kg Free Style Wrestling. The selection has been made of Yogeshwar Dutt in 65 kg category and Mr. Bajrang in 61 kg category. According to him, the petitioner No. 2 was a Gold Medallist in 2011 Commonwealth Free Style Greco Roman Style and Female Wrestling Championship held at Melbourne in the year 2011.

He was also a bronze medallist in 2011 in Senior Asian Free Style Championship held at Uzbekistan. He participated in the Dave Schultz Memorial International Free Style in the months of January- February, 2014.

28. That insofar as petitioner No. 3 Mausam Khatri is concerned, he would state that Mausam Khatri has been participating earlier in 96 kg category, which has now been changed to 97 kg category. He would also highlight the performance of Mausam Khatri. According to him, there is no comparison between the petitioner No. 3 and Satyavarat Kadyan, who has now found his place in the list. He has drawn my attention to the different provisions of the Code, which have already been highlighted above. He has also placed reliance on para 1, para 33 and para 86 of the judgment of the Division Bench of this Court in W.P.(C) No. 2310/2012 to contend that till such time a legislation is formulated by the Parliament, the Code would hold the field and the selection necessarily be in accordance with the Code. In the last, he would state that the stand of the respondent, relying upon the trials held on February 18, 2014 and April 02, 2014, is totally misplaced as the said trials on those dates were only for selecting a team for participation in 2014 World Cup held at Los Angeles from 14 to 16th March, 2014 and for selecting team for participation in 2013 Senior Asian Free Style Greco Roman Style and Female Wrestling Championship held at Kazakhstan from 22 to 27th April, 2014. According to him, there was no indication that the trials held on February 18, 2014 and April 02, 2014 would hold good for selecting the team for participating in the Commonwealth Games, 2014. According to him, by that analogy, one of the petitioners namely Amit Dhankhar, who was selected in those

trials, should necessarily be selected to participate in the Commonwealth Games, 2014. Since the selection trials need to be held afresh, no reliance could have been placed by the respondents only on the selection trials on those dates. He would submit that it is a case where the respondent No. 1 Ministry of Youth Affairs and Sports has failed to discharge its obligation under the Code to ensure a fair and transparent selection.

29. Mr. Arun Bhardwaj, learned counsel appearing for the petitioner in W.P.(C) 3914/2014 has referred to the instructions issued by the Commonwealth Games Committee to contend that in terms of the replacement policy, the Commonwealth Games Association i.e. the concerned country will be permitted to submit a preliminary squad by close of entries on June 11, 2014 with final squads to be confirmed on July 07, 2014. According to him, the list which has been sent on June 11, 2014 is only a temporary list, subject to change. He has also drawn my attention to para 3.1.9 of Athlete Replacement Policy to contend that under exceptional circumstances, after close of entries and upto the time of relevant sport technical meeting, athlete replacements may be approved by the Commonwealth Games Federation Executive Board, in consultation with the relevant International Federation. According to him, the deadline for athlete replacement request is July 22, 2014 till 4.00 p.m. local time. He would also show the credentials of the petitioner Amit Dhankhar at page 29-30 of the writ petition to contend that the petitioner required to be selected. He would state, in the past, he had participated in 70 kg category but the same is of no relevance. According to him, the petitioner today falls in 65 kg weight category. Depending upon the weight of the persons at a particular point of time, he gets

eligibility to participate in that category. A person with lesser weight can participate in higher weight category. According to him, today he is entitled to participate in 65 kg category, for which, the trials necessarily have to be held. He would also state that the past performance would only be an input for selecting the team. The overall selection need to be made by taking the performance at the trials. He quotes an example of Mary Kom, who despite winning a medal in the last Olympics could not be selected for the Commonwealth Games because of her performance in the trials.

30. On the other hand, Mr. Pradeep Dewan, learned Senior Counsel appearing for the respondent No. 4 (WFI) in all the three writ petitions, would urge that insofar as the petitioner Amit Dhankhar in W.P.(C) 3914/2014 is concerned, he is not entitled to any relief as he has concealed material facts that in the past, the said petitioner was participating in 70 kg category, by referring to the tournaments, which the said petitioner has participated in the past. In this regard, he has taken me through the counter affidavit filed by the respondent No. 4 (WFI) wherein, it has detailed the number of tournaments participated by this petitioner in the 70 kg category. On Code, it is his submission that the same would be binding on the Ministry of Youth Affairs and Sports (respondent No. 1), the IOA (respondent No. 2) and the Wrestling Federation of India (respondent No. 4) and the same cannot be read as a Statute. He would also state that the Federations not being a government bodies but societies, their working is very informal, inasmuch as every meeting/selection does not necessarily has recorded minutes. Further, discretion is vested with them to evolve its own procedure for selection. He would justify the selection of the Men's Wrestling Team in Free

Style Wrestling. He has also drawn my attention to letter dated June 23, 2014 written by the foreign expert annexed to page 399 of W.P.(C) 3943/2014, wherein, the foreign expert has highlighted that the team selected for Commonwealth Games 2014 is the best possible team by considering the following factors:

“1. Past performance in major events like Olympic and world wrestling championship.

2. Including iconic players like Olympic medal winners Sushil Kumar and Yogeshwer Dutt which leads a high stature of team.

3. Discipline, commitment, dedication and hard work exhibited during the coaching camps at NRC, Sonapat.

4. Future development of the team with 2016 Rio Olympic Games in view and giving exposure during important games to wrestlers who are likely to qualify for the 2016 Rio Olympic Games.

5. Performance shown during the periodical trials held during the last one year and also during the training camps.”

31. He would also state that the wrestlers whose names have been sent to the Commonwealth Games Committee are necessary parties and in their absence, no orders can be passed. He would also state that the selection list is a final list as replacement is permitted only under certain

circumstances like injury or any illness and that too, it is within the discretion of the Commonwealth Games Federation Executive Board to allow such replacement. The final list, even if prepared, would be in accordance with the instructions issued by the Commonwealth Games Federation and not otherwise. He would also draw my attention to the certificate issued by camp doctor dated June 24, 2014 to suggest that loosing weight would have serious impact like loss of energy, strength, endurance, which may enable a wrestler to give his best performance. He has also suggested that it is advisable that a wrestler gain weight rather than reduce the weight. He would also submit that in the past also, the petitioners namely Joginder Kumar, Rahul Aware and Amit Dhankhar have been the beneficiaries of the same process as has been undertaken by the Selection Committee for Commonwealth Games 2014. He would point out that for 2013 Commonwealth Wrestling Championship which was held at Johannesburg, South Africa, the selection was done on the basis of their past performance. He has also drawn my attention to the meeting of the Selection Committee held on July 04, 2013 for selecting the team for participation in 2013 Asian Cadet Free Style Greco Roman and Female Wrestling Championship held in Ulaanbaatar, Mongolia from 25-28th July, 2013; so also, the meeting of the Selection Committee held on June 07, 2012 for participation in the 2012 Asian Cadet Wrestling Championship held at Bishkek (Kyrgyzstan) held between 5 to 8th July, 2012 and meeting of the Selection Committee held on 7th June 2012 for selecting the wrestling teams for participation in the special training camp held in Colorado, Springs, USA; the meeting of the Selection Committee held on May 21, 2012 for selecting the team for participation in 1st Hari Ram Indian Grand Prix International Wrestling

Tournament held in New Delhi between 25-27 May, 2012; meeting of the Selection Committee of the WFI held on April 10, 2012 to select the team for participation in the 2012 1st World Olympic Games Qualifier Wrestling Tournament held at Taiyuan, China from 27 to 29th April, 2012, without holding any trials. Similarly, meeting of the Selection Committee dated June 13, 2011 held in New Delhi for selection of the wrestlers for participation in the International Wrestling Tournament 'Grand Prix' held at Madrid from 9 to 10th July, 2011 without holding trials. He has also justified the selection of seven wrestlers for participating in the Commonwealth Games 2014, on merits, by taking me through their credentials. He would further state, the judgment of this Court in W.P. (C) No. 2310/2012 is binding intra-parties and no writ of mandamus can be issued, on a petition filed by a third party, to the authorities for holding trials as per Code, which has no statutory force. He would rely upon the following judgments:

(i) *The State of Assam and another Vs. Ajit Kumar Sarma and Ors.*, AIR 1965 SC 1196 (V 52 C 188)

(ii) *J.R. Raghupathy and Ors. Vs. State of A.P. and Ors. and connected civil appeals* (1988) 4 SCC 364

(iii) *Kumari Regina Vs. St. Aloysius Higher Elementary School and Anr.*, (1971) Supp. S.C.R.

32. Learned Senior Counsel would also rely upon the judgment of the Single Judge of this Court in W.P.(C) No. 5034 of 2010 and connected writ petitions decided on August 02, 2010 and W.P.(C) 7170/2010 decided on December 10, 2010 in support of his contention that the selection of the team must be left to the expert body and the Court must not interfere. In the last, he would submit that any directions at this

juncture for holding trials would unnerve wrestlers and put in unnecessary physical strain on them who are undergoing coaching under the supervision of the experts. He seeks the dismissal of the writ petitions.

33. Learned counsel appearing for the respondent No. 1 in the writ petitions would reiterate the stand taken by the Ministry of Youth Affairs and Sports in its short affidavit and he would also state that no representations was ever made by the petitioners to the Ministry to look into the process of selection. He would state, on instructions, if Court is of the view that the selection has to be made through trials, the respondent No. 1 would be open to appoint an Observer to oversee the selection.

34. Learned counsel appearing for the Indian Olympic Association (respondent No. 2) has only drawn my attention to the sports entries athlete replacement request form to submit that the replacement is not automatic and subject to being approved by the Commonwealth Games Federation in accordance with the Commonwealth Games Federation Obligation SPT 18, which is decided on case to case basis after consultation with relevant international Federation.

35. In rejoinder, Mr. Rahul Mehra, learned counsel would only submit that even if the petitioners were beneficiary of the same selection process, that was only in international event, but, not for selection for Commonwealth Games. According to him, never in the past, team for Commonwealth Games has been selected without trials. He would further state, the selection being void-ab-initio, the persons in the select list are not necessary parties.

36. Mr. Arun Bhardwaj, learned counsel also in rejoinder would

distinguish the judgments relied upon by the learned Senior Counsel for WFI and states that in those cases, one; trial was not held and in other case, it was not brought to the knowledge of this Court that in terms of the Sports Code, trials were mandatory.

37. Having considered the submissions made by the learned counsel for the parties, at the outset, I may state here that in two writ petitions i.e. W.P.(C) Nos. 3943 and 3955 of 2014, a prayer for derecognising the respondent No. 4 has been made. I do not think that the learned counsel for the petitioners in the said writ petitions have seriously made any submissions in that regard. Now, the first and foremost issue which would arise is, whether, in view of the nature of Code, a writ of mandamus can be issued to enforce non-statutory guidelines. Suffice to state, recently, the Supreme Court in the case reported as *AIR 2010 SCC 1955, Secretary, Cannanore District Muslim Educational Association Vs. State of Kerala and Ors.*, after referring to its various judgments including *J.R.Raghupathy's case (supra)*, held as under:

“37. The same view was also expressed subsequently by this Court in J.R. Raghupathy v. State of A.P. [(1988) 4 SCC 364 : AIR 1988 SC 1681] Speaking for the Bench, Justice A.P. Sen, after an exhaustive analysis of the trend of Administrative Law in England, gave His Lordship's opinion in para 29 at p. 1697 thus: (SCC p. 386, para 30) “30. Much of the above discussion is of little or academic interest as the jurisdiction of the High Court to grant an appropriate writ, direction or order under Article 226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England. Most of the cases in which the English courts had earlier enunciated their limited power to pass on the legality of the exercise of the prerogative were decided at a time when the courts took a generally rather circumscribed view of their ability to review ministerial statutory discretion. The decision of the House of Lords in Padfield

case [Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997 : (1968) 2 WLR 924 : (1968) 1 All ER 694 (HL)] marks the emergence of the interventionist judicial altitude that has characterised many recent judgments.”

This extract is taken from Cannanore District Muslim Educational Assn. v. State of Kerala, (2010) 6 SCC 373 at page 382

38. In the Constitution Bench judgment of this Court in LIC v. Escorts Ltd. [(1986) 1 SCC 264] this Court expressed the same opinion that in Constitutional and Administrative Law, law in India forged ahead of the law in England (SCC p. 344, para 101).

39. This Court has also taken a very broad view of the writ of mandamus in several decisions. In Comptroller and Auditor General of India v. K.S. Jagannathan [(1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1 : AIR 1987 SC 537] a three-Judge Bench of this Court referred to Halsbury's Laws of England, 4th Edn., Vol. I, para 89 to illustrate the range of this remedy and quoted with approval the following passage from Halsbury about the efficacy of mandamus:

“89. Nature of mandamus.— ... is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.” (See SCC p. 692, para 19 of the report)

In SCC para 20, in the same page of the report, this Court further held: (K.S. Jagannathan case [(1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1 : AIR 1987 SC 537] , p. 693)

“20. ... and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself

pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

40. In a subsequent judgment also in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [(1989) 2 SCC 691 : AIR 1989 SC 1607] this Court examined the development of the law of mandamus and held as under: (SCC p. 701, para 22)

“22. ... mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: ‘To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.’ (Judicial Review of Administrative Action, 4th Edn., p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available ‘to reach injustice wherever it is found’. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.” (emphasis supplied) (See AIR p. 1613, para 21.)”

38. Even this Court in the case reported as *ILR 2009 (IV) Delhi 280, M/s. Narinder Batra Vs. Union of India*, on an issue, whether the writ of mandamus can be issued to enforce non-statutory guidelines, has, while referring to the judgments relied upon by the learned Senior Counsel for the respondent No. 4, has held as under:

“200. So far as the jurisdiction to lay down conditions and enforce the guidelines for grant of

financial assistance and recognition is concerned, an issue with regard to permissibility of University/State providing for a condition for granting recognition/affiliation was raised before the Apex Court in the judgment reported at AIR 2003 SC 3724 Islamic Academy of Education v. State of Karnataka. The Apex Court in para 17 of the judgment held that such provisions/conditions prescribing merit base selection can be made at the time of granting recognition or affiliation as well as subsequently after the grant of such recognition or affiliation.

201. It is, therefore, trite that though it may not be possible to assert a right based on administrative/executive instructions and non-statutory guidelines, however, a challenge may be available to a person to assail an action by the authority concerned on grounds of arbitrariness, mala fide for breach thereof. The prayers made by the petitioner have to be tested in this background.

202. The respondent no. 1 has stated that the Indian Hockey Federation is the national level federation recognised by the Government for the game of hockey. It is further stated by the Government on affidavit that the Indian Hockey Federation is one of the national sports federations getting financial assistance exceeding Rs. 1 crore in a year through the Comptroller General of India as per the provisions of 'guidelines for assistance to National Sports Federation' and that has been issued necessary instructions for audit of its accounts. A statement showing grants released by the Ministry of Youth Affairs & Sports to the Indian Hockey Federation between 1995 to the year 2005 shows that in the year 1995 an amount of Rs. 80,54,831/- was released which in the year 1999, went up to Rs. 1,09,12,796/- and in 2004-2005 has further increased to Rs. 1,94,21,032/-.

203. The respondent no. 2 though has not given the details of the amounts advanced by the respondent no. 1, however it accepts that respondent no. 1 is giving

financial assistance have identified activities of the players. It is also stated that apart from the grants made by the Government of India, the respondent federation is receiving funds through sponsorship and royalties from sale of broadcasting rights of matches.

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206. In the case reported at State of Assam v. Ajit Kumar Sharma (supra), Mr. Ajit Kumar Sharma was a teacher in the Hindu Girls College at Gauhati which received a grant from the State of Assam. Certain conditions had been imposed by the State Government of Assam while giving such a grant to private colleges to enable them to give higher scales of pay etc. to their teachers in accordance with the recommendations of the University Grants Commission. The petitioner was seeking enforcement of these rules as binding on the college and seeking a mandamus based thereon as an entitlement to the benefits under the rules.

In the judgment reported at AIR 1965 SC 1196 State of Assam v. Ajit Kumar Sharma, the Apex Court clearly held that there was no law to prevent the state from prescribing the conditions of the grants made by it by mere executive, instructions which do not have the force of statutory rules. Such conditions of grant in aid laid down by executive instructions were open to the private college to accept or not to accept them. If it decides not to accept the instructions, it would naturally not get the grant and aid which was contingent on it accepting the conditions contained in the instructions.

It was held that the state could prescribe instructions laying down condition of grant. However it was not open to a teacher to insist that the governing body should carry out the instructions as they conferred no right of any kind on teachers and consequently they could not apply to the High Court for a mandamus seeking the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them because of the

grant and aid being withheld in whole or in part.

207. The pronouncement of the Apex Court reported at (1988) 4 SCC 364 J.R. Raghupati v. State of Andhra Pradesh & Ors. was concerned with a challenge to a pronouncement of the Andhra Pradesh High Court involving a question of principle relating to location of mandal headquarters in the state of Andhra Pradesh under section 3(5) of the Andhra Pradesh Districts (Formation) Act, 1974. The issue raised before the court was whether location of the Mandal Headquarters was a purely governmental function and therefore not amenable to the writ jurisdiction of the High Court under article 226 of the Constitution. The High Court quashed the Government notification issued after consideration of objections and a detailed consideration by the authorities on the ground that the government acted in breach of guidelines. In this case the court was of the view that mandamus could not be issued to enforce the guidelines which were in the nature of administrative instructions not having a statutory force and not giving any legal right in favour of the writ petitioners.

In this case, the Apex Court set aside the interference by the High Court in cases where it had directed relocation of the Mandal Headquarters inter alia for the reason that the location of the Mandal Headquarters by the Government was on a consideration by the Cabinet Sub-committee of proposals submitted by collectors concerned and objections and suggestions received from local authorities like the Gram Panchayat and the general public keeping in view the relevant factors. The court was of the view that even if breach of the guidelines laid down by the Government was justiciable, the utmost that the high Court could have done was to quashed the impugned notification in a particular case and direct the Government to reconsider the question. It was further observed by the court that there was nothing on record to show that the decision of the State Government in any of the cases was arbitrary or capricious or was one not urged in good faith or actuated

with improper consideration or influenced by extraneous considerations. The issues raised before the Supreme Court in this case do not arise for consideration in the present case.

208. Again in *Kumari Regina v. Saint Aloysius Higher Elementary School and Anr.* reported at (1972) 4 SCC 188 the Supreme Court held that if the terms of the appointment letter issued by the school were different from the conditions of the affiliation to be fulfilled by a school as imposed by the State Government, a teacher aggrieved thereby may not be entitled to seek a relief in his favour on the basis of the conditions of affiliation. At the same time, the Apex Court held that, the state administration was fully empowered to enforce the fulfilment of the conditions towards affiliation against the school. It is noteworthy that in para 24 of the pronouncement, the Apex Court has clearly stated that the Government has the power to admit schools to recognition and grants in aid; and it cannot be gainsaid that *de hors* the statutory enactment, the Government can lay out conditions under which it would grant recognition and aid. It is further held by the Supreme Court that “to achieve uniformity and certainty to the exercise of such executive power and to avoid discrimination, the Government would have to frame rules which, however, would be in the form of administrative instructions to its officers dealing with the matters of recognition and aid. If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be a condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either denial or withdrawal of recognition and aid. The management of a school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce those rules upon the management.

209. It is noteworthy that the conclusions of the Apex Court in the case were based on the well settled principles that non-statutory administrative/executive conditions and instructions would confer no right on the teachers of private college and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced to assert a right in his favour based thereon. However, the Apex Court reiterated its earlier view that the Government is entitled to insist on compliance with such conditions for affiliation, recognition and aid; that breach or non-compliance would vest the consequence of denial or withdrawal thereof.

210. A closer look at the guidelines dated 14th August, 2001 would show that they have been framed with the objective of defining the areas of responsibility of the various agencies involved in promotion and development of sports in India; to identify national sports federations/associations eligible for recognition and coverage under the guideline; set out priority in sport; to detail procedures to be followed by the national federations/associations to avail financial assistance sponsorship and all other assistance which the Government advances; to state clearly the conditions for eligibility which the Government would insist upon for recognition of the sports federations/associations as well as those which it would insist upon for releasing grants to sports federations/associations. The sports authorities and bodies which are involved include the Sports Authority of India; Indian Olympic Association etc.

211. It is well settled that a judgment or a judicial precedent is law for the facts in which it was rendered. In the instant case, the petitioner is not asserting entitlement to any individual rights in his favour. Detailed submissions have been made on acts and omissions of the respondent no. 2 and complaints have been made by the petitioner that there is violation of the guidelines dated 14th August, 2001. The petitioner has made a prayer for initiation of necessary action in accordance with the

guidelines for withdrawal of the recognition conferred on the respondent no. 2 as a national level sports federation as well as a prayer for withdrawal of the financial assistance rendered by the Central Government.

212. Malfunctioning on the part of a recognised national level sports federation or association causes irreparable damage to the progress of the sport in the country. There can be no comparison of the private interest of an individual teacher seeking the benefit of a particular level of salary or entitlement to a notice provided under administrative instructions against his employer against the damage which would result to the sport of hockey and national interest. Effective and efficient working of the national sports federation impacts the status, standing and reputation of the entire nation in the arena of sports.

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214. Before this court, it is an admitted position that the Indian Hockey Federation derives substantial financial assistance from the Government of India. The Indian Hockey Federation stands formally recognised as a national sports federation also by the Government of India. The respondent no. 2 effectively controls the functioning of its members.

215. The guidelines framed by the Government enable the National Sports Federations recognised thereunder to derive substantial financial assistance and other facilities from the Government. Apart from purchase of valuable equipment, this assistance includes training/coaching camps; assistance for organisation and participation in national and international competitions and training abroad; appointment, availability and expenditure on foreign coaches for training of sports person, assistance of the Sports Authority of India as well as facilities at the state owned sports set ups. To enable meaningful utilisation of its assistance, the Government has framed

guidelines for recognition of national sports federations.

216. As part of its initiative, the Ministry of Youth Affairs and Sports operates a number of independent schemes alongwith the Sports Authority of India which are apart from the financial grants to the national federations. These schemes have a direct bearing on the promotion and development of sports in the country and include (i) Exchange of Physical Education Teachers etc(CEPs); (ii) Rural Sports programme, (iii) National Championships for Women, (iv) Grants for Creation of Sports infrastructure, (v) Grants to Universities and Colleges, (vi) Assistance for synthetic surfaces and (vii) Scholarships for training abroad. The Government has recognised that the National Sports Federations are primarily responsible for judicious selection of sports persons for participation in major international events based on merit and with the objective of enhancing national prestige and bringing glory to the world. Such federation is also required to be concerned with the development and encouragement of the sport in the country.

217. The Apex Court has not prohibited the High Court in exercise of its jurisdiction under article 226 from issuing a mandamus requiring the Government from ensuring compliance with the guidelines or conditions which it has fixed for grant of recognition and affiliation. The absolute prohibition urged by the respondents to the maintainability of the writ petition seeking directions on a complaint of breach of statutory guidelines certainly is not legally tenable is hereby rejected.

218. The Government of India is dispensing not only financial assistance but also providing other facilities in terms of the guidelines; has recognised national level federations; framed priorities in sports and has effected dispensation of state largesse based thereon.

219. In view of the principles laid down by the Apex Court in the aforementioned judicial pronouncements,

there can be no dispute that the Government is entitled to frame the guidelines for dispensation of its largesse which will take the nature of financial assistance; assistance in the nature of expert coaches, national level facilities etc. Certainly, the Government is entitled to notify and evolve a procedure for dispensation of the financing assistance which runs into crores of rupees as well as guidelines for recognition of the national sports federation and cannot permit the same to be disbursed arbitrarily without any clear directives in this behalf. The guidelines issued by the Government and modified from time to time have been therefore validly issued and are binding for the purpose for which they have been issued.

In view of the above discussion, it has to be held that a National Sports Federation regulating the game of hockey in the country can be compelled by the Government in discharge of its executive powers and functions to abide by the rule of law as well as executive guidelines framed for such recognition and dispensation.”

39. Further, I note the following conclusion of the Division Bench of this Court in para 73 of the W.P.(C) No. 2310/2012, filed by the IOA, a reference of which has been given above:

“73. State or social concern in regard to regulation of sports can be achieved, inter alia, through the method of requiring certain definitive policies to be followed by the NSFs and the IOA to ensure its representative character, aimed at the larger common good in the world of sport and to avoid development of cliques or cabals in sporting federations or bodies. Such cabals beget not only concentration of power, but thrive in opaqueness in all their dealings- functioning, finances and most importantly selection of sportspersons to represent the country in the

concerned field of sport. The overriding concern of the Central Government in ensuring that the decision making are by bodies which such cabals operate, is sought to be achieved by such tenure restrictions. So long as the Central Government has the authority to recognize the national sporting federations and the IOA, even for the purpose of funding and declaring which of them is entitled to use the national emblem or use the term "India", insistence on such regulations, is legitimate. The important aspect here is that the Central Government, through the not saying that absent such compliance, there would be any deprivation of an existing right; all that it suggests is that if recognition and funding for various purposes is sought (towards travel, boarding and lodging, coaching facilities, tax exemptions, etc) the NSF has to comply with these guidelines. In other words, it is not as if the violation of such norms leads to any adverse consequence, in the form of a penal sanction, or blacklisting. The body simply cannot claim to select a team that represents "India" or hold itself out as "Team India". The Petitioners' argument that Sports Code provisions are unenforceable, as they are not "law" therefore, is without merit".

40. I hold, keeping in view the position of law referred above, the petitioners can seek, and this Court in its jurisdiction under Article 226 of the Constitution issue a writ of mandamus, requiring the respondent No. 1, to ensure compliance of the guidelines issued by it vide letter dated September 18, 2008.

41. Having held that, a writ of mandamus can be sought by the petitioners for holding selection trials in accordance with the Code, the next issue, which falls for consideration is whether the process followed by the respondent No. 4 (WFI) in selecting the team is justified. A perusal of para 10.5 (page 108 of W.P.C. 3743/2014), 10.6 (page 108 of W.P.C. 3943/2014) and para 3 of the letter/guidelines dated September 18, 2008, issued by the Ministry of Youth Affairs and Sports would reveal the following position:

(i) The Asian Games/Commonwealth Games/Olympic Games are major multi-discipline international sports events.

(ii) A proposal at cost to the government should be sent three months prior to the event along with the Selection Committee's Minutes.

(iii) Selection of sports persons for participation in major international events shall be responsibility of NSF.

(iv) The selection criteria/norms shall be clearly communicated by NSF to all concerned, players, coaches etc. and shall be put up on the website and forwarded to the Ministry.

(v) The minimum qualifying norms may be fixed and announced along with the notice for selection trials which shall be announced at least one month in advance.

(vi) The selection shall be done by the Selection Committee consisting of President of NFS as the Chairman, the national coach etc.

(vii) The national coach will evaluate the progress and performance of each player on regular basis.

(viii) The proceeding of the selection should spell out in detail the selection criteria, the past performance of the players and their performance within trials.

42. The aforesaid is the well laid down procedure. It is not the case of the respondent No. 4 (WFI) that the aforesaid procedure was followed while making a list sent to the CGC on June 11, 2014. The schedule of the Commonwealth Games must have been announced well in advance. The wrestlers are in camp since November, 2013. The trials held on February 18, 2014 and April 02, 2014 were specifically for selecting the team for participation in 2014 World Cup held at Los Angeles, and Sr. Asian Championship at Khazakstan in April, 2014. No reference to the Commonwealth Games has been made. The respondent No. 4 could have made the said trials as a trial for selection of the team for Commonwealth Games. Interestingly, I find the name of one of the petitioners namely Amit Dhankhar is in the list prepared pursuant to the aforesaid two trials. Unfortunately, his name is not found in the list now said to have been sent to CGC on June 11, 2014, which definitely shows the reliance on the aforesaid trials is only a ploy to justify the selection list. Further, I find the selection trials held in the past on which the reliance was placed by the respondent No. 4 (WFI) was not for selection of the team for Asian Games/Commonwealth Games/Olympic Games. I agree with the submission of Mr. Rahul Mehra that the three games being major international events, selection of athletes need to be made through the procedure laid down in the guidelines issued vide letter dated September 18, 2008. The submission of Mr. Rahul Mehra that every selection in the past for CWG has been made through trials, has not been controverted. The endeavour of Mr. Dewan to justify the selection on merit, would be of no relevance on the failure on the part of the respondent No. 4 (WFI) to follow the procedure contemplated in the said letter. The past performance of the wrestlers, performance during the

camp and the trials are necessary input for the ultimate decision on selection. In fact, the guidelines issued vide letter dated September 18, 2008 stipulates so and I note for convenience two clauses; (1) the National Coach shall evaluate the progress and performance of each player on regular basis and submit the report to the selection trials; (2) the proceedings of the selection should spell out in detail the selection criteria, the past performance of the players and their performance in the selection trials. Suffice to note a submission of the counsel for the petitioners that Mary Kom, a Medallist in the Olympic Games in Boxing could not be selected for the Commonwealth Games during trials.

43. The submission of Mr. Dewan that three of the petitioners have been the beneficiaries of a similar selection in the past is concerned, the same is liable to be rejected in view of my aforesaid conclusion that the guidelines issued vide letter dated September 18, 2008 need to be followed for Asian Games/Commonwealth Games/Olympic Games. The selection in which the petitioners were the beneficiaries were not for the aforesaid major international events. Regrettably, I note the author of the Code, the respondent No. 1 has abdicated its responsibility to ensure the compliance of the Code by the respondent No. 4 herein (WFI). The counter affidavit filed by it, except narrating the provisions of the Code, does not deal with the allegations made in the writ petitions. During the submission, it was pointed out by the counsel for the parties that w.e.f. February 01, 2014, the procedure of appointing an Observer for attending the selection trials, has been dispensed with. This also demonstrate the indifference being shown by the respondent No. 1 to have an effective supervision over the process of selection.

44. Insofar as the judgments relied upon by the respondent No. 4

(WFI) of this Court in W.P.(C) 5034/2010, *Shumel Vs. Union of India and connected writ petitions* are concerned, the challenge in that case was for not being found successful to the next level of selection trials. In other words, the challenge was against the disqualification. This Court has rightly dismissed the writ petitions by observing that relative merit of different candidates should be evaluated by experts and not by the Court. Insofar as the present case is concerned, the scope is very limited to the extent of selecting the team through the trials. On facts, the judgment relied upon can be distinguished.

45. Insofar as the judgment of this Court in W.P.(C) 7170/2010, *Neha Rathi Vs. Union of India* is concerned, suffice to state that the challenge in the said writ petition was selection of a wrestler on the basis of a clincher which, according to the petitioner is not justified. The respondent No. 4 (WFI) had justified its selection. It was also the case of the petitioner that the selection must be held by way of a selection trial. A submission was made before the Court that there is no rule for holding a selection trial. It was also contended before the Court that the same has been a past practice. The Court proceeded on a premise that there is no rule for holding a selection trial. In the aforesaid context, this Court had inter alia observed that the remedy for the petitioner is to have a proper rule framed in that regard. It appears that the guidelines dated September 18, 2008 were not brought to the notice of the Court. It is an admitted stand of the parties herein that the guidelines issued vide letter dated September 18, 2008 holds the field governing the selection, which have not been followed in the present case. The judgment relied upon is per incuriam and the reliance placed on the aforesaid judgment of this Court, would not be justified.

46. The issue that selectees are necessary parties, would much depend upon the answer whether the list sent is temporary or final in nature. In this regard, reliance is placed by both the parties on the Wrestling Guide (Annexure P-8, page 262) in W.P.(C) 3955/2014, which stipulates, light for light, can be accepted with the approval of the Commonwealth Games Federation Executive Board, following the consultation with relevant International Federation and upto the time of relevant technical meeting. The start time of Commonwealth Games Federation Technical Meeting is July 28, 2004. Further, the athlete replacement request form also stipulates, replacement is possible because of injury, illness or other special circumstances. The special circumstances need to be decided by the Commonwealth Games Federation Executive Board. In that sense, list is temporary. If the replacement is not permitted, then the list sent on June 11, 2014 is final. This Court would refrain itself from commenting that the present circumstances are the special one. The discretion need to be exercised by the Commonwealth Games Federation Executive Board. Further, I may not agree with the submission of Mr. Rahul Mehra that the list having been prepared in violation of the procedure contemplated under the Code and as such, is a nullity and as such, they need not be made parties inasmuch as there is a difference between an illegality and an irregularity. Not following a procedure contemplated, would be an irregularity. There may be a justification for the petitioners for not making the selectees, parties, as the aspect of the list having been sent to the Commonwealth Games Committee came to their knowledge only through the counter affidavit. Be that as it may, in the given situation, the question would be what relief/directions can be given. Normally, when the conclusion is that the select list has been made without

following the procedure contemplated, as such bad, the necessary consequences must follow. Surely, a Court exercising jurisdiction, more particularly, under Article 226 of the Constitution of India, shall consider subsequent developments to enable it to give definite directions, which are implementable and do not lead to an uncertain situation. This I say so for the reason that the list of selectees was sent on June 11, 2014. Today, is July 03, 2014. It has come on record that on July 09, 2014, the team is going to Belarus for training before embarking on a journey to Glasgow. A direction to hold trial require framing of a criteria, holding of bouts etc. This process may also take some time to be completed. Even if the new list is made, the same need to be sent to the Commonwealth Games Federation Executive Board for a decision on replacement, which may or may not be accepted. Till such time a decision is taken, uncertainty will prevail both for wrestlers and the officials. This process may also delay the departure of the wrestlers to Belarus for training. This would put an unnecessary strain on their psyche and lower the morale of the wrestlers which may have a bearing on their performance. This may not be in the larger public interest, as every citizen in the country expects its sportsmen to win laurels for the country. I do not think, it is case where this Court at this stage should grant the relief sought for by the petitioners in the writ petitions. This Court also would not like to interfere with the list already sent by the respondent No. 4 to the Commonwealth Games Committee. At the same time, this Court justify the filing of the writ petitions by the petitioners for a just cause, seeking implementation of the Code as formulated by the respondent No. 1 and considers it to be a fit case, where the petitioners must be compensated by granting cost. I quantify the cost as

Rs. 25,000/- to be given to each of the petitioners by the respondent No. 4 (WFI). Before parting, this Court would like to remind the respondent No. 1 not to abdicate its responsibility from ensuring the guidelines as issued by it vide letter dated September 18, 2008 are followed in letter and spirit.

47. The writ petitions are disposed of accordingly in terms of the above.

CM Nos. 7890, 7935 & 7954 of 2014

In view of the order passed in the writ petitions, these applications are disposed of as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

JULY 03, 2014
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