

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.09.2014

+ **W.P.(C) 6478/2014**

SAURAV & ORS.

..... Petitioners

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Bhupesh Narula.

For the Respondents : Ms Monika Arora, CGSC with Mr Rajeev
Yadav, Mr Abhisek Choudhary &
Mr Rannvijay Gulerria for UOI.
Mr Aditya Singh for R-2.
Ms Geetanjali Sharma for R-3

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioners have filed the present petition under Article 226 of the Constitution of India *inter alia* praying for a direction to respondent nos. 1 & 2 to give administrative approval to the petitioners (nine athletes and one coach) for their participation in the 17th Asian Games 2014 in Taekwondo competitions in their respective weight-categories. The petitioner athletes have also prayed for a direction to the Indian Olympic Association (respondent no. 2) to release and handover Accreditation Cards of the petitioners as issued by the Olympic Council of Asia (hereinafter referred to as 'OCA').

2. The petitioners are sportspersons from the discipline of Taekwondo, and are aggrieved as their names do not feature in the final list issued by respondent no.1 on 09.09.2014.

3. The counter affidavit filed on behalf of respondent no.1 indicates that the petitioners have not been included as a part of the Indian contingent approved for participating in the 17th Asian Games as they did not meet the requisite criteria. Respondent no.1 has stated that *“For Taekwondo sports the criteria adopted was up to 6th rank in Asia by athlete/medal won in recent tournament”* and the Taekwondo team was ranked 9th. It is further asserted by respondent no.1 that Asian Games is a prestigious tournament and *“only athletes with medal prospects from whom good performance is expected have been allowed by the Government.”*

4. The petitioners have contended that they were selected after being declared successful in selection trials held on 27.07.2014 and have been training for a considerable period of time for participation in the Asian Games, 2014. The learned counsel for the petitioners referred to various documents filed by the Sports Authority of India (hereinafter referred to as ‘SAI’) alongwith its affidavit and contended that the petitioners were led to believe that one player from each category would be included in the discipline of Taekwondo. In these circumstances, the refusal by respondent no.1 to include them in the Indian contingent at the belated stage was most arbitrary and patently unfair. The petitioners also explained the delay in approaching the court by pointing out that the petitioners were sent to a training camp at Tehran for preparing for the Asian Games and filed the petition immediately on their return to India.

5. The learned counsel appearing for IOA submitted that although the sportspersons participating in the Asian Games carry the name of the country, however, the Government is only a sponsor for the participants. The task of selecting the athletes is a function of the IOA which is to be performed independent of the Government. The learned counsel also referred to para 2.1 of Article 28 of the Olympic Charter which reads as under:-

“NOC’s tasks:

2.1 They constitute, organise and lead their respective delegations at the Olympic Games and at the regional, continental or world multi-sports competitions patronised by the IOC. They decide upon the entry of athletes proposed by their respective national federations. Such selection shall be based not only on the sports performance of an athlete but also on his ability to serve as an example to the sporting youth of his country. The NOCs must ensure that the entries proposed by the national federations comply in all respects with the provisions of the Olympic Charter.”

6. The learned counsel submitted that in terms of the said Charter, the athletes selected by the TFI had been approved and thus their names could not be excluded by respondent no.1. He stated that at worst respondent no.1 could decline to sponsor the athletes and in that event TFI could sponsor them.

7. The learned counsel for IOA also pointed out that the criteria as indicated by respondent no. 1 had also not been applied uniformly. He referred to the ranking of the members of the Indian Tennis contingent and submitted that they did not meet the criteria as stated by respondent no. 1.

8. I have heard the learned counsel for the parties.
9. The principal controversy to be addressed is whether the decision of respondent no.1 to exclude the petitioners from participating in the Asian Games is arbitrary and fails the test of reasonableness.
10. The affidavit filed on behalf of SAI indicates that Annual Calendar for Training and Competition (ACTC) 2014-15 was finalized at a meeting held on 26.02.2014 under the Chairmanship of the Director General, SAI. The minutes of that meeting indicates that the discussions included assessment and requirements of the athletes who were concentrating on Asian Games, 2014. The ACTC specifically provided for National Coaching Camps for training and preparation of teams for the 17th Asian Games, 2014 and a budget for the same was also provided. Para 7 of the minutes of the said meeting held on 26.02.2014 are relevant and are quoted below:-

“7. The budget projected by the TFI was Rs.463 lakhs (excluding FOP charges and kit Charges). Finally the Chairman asked the TFI to submit a revised ACTC with the budget within the allocated amount of Rs.350 Lakhs. The Secretary General, TFI informed that they will concentrate more on selected athletes (They have kept only one in each weight category) so that the budget could be reduced. The revised ACTC has a budget of Rs. 354 Lakhs, which is Rs. 4 lakhs more than the allocated Budget. The ACTC as submitted by the TFI at Annexure-II has been approved with the ceiling of Rs.350 Lakhs.”

11. In conformity with the ACTC, the TFI sent a letter dated 17.06.2014 to SAI proposing to send 12 athletes (six male athletes and six female athletes) for an advance training programme from 20.08.2014 to

19.09.2014 in preparation for participation in the 17th Asian Games, 2014.

The opening paragraph of the said letter reads as under:-

“As per our Proposal of ACTC 2014-15, our Federation would like to send 6 Male, 6 Female Athletes along-with 2 Coaches to Centre of Excellence (WTF), Tehran, Iran for Advance Taekwondo Training Programme from 20th Aug to 19th Sep. 2014, in preparation of our National Team for participation in 17th Asian Games : 2014.”

12. Admittedly, this proposal was accepted by SAI and by its letter dated 06.08.2014, SAI communicated to TFI the approval of respondent no.1 for participation of the Indian Senior Taekwondo Team in Advance Taekwondo Training Programme from 20.08.2014 to 19.09.2014 at Iran - which was specifically organized for preparation of the 17th Asian Games, 2014. Due to delay in obtaining visas, the training programme to be held in Tehran was deferred by a few days. The relevant extract from the said letter dated 06.08.2014 reads as under:-

“Sir,

I am directed to refer to letter no. Nil dated 17th June, 2014 on the above mentioned subject and to convey, in principle, the administrative approval of the Government for Participation of- Indian Senior Taekwondo Team in Advance Taekwondo Training Programme at Tehran, Iran from 20th Aug. to 19th Sep. 2014 at Full Cost to Government .

The composition of the Team as under: -

Sr. No.	Male	Female
1.	Mr. Saurav	Ms. Latika Bhandari
2.	Mr. Shiv Kumar	Ms. Aarti Khakal
3.	Mr. Jasvant	Ms. Rekha Rani Gogoi

4.	Mr. Anand Pandia Rajan	Ms. Shreya Singh
5.	Mr. Sandeep Kundu	Ms. Shaloo Raikwar
6.	Mr. Nakul Malhotra	Ms. Margerette Mala Regi
7.	Mr. Prem Kumar, Coach	Ms. Shristi Singh”

13. It is also relevant to note that in the meantime, TFI had held selections for selecting six male and six female athletes for participating in the Asian Games on 27.07.2014. SAI had been informed in advance of the said trials and an official of SAI was present and had videographed the selection trails. The final list of the selected athletes as prepared on 27.07.2014 was subsequently forwarded by TFI to SAI. The list of participants had thereafter been forwarded to IOA and the accreditation cards had been arranged.

14. The above sequence of events clearly indicates that respondent no.1 had expressly approved the list of the selected athletes. It is seen that the petitioners had proceeded for their training to Tehran based on the said approval. The petitioners have evidently spent a considerable period of time and effort in training for the Asian Games on the clear understanding that they had been selected to participate in the said Games and their names had been approved for the same. Respondent no.1 issued the communication excluding the petitioners from the approved list of athletes, while they were in midst of their training at Tehran.

15. In view of the above sequence of events, the contention advanced on behalf of respondent no.1 that the approval for participating in the training

programme was not for the purpose of the Asian Games cannot be accepted. The SAI's letter of approval dated 06.08.2014 contains express reference to the TFI's letter dated 17.06.2014 which had clearly stated that the training programme was for participation in the Asian Games.

16. It is well settled that the government and administrative authorities should not act arbitrarily and are required to act fairly and reasonably. It is also well settled that the test of 'fair-play' is a facet of Article 14 of the Constitution of India. The Supreme Court in **Man Singh v. State of Haryana: (2008) 12 SCC 331** held as under:-

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.”

17. In the given circumstances, the action of respondent no.1 in excluding the names of the petitioners clearly fails the test of fair play and reasonableness. Having led the petitioners to believe that they were selected as participants in the Asian Games and encouraging them to participate in the training programme at Iran for preparation of the said Asian Games,

respondent no.1 cannot now be permitted to resile from its representations.

18. It is also apparent that the criteria adopted by respondent no.1 for approving the athletes (i.e being ranked 6th or below) has not been uniformly applied across disciplines. Undisputedly, teams and athletes have been approved which are either not ranked or ranked lower than the threshold indicated. Although the decision of respondent no.1 in adopting the criteria for participation of the athletes in Asian Games may not be amenable to judicial review, the manner and the stage at which the criteria has been adopted is liable to be decided on the anvil of Article 14 of the Constitution of India. The Supreme Court in the case of **Natural Resources Allocation, In Re, Special Reference No. 1 of 2012: (2012) 10 SCC 1** had explained that *“The legality and constitutionality of policy is one matter, and the manner of its implementation quite another. Even at the implementation stage a forthright and legitimate policy, may take the shape of an illegitimate stratagem.”*

19. Although the said decision was delivered in the context of licenses issued by the Government and in respect of disposal of natural resources. The principle that the implementation of a policy also has to be compliant with the constitutional guarantees is well established and would be applicable in the facts of the present case. As stated earlier, the petitioners had been trained for the selection trials and after being selected had proceeded to be trained further for participation in the Asian Games. At no point did respondent no.1 reveal the criteria as now sought to be adopted by respondent no.1. Once having led the petitioners to undergo an intensive training programme for participation in the 17th Asian Games, it would not

be open for respondent no.1 to now decline granting administrative approval for participating in the Games.

20. In the given circumstances, the petition is allowed and the respondents are directed to forthwith grant the administrative approval for petitioners to participate at the Incheon Games. Since it is stated that it is respondent's policy to fund the entire Indian contingent, the cost for participation of the petitioners in the Asian games may be also be funded by respondent no. 1. However, it will be open for respondent no. 1 to decline the funding and in that event TFI shall provide the requisite funds as indicated by them during the course of hearing.

21. The writ petition is, accordingly, disposed of in the above said terms.

Dasti under the signatures of the Court Master.

SEPTEMBER 26, 2014
RK

VIBHU BAKHRU, J