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

Date of Decision : 27.07.2021

+ **W.P.(C) 6825/2021**

NARESH KUMAR SHARMA

..... Petitioner

Through **Mr.Varun Singh, Mr.Amit Kumar
Sharma & Mr.Satyam Singh, Advs.**

versus

PARALYMPIC COMMITTEE OF INDIA & ORS..... Respondents

Through **Mr.Naveen Kumar & Mr.Mahavir
Singh Rawat, Advs. for R-1.
Mr. Vineet Dhanda, Adv. for R-2.
Mr.Anil Soni, CGSC with Mr.Sahaj
Garg, GP & Mr. Devesh Dubey,
Advs. for UOI/R-3.
Mr.Nitin Sherwal & Mr.Satish Goel,
Advs. for R-4.**

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition has been preferred by a para-athlete who aspires to compete in the 2020 Tokyo Paralympics set to commence from 02.08.2021. It is the petitioner's case that he is an award-winning athlete and has previously represented the country in five Paralympic games held between 1996 and 2016, in the Rifle and Pistol events. The petitioner is aggrieved by the decision of the respondent no.1/Paralympic Committee of India (hereinafter referred to as the 'PCI') to select respondent

no.4/Mr.Deepak to represent India at the R-7 event, being Men's 50m Rifle Position SH1, at the 2020 Tokyo Paralympics instead of the petitioner; he seeks a direction to respondent no.1 to include his name in the list of Selected Shooters for the R-7 event at the 2020 Tokyo Paralympics.

2. Assailing the decision of the PCI Selection Committee, Mr Varun Singh, learned counsel for the petitioner submits that as per the eligibility criteria for selection in Tokyo Paralympics, each athlete interested in participating in the event had to achieve a Minimum Qualifying Score (MQS) at a Shooting Event, which would then be used to calculate his Final Average Score (FAS). To that end, there were two kinds of events, being international and domestic, in which the athlete could participate to build his FAS. He submits that however, the FAS calculated by the Committee appeared to deliberately deviate from the 2019-20 calculation criteria and contained inflated scores, which issue was raised by the petitioner in an e-mail sent by him to the President of the PCI on 17.07.2021. He draws my attention to a chart reflecting the score tabulation between the petitioner and respondent no.4 and submits that, contrary to the usual policy, the respondents decided to factor in the scores obtained by respondent no.4 in the Novi Sad 2021 World Shooting Para Sport (WSPS) Grand Prix, held between 01.04.2021 and 04.04.2021, even though it was not a recognised event for the purpose of score tabulation either by the PCI or the International Paralympic Committee (IPC). He submits that the Detailed Selection Criteria uploaded by the PCI on 18.06.2019 on its website for the Indian Paralympic Shooting Team at the Tokyo Paralympics, clearly stated that for the purpose of calculating MQS, only scores accumulated from the following eight shooting events would be considered - (i) Cheongju 2018

WSPS World Championship, Korea, (ii) Chateauroux 2018 World Cup, France (iii) Para-Asian Games, Jakarta, Indonesia 2013, (iv) Al Ain 2019 WSPS World Cup, UAE, (v) Osijek 2019 WSPS World Cup, Croatia, (vi) WSPS World Championship Sydney 2019, Australia, (vii) AI Ain 2020/21 WSPS World Cup, UAE and, (viii) Paralympic Selection Trials 2019-20/21. He submits that the criterion intentionally did not enlist Novi Sad Grand Prix as one of the qualifying events given that a World Cup is a tougher competition where a large number of countries participate, whereas Grand Prix have lesser competitors. This is why, as a matter of practice, even the Schedule issued by the parent body, IPC, did not include Grand Prix event scores for tallying the FAS of an athlete.

3. Mr. Singh then submits that the respondent no.4 was permitted and, in fact, encouraged to participate at the Novi Sad Grand Prix by the respondent no.1 pursuant to an e-mail that was specifically written by the Chairperson, STC Shooting, PCI to the Senior Manager (WSPS) of the IPC for his benefit, seeking guidance on how to enable respondent no.4 to acquire the requisite points to qualify for the Paralympic. He contends that it is only after receiving a response from the said Senior Manager (WSPS), IPC, stating that the last resort for respondent no.4 to collect the requisite score for the R-7 event was at the Novi Sad Grand Prix that the respondent no.1 hastened to enable respondent no.4 to participate in that event. He places emphasis on the fact that until the PCI went out of its way to seek such an excessive accommodation in the R-7 event in favour of respondent no.4, both the said respondent and petitioner had failed to qualify as per the selection criteria of PCI, with the petitioner being slightly better off owing to his consistent performance. He contends that the respondent no. 4 was

accommodated in such a manner, despite repeated correspondences sent by the petitioner to the PCI drawing their attention to his consistent track record as well as high scores at multiple international events between 2019 and 2021. He submits that in any event, given that neither IPC nor PCI had enlisted the Novi Sad Grand Prix as an event which contributed to the calculation of scores, PCI could not have included the score obtained by respondent no.4 there while calculating his FAS, regardless of the said event being described as a WSPS-compliant.

4. Finally, Mr. Singh submits that the PCI has discriminated against the petitioner by not informing him or other Para Shooters that they could also participate in the Novi Sad Grand Prix to bolster their FAS. Inasmuch as the petitioner is concerned, he submits that such discrimination has arisen on account of the fact that the petitioner, an award-winning veteran Paralympian, has raised his voice against irregularities, corruption, malpractice, and misappropriation of funds of the PCI. He submits that purely on the ground of merit, it is evident that the petitioner has consistently delivered good performances and kept his scores higher than the respondent no.4 in respect of the R-7 event. He draws my attention to the e-mail sent by the PCI (Chairperson of STC Shooting) on 28.06.2021 to the petitioner to submit that for all its tall claims of wanting consistent performance from selected athletes and disinclination towards basing selection on a single competitive event, the respondent no.1 has certainly failed in practice given that the entire basis for accommodating the respondent no.4 in this excessive manner was his performance at the Lima World Cup, 2020. He draws my attention to the correspondences sent by the petitioner to the PCI seeking the conduct of trials for the Tokyo Paralympic

Games, 2020, but to no avail. He submits that the petitioner was deliberately and arbitrarily ignored by the PCI Selection Committee for participation in the R-7 event, and, therefore, prays that PCI be directed to reconsider the sole selection of respondent no.4 for the 2021 Tokyo Paralympics, and that the petitioner be allowed to participate in the R-7 event as well.

5. In response, Mr Kumar, learned counsel for PCI vehemently opposes the petition and submits that the entire exercise of selecting candidates is to ensure that the nation wins accolades at international sporting events, and has very little to do with any petty organizational bias as alleged by the petitioner. In response to the question whether the PCI had deviated from the policy set down for the purpose of tabulating the FAS of the petitioner and respondent no.4, he submits that the pandemic resulted in the cancellation of most international shooting competitions that would have ordinarily been used as the standard for determining the FAS of each candidate. This implied that the Selection Committee as well as the IPC had to make the best of the circumstances by broadening their Para Shooting Score Statement policies and accommodating within the FAS those scores which were accumulated by a candidate in international events, other than the 8 qualifying events that were originally prescribed by it. He draws my attention to the Result Book of the Novi Sad 2021 WSPS Grand Prix and submits that insofar as the legitimacy of the Grand Prix was concerned, it was a matter of record that the same had been certified to have been in accordance with the rules and regulations of the International Shooting Sport Federation (ISSF) and World Shooting Para Sport (WSPS) and was an event in which numerous countries had participated. He, therefore, contends that

merely because the said event was not reflected in the criteria issued by the PCI 2019 - much prior to the onset of the pandemic - and did not find mention in the schedule issued by the IPC, it cannot be said that the said event is not a qualifying event especially since the Senior Manager (WSPS) of the IPC had stated as much.

6. Mr Kumar then submits that there is absolutely no question of the PCI bearing any bias against the petitioner, and the fact of the matter was that it was by virtue of the performance of respondent no.4 in the 2021 Lima World Cup, that India was able to secure an entry in the 2020 Tokyo Paralympics. He submits that while the petitioner had scored 1120 points, respondent no.4 had scored 1143 in the Lima World Cup which helped India clinch the quota for the 2020 Tokyo Paralympics. This implied that he had established himself as a quota place winner, and was entitled to all benefits arising therefrom. Combine that with the fact that the respondent no.4 was one of the highest scorers among the existing Shooters of the country, in R-7 as well as other events, his selection was inevitable and entirely merit-based. He submits that in case the petitioner was desirous of participating in the Novi Sad Grand Prix, it was always open for him to do so - but he voluntarily chose not to. He, therefore, submits that there was no bias whatsoever against the petitioner, who has been given a fair chance. He finally contends that the respondent no.4, having scored more points than the petitioner, has been rightly selected to participate in the R-7 event at the 2020 Tokyo Paralympics and prays that the present petition be dismissed.

7. I have heard learned counsel for the parties. It is an undisputed position that the Detailed Selection Criteria uploaded by the PCI on its website had set out eight events whose scores could be used to calculate the

final average score (FAS) of an athlete aspiring to compete at the 2020 Tokyo Paralympics. It is also a matter of record that the Novi Sad Grand Prix was not one of the qualifying events listed either by the PCI or the IPC. However, it transpires that it was solely by the virtue of his participation in the 2021 Novi Sad Grand Prix that respondent no.4 was regarded eligible to be selected for the R-7 event at the 2020 Tokyo Paralympic Games by the PCI. Therefore, the short question arising for consideration of this Court is whether the Novi Sad Grand Prix could at all be taken into consideration by the respondent no.1 while evaluating the eligibility of athletes.

8. Now, under the directions of this Court, the PCI had filed a brief note to explain its criteria for selecting the para shooting team for the 2020 Tokyo Paralympics. Subject to the Shooter obtaining the MQS, the three-fold component of calculating the FAS were - (i) the two highest scores obtained by the Shooter in Paralympic trials in 2020-21 (ii) the highest score obtained by the Shooter at an international competition from either the 2019 Sydney WSPS World Championship, Australia or the 2020-21 World Cup, and, finally, (iii) the highest score obtained by the Shooter at an international competition between 01.0.2018 and 31.07.2019. The PCI stated that since neither the petitioner nor the respondent no.4 had participated in an international competition between 01.0.2018 and 31.07.2019, they failed to score in that category. That left the Selection Committee to regard the scores from the Paralympic trials and a World Championship between 2020-21. Inasmuch as the first category was concerned, both the petitioner and respondent no.4 had participated in four domestic events and one national event - the two best scores of the petitioner were 1135 and 1145, whereas that of respondent no.4 were 1126 and 1136. Till this point, the record

shows that the petitioner was ahead of the respondent no.4 by a slim margin of 18 points. The second and final category, being that of the international world championships dictated the course of the selection. Whereas the petitioner had participated in two of such events, being the 2021 Al Ain World Cup at U.A.E. and the 2021 Lima World Cup, and secured 1111 points and 1120 points respectively, the respondent no. 4 had only participated in the 2021 Lima World Cup and secured 1143 points. The petitioner claims that, thus, at the conclusion of the Lima World Cup in June 2021, he was ahead of respondent no. by 1106 points since he had accumulated extra points by virtue of his participation in an extra international event and was leading insofar as the FAS was concerned.

9. However, in July 2021, the Novi Sad Grand Prix was held and the respondent no.4 accumulated 1114 points in the R-7 event there. Ordinarily, this would not have mattered, but in the case of respondent no.4, this time, his Novi Sad Grand Prix scores were taken into consideration for the purpose of calculating his FAS. Not to mention, he was given an additional point for being a quota place winner. In effect, this propelled respondent no.4 to the front of the scoreboard by a slim margin of 9 points.

10. Now, insofar as the contention of the petitioner is concerned that the Novi Sad Grand Prix, by virtue of being absent from the list of qualifying events published by the PCI, could not be used to subsequently validate an athlete who was lacking in the requisite points – I find that this contention cannot be regarded in isolation and has to be viewed in the circumstances and ground reality that accompanied such a decision. The fact remains that the guidelines of the PCI which set apart eight qualifying events, was published in June 2019 - much before the extraordinary onset of the

COVID-19 pandemic brought the entire world to a sudden halt. The world of para athletics was no exception and it is an undisputed position that barring a few competitions, there was very limited scope for a para Shooter to accumulate the requisite points for his FAS in time to be considered for the 2020 Tokyo Paralympics. In fact, it appears that in June 2021, the Chairperson, STC Shooting, PCI exchanged the following e-mail correspondence with the Senior Manager (WSPS) of the IPC:

*“From: jaiprakash nautiyal <nautiyal2006@hotmail.com>
Sent: 15 June 2021 09:12
To: Tyler Anderson <Tyler
Anderson@WorldShootingParaSport.org>
Cc: Gursharan Singh <hopcidelhi@yahoo.com>*

Subject: Request regarding parashooter Deepak

Caution! External email. Do not open attachments or click links, unless this email comes from a known sender and you know the content is safe.

Dear Tyler,

Hope everything would be fine at your place.

I need a advise and direction on Para Shooter Deepak. He has just won a quota in R7 with a score of 1143. As per eligibility criteria in the same medal event, he/she have to achieve MQS in TWO WSPS recognized competition between 1st January 2018 and 15th July 2021.

Deepak has achieved MQS in R1, R3 and R6 multiple times but has achieved MQS in R7(wherein he got the quota) only one time.

Although we have the competition in Novi Sad but due to COVID I want to avoid unnecessary travel.

Is it possible that permission for Deepak is granted to participate in all the events at 2020 Paralympics or should send him to NOVI SAAD to get a MQS in R7.

Would appreciate your reply please.

With kind regards

*J.P Nautiyal
Chairperson
STC Shooting
NPC India”*

11. In reply, the Senior Manager (WSPS) of the IPC wrote back saying:

*“From: Tyler Anderson
Sent: 15 June 2021 17:38
To: jaiprakash nautiyal
Cc: Gursharan Singh*

Subject: RE: Request regarding parashooter Deeapk

Dear JP,

I hope this email finds you safe and well.

Unfortunately based on the current situation Mr. Deepak would not be eligible for Tokyo because he does not have the two required MQS scores for R7. The last chance to shoot this second MQS would be the event in Novi Sad. If he is deemed ineligible, the quota would go to bipartite

Respectfully.

Tyler

*Tyler Anderson
World Shooting Para Sport Senior Manager
International Paralympic Committee”*

12. It appears that even the IPC, the foremost Paralympic body in the world, had considered the exigencies of the pandemic and permitted the respondent no.4 to submit his scores from his performance at Novi Sad Grand Prix, an event which was traditionally not listed as a qualifying event. Before this Court, learned counsel for the petitioner emphasised the difference between a Grand Prix and a World event to point out that scores from the two could not be compared. That being said, given the cancellation of international competitions since 2020, and the fact that the Novi Sad Grand Prix was WSPS-compliant, an international event and one that had witnessed considerable participation in 2021, it appears that the WSPS, IPC conveyed its decision to accept the scores of Novi Sad Grand Prix for the purpose of calculating the average scores of an athlete to participate in the Tokyo Paralympics. When the foremost international parasport body, which is in charge of the Paralympics, has made the decision to accept the scores from a particular competition, then irrespective of whether such a competition was deemed as a qualifying event under the extant policy, it would not be appropriate for this Court to take matters into its own hands. For that matter, given that the Shooting Team has already been placed in a bubble for the purpose of attending the Paralympics, this is certainly a very belated stage for this Court to exercise any interference at all. In the light of these particular circumstances, I find that the decision of PCI to accept the Novi Sad Grand Prix scores of respondent no.4 to calculate his average

score, cannot be found fault with.

13. In these circumstances, I see no reason to interfere with the selection of respondent no.4 or issue directions to the PCI to select the petitioner to compete in the R-7 event of the 2020 Tokyo Paralympics, either in place of respondent no.4 or as an additional entry.

14. Before I conclude, I would be remiss if I did not deal with the petitioner's grievance that the PCI has acted in an arbitrary and discriminatory manner towards him. There is certainly something to be said about the manner in which respondent no.1/PCI has conducted itself, which is quite unbecoming of a public sporting body entrusted with the important task of selecting athletes to represent the nation at Paralympic games and other international Paralympic athletic meets, as also for managing Indian Paralympic teams at such events. In view of the spirit with which it was formed, it is incumbent for the PCI to maintain a fair, transparent and inclusionary approach when carrying out its activities. Yet, the PCI, despite knowing that the petitioner already fulfilled the existing criteria, proceeded to contact the IPC in respect of selection of the respondent no.4 for the R-7 event. The response of the PCI on this aspect has been that since the respondent no.4, with his score of 1143 at the Lima World Cup, had won India the quota to participate in the 2020 Tokyo Paralympics, the same could not be given a go-by. However, I find that in adopting this approach, the PCI acted in violation of its own Criteria for the Selection of Paralympic Shooting Team, especially Clauses 6.1 and 6.4 thereof which read as under:

"Clause 6.1

As with the Paralympic Games, the IPC has a clear existent policy that any quota won by an Indian athlete belongs to the

Federation and the Country. Though due consideration shall be afforded to such an athlete per provisions of this policy, it does not necessarily imply that merely winning a quota place in its self suggests that only that particular athlete shall eventually represent the country at the Paralympic Games in 2020. Quota place winners alongside other qualified athletes shall have to subject themselves to the test of trials in order to be selected as per the provisions of this policy.

xxx

Clause 6.4

This Committee does not wish to take away the individual achievement of the sportsperson from achieving this laudable milestone of winning a Paralympic quota place, therefore, it is decided to honour such achievement by individuals whereby the winner of the quota place will be entitled to get one (1) additional quota point to add to his final score average arrived as per the provisions listed in this policy. These quota points shall be exclusive of all other merit points and will be available only to shooters earning a quota place for the nation” (emphasis supplied)

15. Thus, as per its own policy, the PCI did not intend to treat a quota winner any differently than its other qualified Para Shooters and, barring the grant of a single point in its favour at the time of calculating average score, did not vest the quota winner with any entitlement for qualification to the Paralympics. In view of this position, the manner in which the PCI went above and beyond to raise concerns in respect of respondent no.4 with the IPC, secure an alternate method for him to score additional points without informing any other Para Shooter of the same, and eventually ensure his selection does merit a careful examination. In fact, I *prima facie* find that by failing to inform the petitioner and other Para Shooters that scores from the

Novi Sad Grand Prix 2021 would be accepted for the purpose of selections for the Tokyo Paralympics, the PCI appears to have acted in a discriminatory manner. Be that as it may, although I do not find any reason to grant the petitioner's prayer to have his name included in the list of athletes for the R-7 event at the 2020 Tokyo Paralympics at this belated stage when the Shooting team has already been placed in a bubble for the purpose of the Paralympics, I do find *prima facie* merit in his averment that the PCI Selection Committee did adopt different standards vis-à-vis the respondent no.4 and other Para Shooters, including the petitioner. Since the respondent nos. 2 and 3 are the Sports Authority of India and the Ministry of Youth Affairs and Sports respectively, I deem it appropriate to direct respondent no. 3 to examine this aspect after giving an opportunity for hearing to both the petitioner as well as respondent no.1. In case respondent no.3 finds that there was any foul play in this regard, it is directed to take appropriate action against the PCI in accordance with law.

16. The petition is disposed of in the aforesaid terms, with no order as to costs.

JULY 27, 2021
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REKHA PALLI, J