

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

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Judgment reserved on: 09th August, 2016

Judgment delivered on: 11th August, 2016

+ WP(C) 6815/2016 & CM No.27978 /2016

KARAMJYOTI

.... Petitioner

versus

UNION OF INDIA AND ORS.

.... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Nidesh Gupta, Sr. Adv. with Mr. Tarun Gupta, Adv..
For the Respondents : Ms. Monika Arora, CGSC with Mr. Mr. Vinod Tiwari, Govt. Pleader
Harsh Ahuja and Mr. Kushal Kumar, Advocates for UOI/R-1
Mr. Anil Grover, Adv. for SAI along with Mr. Mishal Vij, Adv. Mr.
Naveen Chaudhary, Adv. for R-3
Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Prashant Mehta, Mr. Rajeev
Goyal and Mr. Alok Tripami, Adv. for R-4

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

1. The petitioner seeks quashing of the action of the respondent No. 1 and 2 i.e. Union of India and Sports Authority of India respectively in not selecting the petitioner for participation in the Rio Paralympic Games, 2016 and selecting respondent No. 4. Further, mandamus is sought to select the petitioner for participation in the upcoming Paralympic Games, 2016 "Discus Throw" and to re-conduct selection trials in a fair and transparent manner.

2. The contention of the petitioner is that the petitioner is a “Discus Throw” national para-athlete and has won two medals in Para-Asian Games, 2014. Because of her merit, the petitioner has won a “Quota” for the upcoming Rio-Paralympic Games, 2016 and is the first Indian female para-athlete to win such a Quota. The petitioner won the Quota on the basis of the International Paralympic Committee Athletics Marathon World Cup (London), 2016 method, one of the qualification systems prescribed by the Qualification Guide issued by the International Paralympic Committee for the Rio Paralympic Games, 2016. The petitioner in the International Paralympic Committee Athletics rankings over a 12 month period commencing from 01.04.2015 to 01.04.2016 ranks No. 5 in the world in the discipline of “Women Discus Throw”. It is the contention of the petitioner that, as per the International Paralympic Committee Regulations, since the petitioner has earned the Quota, she alone has the right to be sent for participation in the upcoming Rio Paralympic Games, 2016.

3. Reliance is placed on the glossary to the Qualification Guide which defines slot allocation as under:-

<i>Slot Allocation</i>	<i>Each sport is given a fixed number (quota) of athletes that may participate in the Games. The allocation of these qualification slots is then attributed to either an individual athlete/team or to their NPC depending on the sport and the respective qualification method.</i>
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4. It is contended that the respondent Nos. 1 and 2 illegally on 08.07.2016 called for the selection trials to be conducted for various

athletes on 26th July, 2016. The petitioner participated in the selection trials but immediately on 27th July, 2016 represented to the respondents No. 1 and 2 that the petitioner was not required to undergo any trial as the petitioner had secured the Quota and had the right to go against the said Quota. It is contended that in case the petitioner had not secured Quota, no female athlete would have had an opportunity to represent the country. It is contended that it is for the first time that any female athlete had earned the Quota on her own merits and since the petitioner had earned the Quota on her own merits, the petitioner alone has the right to represent India.

5. Respondent No. 4 who has been nominated by the Respondents 1 and 2 to represent India is a para-athlete, participating in the discipline of “Shot Put”.

6. The other grievance raised by the petitioner in the petition is that the selection trials that were conducted were not fair and were biased. It is contended that all the attempts/throws by the respondent No. 4 were fouls. However, the Selection Committee instead of declaring all the throws as foul, declared respondent No. 4 as qualified. A re-trial has been sought by the petitioner.

7. Learned senior counsel for the petitioner, in some detail referred to the “Guidelines – Best practices for disability (track and field)” prescribed by the Paralympic Committee to contend that the attempts of the respondent No. 4 were all fouls.

8. When this petition was taken up on 04th August, 2016, it was noted that the last date for nominating athletes for the Rio Paralympic Games 2016, is 15.08.2016 and as 13th August, 2016 is a Second Saturday, 14th being a Sunday and 15th being a National Holiday, the effective last date for nomination would be 12th August, 2016. Since, allegations were being raised by the petitioner with regard to the throws of the respondent No. 4 at the selection trials, it was found expedient to have the official video recording of the selection trials of respondent No. 4 examined by a specialized committee. This unusual course was adopted in view of the limited time available and to narrow down the controversy. A three member committee was constituted comprising of :

(i) Mr. Sunny Joshua, President, Delhi Athletic Association and National Technical Official for throws of Athletics Federation of India.

(ii) Mr. Satyanarana, IPC qualified Technical Official.

(iii) Mr. Satyapal Singh, Coach and Dronacharya Awardee in Paralympics.

9. The names of the members of the committee were suggested jointly by the petitioner, the Sports Authority of India and respondent No. 4. The three-member Committee was directed to examine the official video of the selection trials conducted of respondent No. 4 and submit a report.

10. The three member Committee accordingly viewed the official video of the selection trials in respect of respondent No. 4 and submitted its report, which reads as under:-

“MINUTES OF THE REVIEWING COMMITTEE OF THE
SELECTION TRIALS IN RESPECT OF F-53 WOMEN'S
CATEGORY FOR RIO-PARALYMPICS, 2016

As per the directions of the Hon'ble High Court of Delhi a Committee for review of the official video of the selection trials in respect of F-53 category Shotput held on 26th July, 2016 at SAI Northern Regional Centre, Sonapat.

The Committee met on 5th August, 2016 at 10.00 a.m. at SAI Hqs., New Delhi. The following members were present: -

(i) Mr. Sunny Joshua, President, Delhi Athletic Association and National Technical Official for throws of Athletics Federation of India

(ii) Mr. Satyanarana, IPC qualified Technical Official

(iii) Mr. Satyapal Singh Coach and Dronacharya Awardee in Paralympics

The Committee gone through the orders of Hon'ble High Court and viewed the official video of the Selection Trials again and again, without accepting any of the contention of the petitioner and without prejudice to the rights and contention of the parties, the Committee reached on this conclusion that the decision taken by the officials of Selection Committee was correct. As mentioned in the score sheet, the 2nd and 3rd throws were found foul throws and other throws are found correct.

The Review Committee, therefore, submits its conclusion that the decision of the Selection Committee is correct.

<i>(Satyapal Singh)</i>	<i>(Satyanarana)</i>	<i>(Sunny Joshua)</i>
<i>Athletics Coach</i>	<i>IPC qualified</i>	<i>AFI qualified ITO</i>
	<i>Technical Official ”</i>	

11. Perusal of the report of the three-member committee shows that the committee has unanimously reached the conclusion that the

decision taken by the officials of the selection committee with regard to the throws made by the respondent No. 4 at the selection trials was found to be correct. Since the report of the Committee was unanimous and concluded that the decision of the selection committee insofar as throws of the respondent No. 4 were concerned, were correct, learned senior counsel for the petitioner did not press the said argument any further.

12. The question that remains for consideration in the present petition is whether the petitioner has a right to represent India on account of the fact that the petitioner has earned the Qualification Quota/Slot on the basis of her performance as per the prescribed qualification system.

13. Learned counsel for the petitioner referred to the e-mail sent by the Secretary-General, Paralympic Committee of India dated 30th July, 2016 where the Paralympic Committee of India had stated that it was no-way connected with the selection trials as it had been conducted by Sports Authority of India and requested the petitioner to take the matter with Sports Authority of India for a re-trial for respondent No. 4 in front of International Paralympic Committee approved technical officials. At this point, it may be noted that in India, the Paralympic Committee of India is the National Paralympic Committee which is the concerned National Sports Federation.

14. It is contended that it is a matter of settled practice that the athlete, who earns the Quota, is sent to Paralympic Games and there is

no system of conducting selection trials before the event. It is contended that respondent No. 4 has not earned any Quota based on her performance.

15. Allegations have also made in the petition against one of the members of the Selection Committee of bias and favouritism during the selection trials. However, in view of the unanimous report of the three-member committee appointed by this court, learned senior counsel for the petitioner did not press the contention any further during the hearing.

16. It is also contended that Discus Throw and Shot Put are two completely different disciplines of the Sport of Athletics having different parameters and different styles of play. The performance of the athlete of one discipline cannot be compared with the performance of the other discipline. Thus, it is contended that the action of the Sports Authority of India in conducting common selection trials for different disciplines was irrational and illegal.

17. On the merits of the selection, it is submitted that based on the performance of the petitioner, the petitioner was also sent for training at the Olympic Training Centre in Finland. It is submitted that the performance of the petitioner is better than that of the respondent No. 4 and there are greater prospects of win a medal .

18. Reliance is placed on the decision dated 06th June, 2016 in **WP(C) No. 4514/2016 titled Sushil Kumar Vs. Union of India &**

Ors. to contend that there was a clear violation of the National Sports Development Code, 2011 by the respondents No. 1 and 2 inasmuch as the Code specifically provided that the selection of the athletes shall be the responsibility of National Sports Federation concerned and the 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. Further based on the said judgment, it is contended that the Court had recognized the principle that without a berth (i.e. Quota), there would have been no Indian women representation in Olympics in this category (i.e. Athletics). It was contended that the Court had recognized the right of the athlete, who had won the berth for the country, to represent the country.

19. Per contra, respondent No. 1/Union of India filed its counter affidavit contending that the International Paralympic Committee vide its letter dated 15.4.2015 had suspended the Paralympic Committee of India and accordingly the Union of India also suspended the Paralympic Committee of India on 22.04.2015. Keeping in mind the interest of para-athletes of the country, regarding their participation in various International Paralympic Committee sanctioned tournaments, the Sports Authority of India was given the authority to look after the affairs/interest of para-athletes including visiting of Indian teams of various sanctioned tournaments of International Paralympic Committee. It is stated that International Paralympic Committee vide its letter dated 31.05.2016 lifted the suspension of Paralympic Committee of India with the sole purpose of allowing Indian para-

athletes to compete under the Indian flag at Rio 2016. However, by the said letter the International Paralympic Committee recorded that Sports Authority of India will continue to have the authority to administer the entry of athletes and team officials for the Rio Paralympic Games, 2016.

20. It is contended that the Sports Authority of India undertook selection trials for athletics disciplines by a duly constituted selection committee for participation in Rio Paralympic Games, 2016.

21. Respondent No. 2/Sports Authority of India, in its counter affidavit has contended that the Qualification Guide provides that the qualification slot is allotted to the National Paralympic Committee and not to the individual athlete. It is not disputed that the petitioner won the qualification slot for the Rio Paralympic Games, 2016 for the sports of athletics. However, the said qualification slot is allocated to National Paralympic Committee and not to the petitioner.

22. It is contended that keeping in view the performance of both the petitioner and respondent No. 4, they were both identified for providing financial assistance under Target Olympic Podium Scheme and an amount of Rs. 30 lakhs was sanction for each of them. The petitioner preferred to go to Finland for her training and respondent No. 4 continued her training under her own arrangement within the country.

23. It is contended that the allegations of bias against the selection committee are baseless inasmuch as the same selection committee had selected both the petitioner as well as respondent No. 4 for participation in International Paralympic Committee World Athletics Championship at DOHA.

24. It is contended that in a fair and transparent manner, the selection trials were conducted on 26.07.2016 and the complaints of the petitioner with regard to the attempts/throws of respondent No. 4 were forwarded to the selection committee which considered the complaints and reviewed the official video and considered the relevant rules and regulations promulgated by International Association of Athletics Federation as well as International Paralympic Committee and after reviewing the video rejected the representation of the petitioner.

25. It is contended that in the matter of selecting the best possible athlete to represent India in an International event, the decision is best left to the experts in the field and Courts while exercising jurisdiction under Article 226 of Constitution of India would not examine the merits of the decision but the examination would be limited to ascertain whether the selection process is transparent and fair. If the court came to a conclusion that the process adopted for selection was transparent and fair, the court would not interfere with the selection. It is contended that the respondents have acted in a transparent and fair manner without any bias and thus no interference is called for.

26. It is further contended that since the petitioner had participated in the selection trials, the petitioner is estopped from challenging the selection process and contended that the petitioner does not have the right to represent India merely because she earned the qualification slot for the National Paralympic Committee.

27. Learned counsel for the respondent/Sports Authority of India contended that it is not a practice to nominate only those athletes who have earned the qualification slot. The selection trials are conducted and the performance of athletes is judged and then a decision taken to nominate an athlete. It is contended that the fact that an athlete has won a qualification slot, does not *ipso facto* entitle the athlete to represent India as the slot is earned for the National Paralympic Committee and not for any individual.

28. Learned Counsel further submitted that even the male athletes had to undergo selection trials including the athletes who had earned the qualification slots like the petitioner. Even their selection was done based on their overall performance at the selection trials. They have not been selected solely because of having earned the qualification slot.

29. Respondent No. 4 has also contended that the qualification slot is allotted to the National Paralympic Committee and not to an individual athlete. It is contended that the selection committee had short-listed three handicapped females, which *inter alia* included the petitioner and respondent No. 4. To select the best person to represent

India, selection trials were conducted on 26.07.2016. During the said selection trials, the petitioner threw disc at 20.06 meters, which as per the World Record of 24.69 meters ranked the petitioner at 5th place. On the other hand, respondent No. 4 threw short-put at 4.48 meters, which as per the current world rankings would rank her at first place. It is contended that the selection process was completely fair and transparent and based on the qualification guide for Rio Paralympic Games, 2016. It is contended that the overall consistent performance of the respondent No. 4 is much better than the performance of the petitioner and since the selection process was transparent and fair, it does not warrant any interference by this court.

30. Learned Counsel also relied on the decision in Sushil Kumar (*Supra*) to contend that a Court would not interfere in the exercise of discretion of National Sports Federation/National Paralympic Committee except where the discretion is shown to have been exercised in an arbitrary, capricious or perverse manner or contrary to the settled principles of practices. It is further contended that the last minute challenge to selection can disturb the mental preparation of the selected athlete. It is contended that since the selection of the respondent No. 4, she has been concentrating on her preparation and any disturbance in the selection process would greatly disturb her mental preparation.

31. The question that arises for consideration is whether the petitioner can claim a right to represent India solely because of having earned the qualification slot.

32. The argument, that the athlete who has earned the qualification slot is the best athlete to represent, does on the first blush does seem very appealing but when it is considered in light of the regulations prescribed by the Qualification Guide issued by the International Paralympic Committee, it loses its sheen.

33. The qualification system prescribed by the Qualification Guide reads as under:-

“QUALIFICATION SYSTEM:-

Qualification slots will be allocated as follows:

METHOD	QUALIFICATION	TOTAL
2015 Marathon World Championships Allocation (London)	The top two (2) ranked athletes at the IPC Athletics Marathon World Championships in each of the medal events on the Rio 2016 Paralympic Programme each obtain one (1) qualification slot for their respective NPC.	6 male athletes 4 female athletes
2015 Marathon World Championships Allocation (Doha)	The top two (2) ranked athletes at the 2015 IPC Athletics Marathon World Championships in each of the individual medal events on the Rio 2016 Paralympic Programme (excluding Marathon) will each obtain one (1) qualification slot for their	180 male athletes 152 female athletes

	<u>respective NPC.</u> <u>In the case that an athlete is ranked first or second in more than one medal event, he/she can only obtain one (1) qualification slot for his/her NPC.</u> Athletes who have obtained a qualification slot at the 2015 Marathon World Championships cannot obtain any additional slot <u>for their NPC through this allocation method.</u> <u>In the case that fewer slots are allocated through this method than available in the quota, IPC Athletics will allocate the remaining slots via the AQS Qualification Allocation method.</u>	
<i>Rio 2016 Qualification Rankings Allocation</i>	<i>IPC Athletics will establish a 12-month Qualification Ranking from 1 April 2015 to 1 April 2016 for each of the individual medal events on the Rio 2016 Event Programme except for the Marathon medal events.</i> <i>The three (3) highest ranked athletes in the Top 5 of each individual medal event, who have not otherwise obtained a qualification slot through the aforesaid methods, <u>will obtain one (1) qualification slot for their respective NPCs.</u> In the case that an athlete is eligible in more than one (1) medal event for slot allocation under this methods, <u>he/she can only obtain one (1) qualification slot for</u></i>	<i>270 male athletes</i> <i>228 female athletes</i>

		<u>his/her NPC.</u> <i>In the case that fewer slots are allocated through this method than available in the quota, IPC Athletics will allocate the remaining slots via the AQS Qualification Allocation method.</i>	
2016 IPC Athletics Marathon World Cup (London)	IPC Cup	<i>The three (3) highest ranked athletes in the Top 5 of each Marathon event on the Rio 2016 Paralympic Programme who have not otherwise obtained a <u>qualification slot for their respective NPC will each obtain one (1) qualification slot for their NPC.</u></i> <i>In the case that fewer slots are allocated through this method than available in the quota, IPC Athletics will allocate the remaining slots via the AQS Qualification Allocation method.</i>	9 male athletes 6 female athletes
****		*****	****
<i>Bipartite Commission Invitation Allocation</i>		<i>Twenty (20) eligible male athletes and ten (10) eligible female athletes will be considered by IPC and IPC Athletics for Bipartite Invitation qualification slots. Some or all of these slots may be used to protect the viability of certain medal events.</i> <i>To be considered for a Bipartite Commission Invitation slot,</i>	

	<i>NPCs must submit an official application in writing to IPC Athletics by 20 June 2016.</i>	
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(Underlining supplied)

34. Reading of the Qualification System as prescribed shows that the athletes, based on their rankings determined through the various methods specified, each obtain one (1) qualification slot for their National Paralympic Committee (NPC). If the intention of the regulations was that the qualification slot is allocated to an individual athlete, then the regulations would not have stated “*each obtain one (1) qualification slot for their National Paralympic Committee*”

35. In the Qualification Guide under the chapter of Athletics, the heading Allocation of Qualification Slots reads as under:

“Allocation of Qualification Slots

The qualification slot is allocated to the NPC not to the individual athlete. In case of a Bipartite Commission Invitation the slot is allocated to the individual athlete not to the NPC.”

36. The Guide clearly stipulates that the qualification slot is allocated to the National Paralympic Committee and not to the individual athlete. Only in case of Bipartite Commission Invitation is a slot allocated to the Individual Athlete and not to the National Paralympic Committee. This, admittedly, is not a case of Bipartite Commission Invitation. The regulations very plainly show that the contention of the petitioner is not correct.

37. The reference to the definition of Slot Allocation in the glossary to the Qualification Guide also does not further the case of the petitioner. The glossary defines Slot Allocation and states that “*The allocation of these qualification slots is then attributed to either an individual athlete/team or to their NPC depending on the sport and the respective qualification method.*” As noted above, with respect to athletics, the regulations clearly stipulate that the qualification slot is allocated to the National Paralympic Committee and not to the individual athlete.

38. The selection of athletes has been done by specialists in the field. They have adopted a fair and transparent method of conducting selection trials. No doubt performance in the discipline of Discus Throw and Shot Put cannot be compared directly, but the selection committee has in its minutes recorded that the recommendation has been done on the basis of performance during Selection Trials conducted and the status of athletes in compare to the world ranking (IPC Athletics Rankings – Rio 2016 Paralympic Games – Eligibility, created by IPC Sports Data Management System) from 15.10.2014 to till date in a respective event and category. It may also be noted that even the male athletes, including the ones who had earned the qualification slots for the National Paralympic Committee, had to undergo the selection trials.

39. With regard to the allegation of bias and favouritism and the performance of respondent No. 4 during the trials, the three-member

committee appointed by this court has unanimously opined that the decision of the selection committee is correct. As already noted above, the three-member committee was constituted with the consensus of the parties and that the Learned Senior Counsel for the Petitioner, after perusal of the report, did not press the issue any further. Even otherwise, the allegation is a mere bald, vague allegation which is unsubstantiated.

40. The reference by the petitioner to the email of the Paralympic Committee of India dated 30th July, 2016, is misplaced. The contention that the selection should have been done by the Paralympic Committee of India and not by the Sports Authority of India is not sustainable. The Union of India in its counter affidavit has specifically states that the International Paralympic Committee vide its letter dated 15.4.2015 had suspended the Paralympic Committee of India and the Union of India had also suspended the Paralympic Committee of India on 22.04.2015. The Sports Authority of India was given the authority to look after the affairs/interest of para-athletes including visiting of Indian teams of various sanctioned tournaments of International Paralympic Committee. It is also stated that even though the International Paralympic Committee vide its letter dated 31.05.2016 lifted the suspension of Paralympic Committee of India with the sole purpose of allowing Indian para-athletes to compete under the Indian flag at Rio 2016, it by its said letter, recorded that Sports Authority of India will continue to have the authority to administer the entry of athletes and team officials for the Rio Paralympic Games, 2016.

41. A coordinate bench of this court in the case of Sushil Kumar (*Supra*) has held as under :-

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COURT'S REASONING

A WRIT COURT WILL NOT INTERFERE IN THE EXERCISE OF DISCRETION OF THE NATIONAL SPORTS FEDERATION EXCEPT WHERE THE DISCRETION IS SHOWN TO HAVE BEEN EXERCISED IN AN ARBITRARY OR CAPRICIOUS OR PERVERSE MANNER OR CONTRARY TO SETTLED PRINCIPLES OR PRACTICES. AFTER ALL POWER AND RESPONSIBILITY GO HAND IN HAND

36. Having heard the learned counsel for parties, this Court is of the view that the decision who should represent India in a sporting event is best left to the experts i.e. the concerned National Sports Federation.

37. Power and responsibility go hand in hand. The National Sports Federation cannot be held responsible for the performance of its athletes, if it does not have power to select them according to a flexible procedure as long as the same is fair, transparent, reasonable and consistent.

38. A Coordinate Bench of this Court in **Shumel vs. Union of India & Ors., W.P.(C) 5034/2010** has held as under:-

"4. Having heard learned counsel for the parties, this Court is of the view that in matters of selecting the best possible candidate to represent India in an international competitive event, there cannot be any interference by this Court in the selection criteria set down by the concerned national sports federation.....

13. *Considering that the best possible candidate has to be selected to represent India in the CWG 2010 in the 72 kg category, the methodology adopted by the Respondents by holding a coaching camp, followed by a national championship and conducting selection trials for the top women wrestlers in such championship, to ultimately choose one, cannot be held to be arbitrary or unreasonable. Consistent with the high standards of the CWG 2010, it is but essential that the candidate who qualifies by consistent performance through a rigorous procedure of selection, is picked up to represent India in the various sports events. How the relative merits of the different candidates should be evaluated is not a matter for this Court to decide. That is best left to the experts in a particular field of sport.*

(Emphasis supplied)"

42. I am in complete agreement with the view taken in the case of **Sushil Kumar** (*Supra*) that the decision, who should represent India in a sporting event, is best left to the experts. In the matters of selecting the best possible candidate to represent India in an international competitive event, there cannot be any interference by this Court in the selection criteria set down by the concerned national sports federation and also as to how the relative merits of the different candidates is to be evaluated, which is for the experts to decide and not this Court.

43. The reliance by the learned senior counsel on the decision of **Sushil Kumar** (*Supra*) to contend that there is a practice that a

wrestler who has earned the berth for the country will represent the country and similarly the petitioner who has earned the berth should represent India, is misplaced. First of all, no such past practice has been shown to have been adopted in this case. Secondly, even the other athletes who had earned qualification slots had to undergo selection trials. Thirdly, even in the said case, the Union of India, in its counter-affidavit had stated *“5.....After Olympics berths have been earned, it is for the concerned NSF to decide whether it deems fit to hold a selection trial or to nominate the individual sportsperson who has earned quota place in Olympics for the country”*.

44. In the present case, the concerned NSF (i.e. the Sports Authority of India because of banning of Paralympic Committee of India) has decided to hold selection trials and all athletes male and female were asked to undergo the same. The selection has been made by the expert selection committee based on the performance during Selection Trials and the status of athletes in comparison to the world rankings. I do not find the procedure adopted to be arbitrary, perverse or irrational. In my view, the selection has been done in a fair and transparent manner and no interference in the same is called for.

45. I find no merit in the petition. The same is accordingly dismissed. There shall be no orders as to costs.

SANJEEV SACHDEVA, J

AUGUST 11, 2016/sk