



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

Date of decision: 04th OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 12093/2023**

YAMINI MOURYA & ORS.

..... Petitioners

Through: Mr. Siddhant Sharma, Advocate.

versus

INDIAN OLYMPIC ASSOCIATION & ORS.

..... Respondents

Through: Mr. Pavan Narang, Sr. Panel Counsel
with Mr. Himanshu Sethi and Ms.
Aishwarya Chhabra, Advocates for
R-2.

Mr. Harshit Jain and Mr. Prakhar
Sharma, Advs. for R-3/Sports
Authority of India.

Mr. Bharat Gupta, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners have approached this Court by way of this writ petition seeking a direction to Respondents No.2 and 3 to send the names of the Petitioners to represent India for participating in the discipline of Judo in their respective weight categories in the forthcoming Asian Games to be held in Hangzhou, China.
2. Petitioner No.1/Yamini Mourya is an athlete in (-57 kg) category, Petitioner No.2/Swaita is an athlete in (-48 kg) category, and Petitioner No.3/Vikas Dalal is an athlete in (-73 kg) category.
3. It is contention of the Petitioners that for the purpose of selecting the



team to represent the country in Judo, trials were held between 5th and 8th April, 2023. The Selection Committee was constituted by the Administrator of Judo Federation of India for the said purpose. It is stated that 26 athletes were shortlisted, out of which the athletes who obtained the first position were to be automatically sent for the 19th Asian Games.

4. It is stated that the Petitioners herein stood first in their respective weight categories. It is stated that on 10.07.2023, an entirely different new criteria was adopted by the Respondents for the purpose of selection of individual and teams for participating in the forthcoming Asian Games. It is stated that the Petitioners wrote letters to the Sports Authority of India stating that they had excelled in the selection trials and that they should be permitted to represent the country in their respective weight categories.

5. It is stated that on 24.08.2023, the Ministry of Youth Affairs & Sports released a list of names of sportspersons who were to represent India in various disciplines in the forthcoming Asian Games, and the names of the Petitioners were not reflected in the list despite having stood first in the selection trials.

6. It is stated that repeated lists are being released and names of athletes in various disciplines are being included but the names of the Petitioners have not been included in those lists.

7. Aggrieved by the non-selection of the Petitioners in their respective weight categories in the discipline of Judo, the Petitioners have approached this Court by filing the instant writ petition.

8. Notice was issued on 14.09.2023. On the said date, there was no representation on behalf of Respondent No.1/Indian Olympic Association.

9. Mr. Pavan Narang, learned Sr. Panel Counsel for Ministry of Youth



Affairs & Sports, was asked to take instructions as to how the players were being selected and the matter was adjourned to 15.09.2023.

10. On 15.09.2023, when the matter was taken up, on the said date also, there was no representation on behalf of the Indian Olympic Association.

11. Heard learned Counsel for the Petitioners and learned Counsel for Respondents No.2 and 3.

12. The short contention of the Petitioners is that the selection criteria which has been introduced *vide* letter dated 10.07.2023 cannot be the basis for rejecting the inclusion of the name of the Petitioners for representing the country in their respective weight categories in the discipline of Judo.

13. At this juncture, it is relevant to quote the criteria adopted by the Respondents for the individual and team events for participating in the Asian Games. The letter dated 10.07.2023, which was sent by Respondent No.2 to the President and Secretary General, Indian Olympic Association and the President and Secretary General of all the National Sports Federations (NFSs) recognized by the Ministry, laying down the selection criteria for the players to represent the country reads as under:-

“(i) In the individual events during the last twelve months prior to the commencement of the event, the performance of the sportspersons should not be less than the performance achieved by the 8th position holder of the 2018 Asian Games in measurable sports.

(ii) 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.

(iii) In non-measurable individual sports disciplines, the sportspersons must have achieved 8th rank in the



last 12 months. In sports events where rankings are not maintained or where sportspersons have not been able to improve their ranking on account of reasons like lack of exposure in international tournaments, appropriate criteria must be adopted by the NSF in consultation with the Ministry of Youth Affairs & Sports. In sports competitions where the number of participants is limited, stricter norms of selection will be prescribed.

(iv) Further, where, in the opinion of the experts of specific sports disciplines, and that of Sports Authority of India, participation of individuals and teams in relaxation of the above criteria is recommended with justifiable reasons, the same will be considered in the Ministry for appropriate decision.”

14. It is the contention of learned Counsel for the Petitioners that India did not send athletes to represent the country in the weight categories of (-48 kg) and (-57 kg) for women and (-73 kg) category for men. He, therefore, states that in absence of any participation, the sports of Judo which is a non-measurable individual sport, the Petitioners' performance cannot be evaluated on the basis of Clause (i) of the letter dated 10.07.2023 issued by Respondent No.2. He states that Clause (iii) of the letter dated 10.07.2023 is an extremely vague category. He states that Clause (iii) deals with non-measurable sports which does not indicate the event in which the individual sportsperson should have achieved 8th rank in the last 12 months. He, therefore, states that the Petitioners, who had stood first in the trials, cannot be excluded on the basis of the criteria so evolved *vide* letter dated 10.07.2023.

15. *Per contra*, Mr. Pavan Narang, learned Sr. Panel Counsel for



Respondent No.2, contends that the Respondents took a conscious decision to change the criteria for selection of players to represent the country. He states that decision was taken to select only those players who had the probability to win a medal for the country in the events of Judo. He states that in the sport of Judo, all the athletes have secured world rankings, and these ranking were analyzed by the Respondents on 15.07.2023. He states that the ranking of every athlete in their respective weight categories was made, taking into account the ranking achieved by the athletes of countries who were participants in the Asian Games. The sportspersons were re-ranked for each of the weight category. He states that as per the Asian Ranking, Avtar Singh was ranked at No.6 in the (-100 kg) category for men, Garima Choudhary was ranked at No.8 in the (-70 kg) category, Indubala Devi Maibam was ranked No.8 rank in the (-78 kg) category and Tulika Maan was ranked at No.6 in (+78 kg) category for women.

16. He states on the other hand, Petitioner No.1/Yamini Mourya was ranked 10th in the (-57kg) category, Petitioner No.2/Swaita was ranked 10th in the (-48 kg) category for women and Petitioner No.3/Vikas Dalal was ranked 16th in the (-73 kg) category for men. It is stated that the players were selected to represent the country on this basis. Learned Counsel states that the selection had been done purely keeping in mind the rank which each of the player would be placed in Asia and only such of those sportspersons who achieved 8th rank in their category in Asia were selected.

17. Learned Counsel for Respondent No.2 states that the reason for discarding the performance in the trials was that a policy decision had taken to send the best players in the country, i.e. those who possessed the chance of winning a medal, to participate in the Asian Games. He states that Clause



(iv) of the criteria laid down *vide* letter dated 10.07.2023 provides that if the experts of specific sports discipline and the Sports Authority of India were of the opinion that even though the individual or teams who have not achieved 8th rank in Asia but the criteria should be relaxed and recommend sending of the teams and sportspersons with justifiable reasons, the same would have been considered by the Ministry of Youth Affairs & Sports. Mr. Narang states that no recommendation has been received by the Sports Authority of India in the case of the Petitioners who are ranked 10th and 16th in their respective categories.

18. The selection criteria has been evolved by experts and this Court is of the opinion that the criteria which has been evolved by the Respondent No.2 on 10.07.2023, is not perverse. The writ court must only see whether the criteria which have been arrived at is in good faith and whether the decision is reasonable. The writ court must not sit as an Appellate Authority over the decisions arrived at by experts if the same is reasonable and has been taken in good faith.

19. A Coordinate 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.”

20. 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)

21. 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)

22. The criteria adopted by the Respondents by ranking the players in their respective weight categories, keeping in mind their world rankings and arriving at their respective Asia ranking and to restrict only those players who have achieved 8th rank in their respective category to be sent to



represent the country in Asian Games, cannot be said to be arbitrary or perverse. There is nothing on record which shows that the criteria has been evolved to oust the Petitioners herein. It has been found that only three athletes in women category in -70 kg, -78 kg and +78kg category and one male athlete in -100 kg category alone satisfy the criteria evolved by the Respondents and they have been selected to represent the country in the Asian Games.

23. Even if two opinions are possible, the Court while exercising its jurisdiction under Article 226 of the Constitution of India must restrain itself from substituting its opinion to the decision arrived at by the authorities. This Court, therefore, does not find any merit in the writ petition.

24. The writ petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 04, 2023

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