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

Date of decision: 28th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 9638/2023 & CM APPLs. 38106/2023 & 37412/2023**

ALPHIA JAMES

..... Petitioner

Through: Mr. Ashwin Kumar Naim, Advocate

versus

BADMINTON ASSOCIATION OF INDIA AND ORS

..... Respondents

Through: Mr. Azim H. Laskar, Mr. Bikas Kargupta, Advocate for R-1
Mr. Naveen Kumar Chaudhary, Advocate for R-2
Mr. Vineet Dhanda, CGSC with Ms. Archana Surve, GP for UoI

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner, who is a Para athlete, has approached this Court invoking Article 226 of the Constitution of India challenging the decision taken in a meeting dated 23.06.2023 and the notification dated 04.07.2023, issued by the Respondent No.1 laying down the criteria for participation in the selection trials to select a team for the Asian Para Games 2023 which are scheduled to be held in Hangzhou China from 20-28 October 2023.

2. It is stated that the Petitioner met with an accident whereby her lower



limbs were paralysed but she fought back and started her career as a para athlete in the sports of Badminton. It is stated that she has won National Para Badminton Championship 2021 which was held in Odisha by winning Gold Medal in both singles and doubles event. It is stated that the Petitioner has participated in several international para badminton tournaments as well.

3. It is the contention of the Petitioner that on 21.06.2023 Respondent No.1 published a list of probables for the Indian Para Badminton Team for the Asian Para Games 2023 wherein 55 para athletes were finalized, including the Petitioner herein. It is stated that within two days of publishing the said list, Respondent No.1 & 2 introduced a new criteria for selection trials for Asian Para Games, 2023 which made it impossible for several players especially single wheelchair players both men and women to get selected even for trials.

4. Notice in the Writ Petition was issued on 21.07.2023. Replies have been filed.

5. Learned Counsel for the Petitioner contends that the Paralympic Committee of India (PCI), also referred as National Paralympic Committee by the International Paralympic Committee (IPC), is the sole organization in India as per IPC Handbook for promotion and development of Para Sports for the persons with disabilities, including intellectually and visually impaired persons. He states that PCI, which has been formed for the promotion and development of Para Sports can alone lay down the criteria for selecting the teams and no other organization can be permitted to have any say in the matter of selection of team to represent the country in the Para Games across the world. He further states that once a list of 55 probables has been finalized on 21.06.2023 then only those 55 probables could have



participated in the selection trials and the criteria could not have been changed and that too at the instance of a third party who cannot have any say in the matter of selection of a team of para athletes. Learned Counsel for the Petitioner stresses on the point that the rules of the game cannot be changed after the game has begun and that new candidates cannot be brought in for the purpose of selection of a team after a list of 55 probables has been finalized.

6. On 27.07.2023 it was stated by the learned Counsels for the PCI, the Badminton Association of India and the Union of India that the team to represent India in the Asian Para Games 2023 is selected as per the criteria fixed by the Badminton Association of India and the PCI only forwards the names as stated by the Badminton Association of India. This Court directed the Counsel for the PCI to file an affidavit to this effect. In compliance to the said order, an affidavit dated 27.07.2023 has been handed over in Court by the Counsel for the PCI. Learned Counsel for the PCI has been directed to ensure the affidavit is also placed on record. Relevant portions of the said affidavit reads as under:

"2. In terms of the International Paralympics Committee's (IPC) guidelines. (reference of which is made in terms of Minutes of Meeting April 26, 2017 of the Sports Authority of India at New Delhi) that disciplines like athletics, Swimming, Shooting and Power Lifting would be directly administered by the National Paralympics Committee (NPC) and other disciplines, such as Archery, Badminton, Table Tennis, Lawn Tennis etc. would be handled by the respective able-bodied National Sports Federations (NSFs). However, PCI would act as Nodal Agency in case of multi-disciplinary sports such as Paralympic Games, Asian Para Games, Commonwealth Games and



National Para Games for those disciplines. Minutes of Meeting April 26, 2017 of the Sports Authority of India at New Delhi is annexed as ANEXXURE R-1/2

3. Considering the IPC guidelines it is the Respondent No. 1 (Badminton Association of India) who set their selection criteria adhering to the limitation of overall selection criteria/qualifying standard set by IFS/SAI and NPC India and select the players pertaining to Para Badminton for their recommendation to Respondent No. 2. "

7. It is stated by the learned Counsel for the Union of India that a decision has been taken on 10.07.2023 that for participation in the forthcoming Asian Para Games only those players will be considered whose performance in the individual events during the last twelve months prior to the commencement of the event is not be less than the performance achieved by the 8th position holder of the 2018 Asian Games in measurable sports and for team events, only those sports which have achieved a ranking up to 8th among participating countries of Asia in the last one year should be considered for participation in Asian Games 2022.

8. Heard the counsels and perused the material on record.

9. The short question which arises for consideration is that after the list of 55 probables is brought out then can the respondents introduce a new criteria for selection of the team or not and whether this Court must exercise its discretion under Article 226 of the Constitution of India to quash such decision. The contention of the Petitioner that the Respondents could not have changed the rules of the game after the game has begun cannot be accepted. The present case is not one of appointment on a post but for selecting the best team to represent the country in the Asian Para Games



where the prestige of the country is involved and, therefore, considerations which are applicable for selection/appointment to a post cannot be made applicable for selection of a team to represent the country.

10. At this juncture it is apposite to reproduce the minutes of meeting dated 23.06.2023 and the same reads as under:

" Minutes of the meeting held on 23-06-2023 with the Representatives of Paralympic Committee of India and Badminton Association of India through virtual medium to take the decision on the criteria to invite players for selection trials to select team for Asian Para Games 2023 to be held in Hangzhou China from 20-28 October 2023.

Committee Members:

Shri Gursharan Singh - General Secretary-PCI

Shri Prabhakar Rao - Jt. Secy-BAI and Chairman (Para -- Badminton) - BAI

Shri Mayur Parikh - Jt. Secy-BAI and Member (Para Badminton)-BAI

Competition to be covered:

Asian Para Games 2023 to be held in Hangzhou China from 20-28 October 2023.

Time line for the event:

31 March 2022	Deadline for NPCs to Submit the Entry by number to BWF, APC & HAPGOC
31 July 2023	Deadline for NPCs to Submit the Entry by Name to BWF, APC & HAPGOC
22-28 October 2023	Asian Pnra Games 2022

Total number of slot available in each category as per



organizing committee of Hangzhou Asian Para Games 2023 is as follows:

- Maximum 18 Males*
- Maximum 18 Females*

An open trial will be organized and the Team will be formed based on the merit list decided on performance during trials.

In order to invite the players for Selection Trials in above Asian Para Games 2023, the following criteria has been decided by the committee:

1. Subject to the condition that entries should not increase to. 3 in singles and 2 pairs in doubles, the following criteria has been considered in the following order for the selection trials of athletes to represent the country in Para Badminton in APG 2023:

- a. The Players under TOPs;*
- b. The medal winners players in Level 1 & Level 2 Paralympic qualification competitions held during 2023;*
- c. Medal winners of BWF Para Badminton World Championship 2022.*
 - a. The players of World rank uptill 10th/Asian Rank uptill 5th in singles/Doubles/Mixed Doubles will be considered in the order of merit;*
 - b. The players/pair who has defeated any athlete/pair under World rank 10 in recent Level 1 & Level 2 Paralympics qualification events of 2023.*



Note:

a. Only highest ranked regular pairs playing doubles at International level will be considered;

b. In case Regular pair is not available among the selected players, the next pair will be formed by the committee among the, available players already selected in singles;

c. Players selected in Doubles/Mixed Doubles would be permitted to play singles if slots are vacant. This is in line with Paralympics regulations.

IMPORTANT: Only achieving above criteria will not be the assurity to get slot in Indian Team to represent APG 2023. The athletes representing the country in APG 2023 must have the recent credential to prove their strength to win medals in Asian Para Games. To prove credentials, the athlete must have defeated any athlete under World rank 10 in recent Paralympics qualification events.

Basis of forming above criteria: Only the players having probability of winning medals in APG 2023 will be considered on Govt. cost. Above criteria will be observed as on the cutoff date of 20 June, 2023 to finalize the Team for APG 2023.

Athletes falling under above mentioned criteria are entitled to attend the trial. The Complete list of the athletes who are eligible to attend trial, Date and Venue of the Trial will be informed by next week."

11. Pursuant to the said Meeting, a notification dated 04.07.2023 was brought out by the Badminton Association of India. Relevant portions of the said notification reads as under:



" Following players falling under the criteria as per the Joint circular dated 23rd June 2023 published on PCI website, are being invited to attend the selection trial on mentioned dates:

Sr N	Name of Athlete	Gen der	Cate gory	Curr ent Worl	Asi a Ra	Eligibility under Criteria	Eligible to Give Trial for
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o				d Ran k	nk		Events
1	Prem Kumar Ale	Male	WH1	6 MD	5	Based on World Ranking	MD WH1- WH2
2	Shashan k Kumar	Male	WH1	5 XD	3	Based on World Ranking	XD WH1- WH2
3	Abu Hubaida	Male	WH2	6 MD	5	Based on World Ranking	MD WH1- WH2
4	Pramod Bhagat	Male	SL3	2 MS 1 MD 7 XD	1 1 6	Based on World Ranking	MS SL3 MD SL3- SL4 XD SL3-SU5
5	Nitesh Kumar	Male	SL3	3 MS 3 MD 19 XD	2 3 10	Based on World Ranking Medalist in paralympic qualification competitions held during 2023 with partner -Thulasi	MS SL3 MD SL3- SL4 XD SL3- SU5
6	Manoj Sarkar	Male	SL3	5 MS	4 5	Based on World Ranking	MS SL3 MD SL3-



				7 MD			SL4
7	Nehal Gupta	Male	SL3	7 MS 20 MD	5 11	Based on World Ranking Doubles - Defeated Under 10 World Rank pair in recent Paralympics qualification events with partner-Naveen	MS SL3 MD SL3- SL4
8	Umesh Vikram Kumar	Male	SL4	9 MS 8 MD	6 6	Based on World Ranking	MS SL3 MD SL3- SL4
9	Moham mad Arwaz Ansari	Male	SL3	18 MD	10	Medalist in paralympic qualification competitions held during 2023 with partner Subhrajeet	MD SL3- SL4
10	Tarun	Male	SL4	4 MS 3 MD	3 3	Based on World Ranking	MS SL4 MD SL3- SL4
11	Sukant	Male	SL4	3	2	Based on World	MS SL4



	Kadam			MS 1 MD	1	Ranking	MD SL3- SL4
12	Suhas L. Y.	Male	SL4	10 MS 8 MD	7 6	Based on World Ranking	MS SL4 MD SL3- SL4
13	Nilesh Gaikwad	Male	SL4	9 MS	6	Based on World Ranking	MS SL4
14	Naveen Sivakumar	Male	SL4	19 MS	14	Defeated Under 10 World Rank player in recent Paralympics qualification events	MS SL4
				20 MD	11	Defeated Under 10 World Rank pair in recent Paralympics qualification events with partner - Nehal	MD SL3- SL4
				30 XD	13	Defeated Under 10 World Rank pair in recent Paralympics qualification	XD SL3- SU5



						events with partner -Palak	
15	Deep Ranjan Bisoyee	Male	SL4	7 MD	5	Based on World Ranking in SL4 Doubles	MD SL3-
16	Abhijeet Sakhuja	Male	SL4	32 MS	15	Defeated Under 10 World Rank player in recent Paralympics qualification events	MS SL4
17	Subhraj et Maharana	Male	SL4	18 MD	10	Medalist in paralympic qualification competitions held during 2023 with partner - Arwaz	MD SL3-SL4
18	Chirag Baretha	Male	SU5	1 MD 4 XD 10 MS	1 3 8	Based on World Ranking	MD SU5 XD SL3-SU5
19	Raj Kumar	Male	SU5	1 MD 10 XD	1 8	Based on World Ranking	MD SU5 XD SL3-SU5



20	Ruthick Ragupat hi	Male	SU5	5 XD 4 MD 9 MS	4 4 7	Based on World Ranking	MS SU5 MD SU5 XD SL3- SU5
21	Hardik Makkar	Male	SU5	4 MD	4	Based on World Ranking	MD SU5
22	Dev Rathi	Male	SU5	39 MS	22	Defeated Under 10 World Rank player in recent Paralympics qualification events	MS SU5
23	Krishna Nagar	Male	SH6	5 MS 5 MD	2 2	Based on World Ranking	MS SH6 MD SH6
24	Sivaraja n Solaimal ai	Male	SH6	8 MS 5 MD	2	Based on World Ranking	MS SH6 MD SH6
25	Gokul Das	Male	SH6	9 MD	4	Based on World Ranking	MD SH6
26	Akash Madhava n	Male	SH6	9 MD	4	Based on World Ranking	MD SH6



27	Ammu Mohan	Female	WH2	5 XD	3	Based on World Ranking	XD WH1-WH2
28	Manasi Joshi	Female	SL3	2 W 3 S 5 XD 3 W D	2 4	Based on World Ranking.	WS SL3 WD WL3-SU5 XD SL3-SU5
29	Mandeep Kaur	Female	SL3	1 W 3 S 2 W D 4 XD	1 2	Based on World Ranking	WS SL3 WD WL3-SU5 XD SL3-SU5
30	Parul Parmar	Female	SL3	4 WS 6 WD 10 XD	3 5 8	Based on World Ranking	WS SL3 WD WL3-SU5 XD SL3-SU5
31	Neeraj	Female	SL3	14 WD	7	Medalist in paralympic qualification competitions held during 2023 with	WD SL3-SU5



						partner - Arati Patil	
32	Jyoti	Female	SL4	7 WS	4	Based on World Ranking	WS SL4
33	Palak Kohli	Female	SL4	14 WS	7	Medalist in paralympic qualification competitions held during 2023.	WS SL4
				24 WD	9	Medalist in paralympic qualification competitions held during 2023 with partner - Vaishnavi	WD SL3-SU5
				30 XD	13	Defeated Under 10 World Rank pair in recent Paralympics qualification events with partner -Naveen	XD SL3-SU5
34	Vaishnavi Puneyan	Female	SL4	18 WS	9	Medalist in paralympic qualification competitions held	WS SL4



						during 2023.	
				24 WD	9	Medalist in paralympic qualification competitions held during 2023 with partner -Palak	WD SL3- SU5
35	Manisha Ramadas	Fem ale	SU5	1 W S 2 W D 7 XD	12 6	Based on World Ranking	WS SU5 WD SL3- SU5 XD SL3-SU5
36	Arati Janoba Patil	Fem ale	SU5	10 WS	6	Based on World Ranking	WS SU5
				14 WD	7	Medalist in paralympic qualification competitions held during 2023 with partner -Neeraj	WD SL3- SU5
37	Shanthiya Vishvanathan	Fem ale	SU5	8 WS	5	Singles - Based on World Ranking	WS SU5



38	Vaishali Nilesh Patel	Fem ale	SU5	6 WD	5	Based on World Ranking	WD SL3- SU5
39	Thulasim athi M.	Fem ale	SU5	14 WS	9	Medalist in paralympic qualification competitions held during 2023.	WS SU5
				3 WD	3	Based on World Ranking	WD SL3- SU5
				19 XD	10	Medalist in paralympic qualification competitions held during 2023 with partner -Nitesh	XD SL3- SU5
40	Nithya Sre	Fem ale	SH6	1 WS 4 XD 4 WD	1 2 2	Based on World Ranking	WS SH6 XD SH6 WD SH6
41	Rachana Shailesh kumar Patel	Fem ale	SH6	4 WD	2	Based on World Ranking.	WS SH6
42	Latatai	Fem	SH6	37	13	Medalist in World	WS SH6



Parmeshwar Ukrekar	ale	WS	championship 2022
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The Travel, Boarding & Lodging for the players attending the trial will be the responsibility of Players only. The Players attending the trial must report to the venue at least one hour prior to their matches. The Schedule of matches will be published beforehand.

The Matches will start at 10 AM sharp on 24th July, 2023 as per BAI rules. The Matches will be played on Round Robin Basis and the Players who are participating in more than one event will be given rest as per rules.

On all matters of dispute, the decision of committee shall be final and binding on all concerned.

12. The decision that for participation in the forthcoming Asian Para Games only those players will be considered whose performance in the individual events during the last twelve months prior to the commencement of the event is not be less than the performance achieved by the 8th position holder of the 2018 Asian Games in measurable sports and for team events, only those sports which have achieved a ranking up to 8th among participating countries of Asia in the last one year should be considered for participation in Asian Games 2022 cannot be found fault with. The minutes of meeting clearly indicates that the basis of forming the criteria is only to have players having probability of winning medals in the Asian Para Games 2023.

13. The jurisdiction of this Court for exercising its discretion under Article 226 of the Constitution of India in the matter of sports and the jurisdiction of the Court to interfere with the decision taken by the



authorities while laying down the criteria has been crystallized by the Apex Court in a number of judgments. It is well settled that writ courts must not substitute their opinions to the opinions arrived at by the experts unless the court is satisfied that the decision taken by the experts is perverse or illegal. The function of the Court is only to see that the decision has been arrived at in a good faith and the experts have acted reasonably. It is not the function of the courts to sit in judgment over the decision arrived at by the experts, if the said decision has been taken in good faith and is not perverse, as it would be risky for the Courts to tread an unknown path while upsetting such decisions.

14. A co-ordinate Bench of this Court in Shumel v. Union of India and Ors., **2010 SCC OnLine Del 4706**, has observed 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. If the Petitioner has not been able to qualify in the top 10 wrestlers in the national championship held at the conclusion of a ten months long coaching camp and on that basis was excluded from participation in the next level of selection trials, that action cannot be held to be either arbitrary or unreasonable warranting interference by this Court.”

15. The said judgment has been quoted with approval in Sushil Kumar v. Union of India & Ors., **2016 SCC OnLine Del 3660**, wherein it was once again held that a writ court will not interfere in exercise of discretion of National Sports Federation and substitute its own judgment except where



discretion is shown to have been exercised in an arbitrary or capricious or perverse manner or contrary to settled principles or practices. Relevant portion of the said judgment reads as under:

“41. Keeping in view the aforesaid, this Court is of the view that a writ Court will not interfere in the exercise of discretion of the National Sports Federation and substitute its own judgment 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.”

(emphasis supplied)

16. In a latest judgment in Swastika Ghosh v. Table Tennis Federation of India, (2022) 4 HCC (Del) 213, a co-ordinate bench of this Court, after considering various decisions of the Apex Court and this Court, has observed as under:

8. It is a settled proposition of law that issuance of a writ is a discretionary remedy and the court can refuse to exercise its jurisdiction even if the petitioner may have a claim in law. The scope of jurisdiction under Article 226 of the Constitution of India in a matter pertaining to conferring of Maulana Abul Kalam Azad Trophy was discussed by this Court in Punjabi University v. Union of India [Punjabi University v. Union of India, 2011 SCC OnLine Del 3496] and it was inter alia held as under :

“11. It is a settled principle of law that in exercise of powers under Article 226 of the Constitution of India, this Court can refuse to exercise jurisdiction even when the petitioner may have a claim in law. The Supreme Court in Chandra Singh v. State of Rajasthan [Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545 : 2003 SCC (L&S) 951] held that issuance of a writ is a



discretionary remedy and that the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India may not strike down an illegality although it would be lawful to do so and in a given case, may refuse to extend the benefit of discretionary relief to the applicant. It was so reiterated in ONGC Ltd. v. Sendhabhai Vastram Patel [ONGC Ltd. v. Sendhabhai Vastram Patel, (2005) 6 SCC 454] . Similarly, in Taherakhatoon v. Salambin Mohammad [Taherakhatoon v. Salambin Mohammad, (1999) 2 SCC 635] even at the time of the dealing with the appeal after grant of special leave, it was held that the court was not bound to go into the merits and even if entering into the merits and finding an error, was not bound to interfere if the justice of the case on facts does not require interference or if the relief could be moulded in a different fashion. This Court has echoed the same views in Filmistan Exhibitors Ltd. v. NCT of Delhi [Filmistan Exhibitors Ltd. v. NCT of Delhi, 2006 SCC OnLine Del 471 : (2006) 131 DLT 648] by holding that even if there is a violation of law, this Court is not bound to exercise discretionary jurisdiction and in Babu Ram Sagar v. Labour Court [Babu Ram Sagar v. Labour Court, 2006 SCC OnLine Del 1648] by refusing to interfere in exercise of discretionary powers in spite of holding the reasons given by the Labour Court to be not convincing.

9. This Court in Punjabi University case [Punjabi University v. Union of India, 2011 SCC OnLine Del 3496] also inter alia held that if the power of judicial review were to be extended into matters such as these also, it would adversely affect the sports. I am in



complete agreement with the finding of this Court that the court cannot appropriate to itself a position as that of a super umpire or a super referee or in the present case to the position of super selector.

10. It is a settled proposition that a mere mistake is not sufficient for this Court to exercise powers under Article 226. A writ can be issued only when there is something more than a mere error/mistake. The court in its writ jurisdiction can interfere only if its decision is illogical or suffers from procedural impropriety or shocks the conscience of the court in the sense that it is in defiance of logic or moral standards. The court cannot clothe itself with the power to make choice and should not substitute its decision over a decision of an Expert Committee. It may be reiterated that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

11. It is pertinent to mention here that a Committee of Administrators was appointed by this Court in Manika Batra v. Table Tennis Federation of India [Manika Batra v. Table Tennis Federation of India, 2021 SCC OnLine Del 4479] after noting down the irregularities being committed in the functioning of Table Tennis Federation of India. In this case this Court inter alia held as under :

19. A Committee of Administrators to discharge the functions of Respondent 1 comprising of the following members is, accordingly, being constituted :

(i) Chairperson : Chief Justice (Retd.) Gita Mittal, former Chief Justice, Jammu & Kashmir High Court. (Mobile:+919818000220)



(ii) Member : Mr Chetan Mittal, Senior Advocate.
(Mobile:+919814044609) (iii) Member : Mr SD
Mudgil, a renowned athlete.
(Mobile:+919811054307)

20. The following directions are being issued to facilitate the smooth functioning of this Committee of Administrators :

(i) The executive body of Respondent 1 will acquiesce their administrative duties to the Committee of Administrators, while the staff engaged by Respondent 1 Federation will continue to work on the same terms and conditions as was applicable to them. Since, there are a number of tournaments coming up in the near future, it is expected that the executive members of the Committee, who claim to be working in the interest of the sportspersons, will render all assistance to the Committee of Administrators, as and when required.

(ii) Even though this Committee is being constituted only to ensure that the morale of sportspersons and pride of the country is safeguarded, and the efforts which the three members will be required to put in cannot be compensated, it is directed that a monthly honorarium to be paid to the members of the Committee of Administrators, for the present is being fixed at INR 3 lakhs for the Chairperson, and INR 1 lakh each for the two members.

(iii) Upon the Committee of Administrators as nominated above assuming charge, the existing office-bearers of Respondent 1 Federation shall no longer be entitled to discharge any function of the Federation but will, as already directed,



render assistance to the Committee of Administrators, as and when requested by the said Committee.

(iv) The Committee of Administrators will have the power to issue all appropriate directions, under the signatures of the Chairperson, as may be necessary for the functioning of the Federation. The Committee of Administrators will be entitled to utilise the existing office of Respondent 1, as also to avail the services of the staff already employed by Respondent 1.

(v) All communications on behalf of Respondent 1 Federation with any sportsperson or international sports bodies, will now take place only through the Committee of Administrators.

(vi) Any of the two members of the Committee of Administrators will, with the prior approval of the Chairperson, be authorised to sign all cheques on behalf of Respondent 1. All the banks where Respondent 1 Federation have bank accounts, are directed to treat the members of the Committee of Administrator as being authorised signatories of Respondent 1. The Committee of Administrators will submit a periodic report, including that relating to accounts, every two months.

(vii) It will be open for the Committee of Administrators to seek any such further directions from this Court, as may be necessary.

12. *A perusal of the above order makes it clear that the Committee of Administrators was entrusted with all the powers and duties of functioning of the Federation. The Committee of Administrators has minutely examined the claim of each of the sportsperson and*



passed a detailed order while finalising the list, which is under challenge. The power of judicial review in the matters relating to sports can be exercised only if there is an allegation of bad faith. In such matters, the courts should give great credence to the decision of the Expert Committee and the coaches. If the courts starts interfering in the decision of such Committees it would have a drastic inhibiting effect on its functioning. The scope of power of judicial review was also laid down by the Supreme court in State of U.P. v. Johri Mal [State of U.P. v. Johri Mal, (2004) 4 SCC 714] wherein it was held that the scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. It was held that the power of judicial review is not intended to assume a supervisory role or don the robes of omnipresent or to review governance under the rule of law or to enable the courts to step into the areas exclusively reserved by the suprema lex to the other organs of the State. It was expressly observed that an order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

13. *This Court in Shumel v. Union of India [Shumel v. Union of India, 2010 SCC OnLine Del 4706] has also inter alia held as under :*

13. ... 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. Irrespective of what may have been the past performance of a



sportsperson, the current consistent form of such sportsperson should be critical in such decision-making given the objective of ensuring that the best performing candidate should represent India at the CWG, 2010. On an overall conspectus of what has transpired, this Court is not able to conclude that the exclusion of the petitioner from the selection trials for the 72 kg class women's wrestling for the CWG, 2010 which is to take place on 7-8-2010 and 8-8-2010 is either arbitrary or unreasonable.

14. In Sushil Kumar v. Union of India [Sushil Kumar v. Union of India, 2016 SCC OnLine Del 3660] , this Court inter alia held that a writ court will not interfere in exercise of discretion of the National Sports Federation and substitute its own judgment except where discretion is shown to have been exercised in an arbitrary or capricious or perverse manner or is contrary to settled principles of practices. The court inter alia held that the decision, who should represent India in a sporting event is best left to the experts i.e. the National Sports Federation concerned. The judgment in Sushil Kumar case [Sushil Kumar v. Union of India, 2016 SCC OnLine Del 3660] was also followed by this Court in Karamjyoti v. Union of India [Karamjyoti v. Union of India, 2016 SCC OnLine Del 6766] whereby it was inter alia held as under :

42. I am in complete agreement with the view taken in Sushil Kumar case [Sushil Kumar v. Union of India, 2016 SCC OnLine Del 3660] 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



National Sports Federation concerned 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.

15. In Paralympic Committee of India v. Naresh Kumar Sharma [Paralympic Committee of India v. Naresh Kumar Sharma, 2018 SCC OnLine Del 8443] this Court has inter alia held as under :

*11. The purpose of preparing the above tabular chart is to ascertain whether the Committee's process of selection is manifestly or prima facie arbitrary. This Court recollects the compass that it has to apply in such matters. **It is beyond dispute that in matters of policy decisions, the court should be circumspect in interfering and must exercise its power of judicial review only to prevent manifest arbitrary or mala fide action. Beyond this narrow scope of enquiry, courts do not possess the ability or the wherewithal to "second-guess" policy decisions made by specialised bodies tasked with that purpose.** Specifically, in the context of selection of athletes for sporting events, this Court in previous decisions such as Karamjyoti v. Union of India [Karamjyoti v. Union of India, 2016 SCC OnLine Del 6766] and Shumel v. Union of India [Shumel v. Union of India, 2010 SCC OnLine Del 4706] , has held that 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 the settled principles or practices. What then is the task before this Court, is to ascertain whether on a broad, prima facie view, without getting into the intricacies of the policy decision, there is manifest*



arbitrariness or mala fides in the decision-making of the Committee.

13. The court must resist adopting a one-size-fits-all approach. In other words, any one single performance at one competition or trial cannot be used as a barometer to make the decision of whether to select an athlete. In sports, as the impugned order also notes, same players perform differently on different occasions and a number of factors influence an athlete's performance. Therefore, the petitioner's performance at the court ordered trial cannot, by and of itself, be considered sufficient to warrant his selection for particular events. The Committee has to take a broader view and analyse the performances of the athletes/sportspersons over different competitions and trials. As such therefore, the court does not find any infirmity with the reasoning of the Committee, insofar as all events other than R-7 are concerned (to which we will turn subsequently).

14. This Court is conscious that the Committee has to consider a wide variety of other factors, including logistical and practical considerations, in selecting athletes. For instance, age is a pertinent consideration; in order to promote budding talent and to ensure that through exposure over periods of time athletes become better prepared and in turn are likelier to win medals for the country, the Committee has found it necessary to give younger athletes a chance over some older athletes. This could for example explain preferring Avani, who is 16 years old, over the petitioner for event R-6 for the 2018 Al Ain Championship, even though the petitioner had a higher score than her in the 61st NSC in the



said event. However, in the 2018 Al Ain Championship, Avani's score was higher than all the other athletes (even when compared to the petitioner's performance in the court ordered trial), and that too by a significant margin, thereby in some ways justifying the Committee's decision to send her over the petitioner.

16. Though the jurisdiction of the court under Article 226 of the Constitution of India is very wide but it has to be used with circumspection. The names in the present case have been finalised by the Committee of Administrators appointed by this Court in Manika Batra v. Table Tennis Federation of India [Manika Batra v. Table Tennis Federation of India, 2021 SCC OnLine Del 4479] vide judgment dated 11-2-2022. Learned counsel for the petitioners have taken this Court through the findings of the Committee of Administrators. A bare perusal of the findings of the Committee of Administrators makes it clear that the Committee has threadbare examined the entire issue and then after taking into account all aspects finalised the names to be sent for participating in the Commonwealth Games. The court in the present jurisdiction cannot substitute its own view with the view arrived into by the Committee of Administrators and the Selection Committee. The courts do not have any expertise to get into the selection and finalisation of players for participation at the international level. This Court is conscious of the fact that any such findings can be interfered with only if there is any perversity or arbitrariness in the findings arrived into by the Federation concerned. However, I do not find any such arbitrariness or perversity in the such order and furthermore, Mr Moazzam Khan, learned counsel for Respondent 1 has stated at bar that the names have already been finalised and sent to the Indian Olympic Association.



17. The court has to take into account that the Selection Committee/Expert Committee has to take account numerous factors while taking decision of selecting sportsperson to represent the country. This exercise cannot be as simple as comparing scores based on individual performances. In the present case also Committee of Administrator has weighed different factors and therefore, this Court finds itself unable to interfere in exercise of its power of judicial review. This Court also finds complete absence of any arbitrariness or mala fide in the decision arrived at by the Committee of Administrators.

18. To represent a nation and to participate, perform and excel in the arena of international sports, a player must not only possess physical but great mental and emotional strength and agility. It is thus pivotal that there should be no uncertainty in the minds of the players. Such litigations may disrupt and impact the preparation and performance of the players.”

(emphasis supplied)

17. All these judgments have also been considered by this Court in its judgment dated 22.07.2023 in **W.P.(C) 9593/2023** titled as Sujeet & Anr. v. Union of India & Ors. wherein this Court has held that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India does not interfere with the decision arrived at by the experts but it only examines as to whether the decision taken is just, fair and reasonable.

18. A perusal of the above judgments shows that in matters of selecting the best person to represent the country in the international events the Courts should not interfere with the criteria set out by the experts in the field. The affidavit filed by the PCI states that in the discipline of Badminton the



matters are handled by the respective members of the National Sports Federation and the PCI acts only as a nodal agency in case of multiple disciplinary sports events like the Asian Para Games. The decision taken by the representatives of the Badminton Association of India and the PCI in restricting the selection trials for selection of the Indian teams in order to finalise the Indian Para Badminton Team for the Asian Para Games 2023 only to those players whose performance in the individual events during the last twelve months prior to the commencement of the event is not be less than the performance achieved by the 8th position holder of the 2018 Asian Games in measurable sports and for team events, only those sports which have achieved a ranking up to 8th among participating countries of Asia in the last one year should be considered for participation in Asian Games 2022 cannot be found fault with. The minutes of meeting clearly indicates that the basis of forming the criteria is only to have players having probability of winning medals in the Asian Para Games 2023 cannot be said to be against national interest and as stated above, the basis for finalising the criteria is only to ensure that players having probability of winning medals in the Asian Para Games are selected and, therefore, it does not require any interference.

19. With this observation, the Writ Petition is dismissed. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

JULY 28, 2023

Rahul