

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 3024 of 2015 (C)

PETITIONER(S):

1. **SRUTHI MOL N, AGED 24 YEARS,
W/O. MANOJ R., CHUKKITTUDAKKAM HOUSE, ATTENGANAM P.O.,
ANANDASHRAM(VIA), KASARAGOD DISTRICT-671 531.**
2. **ANJU BALAKRISHNAN, AGED 20 YEARS,
D/O. K.BALAKRISHNAN, RESIDING AT PUTHIYEDATH HOUSE,
KATTIPOLL P.O., NILESHWAR(VIA), KASARAGOD DISTRICT-671 314.**
3. **RESHMA P.P., AGED 22 YEARS,D/O. KUNHIRAMAN,
RESIDING AT PUTHIYAPURAYIL HOUSE,
ERIAM P.O., MATHAMANGALAM(VIA), KANNUR DISTRICT-670 306.**

**BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS.SRI.S.M.PRASANATH
SRI.C.DINESH
SRI.G.RENJITH
SMT ASHA BABU
SMT AMMU CHARLES
SMT.JINNU SARA GEORGE**

RESPONDENT(S):

1. **THE KERALA SPORTS COUNCIL,
THIRUVANANTHAPURAM-695 001,
REPRESENTED BY ITS SECRETARY.**
2. **THE KERALA STATE VOLLEYBALL ASSOCIATION,
AFFILIATED TO THE VOLLEYBALL FEDERATION OF INDIA,
REPRESENTED BY ITS SECRETARY, PROF. NALAKATH BASHEER,
NOOR MAHAL, PERINTHALMANNA, MALAPPURAM-679 322.**
3. **NATIONAL GAMES SECRETARIAT,
CHANDRASEKHARAN NAIR SPORTS COMPLEX,
CHANDRASEKHARAN NAIR STADIUM, PALAYAM,
THIRUVANANTHAPURAM-695 001,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER & SECRETARY.**

**R1 BY SRI.K.ANAND,SENIOR ADVOCATE
ADV. SMT.LATHA KRISHNAN, SC, KERALA STATE SPORTS COUNCIL
R2 BY ADV. SRI.U.K.DEVIDAS
BY ADV. SRI.SREELAL N.WARRIER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

WP(C).NO.3024/2015

APPENDIX

PETITIONER'S EXHIBITS:

NIL

RESPONDENT'S EXHIBITS:

**EXT.R2(A) COPY OF THE LIST OF SELECTED PLAYERS SIGNED BY THE
ELECTION BOARD MEMBERS WITH TYPED COPY.**

EXT.R2(B) COPY OF THE JUDGMENT DATED 19/12/2014 IN WP(C).NO.32988/2014.

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 3024 of 2015

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Dated, this the 9th day of February, 2015

JUDGMENT

The petitioners have approached this Court seeking to declare that selection of State Volley Ball team for participating in the 35th National Games is not correct or proper and to direct the respondents to include the names of the petitioners as well in the team representing the State.

2. The case of the petitioners is that they have represented the Nation and also the State on different occasions and have won medals for the country in various tournaments. The credentials of the petitioners have been given in paragraph 1 of the writ petition. It is also stated that the one of the petitioners was the captain of the Indian team and their performance was beyond par. In connection with the 35th National Games, selection was conducted by the second respondent association at Thiriprayar. In spite of the best performance put in by the petitioners, when the team was announced they came to be eliminated. After eliminating the better candidates like the petitioners, persons by name Miss. Jini K.S., Miss Sruthi M and Miss Sruthy Johny have been inducted as stated in paragraph 3 of the

writ petition.

3. It is contended that absolutely no parameters or criteria have been laid down for selection and that there is a 'public duty' vested upon the first and second respondents, who are answerable before this Court. It is further pointed out that the selection held at Thriprayar was common for selection of the team to both the National Games and also the Federation Cup Volley Ball. Though the petitioners have been eliminated from the State team for the National Games, they have been found eligible and have been required to represent the State in the Federation Cup. This by itself shows that there is no complaint with regard to the performance of the petitioners and that the elimination of the petitioners from the State Team in National Games was only to accommodate persons of choice of the respondents 1 and 2/selectors. The said action is tainted with malafides and arbitrariness, which ought to have been avoided, and more so, in the light of the ruling rendered by the Apex Court in **Charu Khurana and others Vs. Union of India and others 2015 (1) SCC 192**. The petitioners who are players with outstanding achievement stand eliminated, while persons with lesser merit have been selected, which virtually amounts to

violation of the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India. It is pointed out that there is absolutely no justification or reason for eliminating the petitioners from the Kerala team for the National Games, more so when they are found eligible to represent the State in the Federation Cup.

4. The petitioners also contend in paragraph 3 of the writ petition that, instead of appreciating their merits, skill and selecting them for participation in the National Games, some disciplinary proceedings are sought to be pursued against them, which is only with a bad motive. This made the petitioners to approach this Court by filing the writ petition for immediate interference, since the event (Volley Ball) in the National Games is proposed to be held at Calicut Indoor Stadium between 09.02.2015 and 13.02.2015.

5. The 2nd respondent has filed a detailed Statement, pointing out that there is absolutely no merit or bonafides in the writ petition. It is stated that, the idea and understanding of the petitioners as to the selection conducted and the position of the petitioners is thoroughly wrong and misconceived. The selection was conducted by a Committee consisting of the following

members:

SELECTION COMMITTEE (WOMEN)

1. Prof. Nalakath Basheer, Secretary, State Association.
2. Shri. Anil Kumar, State Coach
3. Smt. K.C. Elemma - Arjuna Awardee
4. Smt. Annakutty - Former International Player
5. Shri. Cyril C. Valloor, Former International Volleyball Player
6. Observer from Kerala State Sports Council

All the above persons were highly skilled, experienced and were having high reputation and further that the selection was conducted strictly in conformity with the relevant norms. The concerned selectors had participated in International events and some of them are 'Arjuna' Awardees.

6. With regard to the selection exercise, it is stated that a meeting was convened by the 2nd respondent on 23.08.2014 as to the modalities to be pursued in connection with selection of the team, after evaluation of the performance and physical ability of the players. It was accordingly, that a tournament was conducted at Wayanad and all the six members of the Selection Committee were present during the tournament. The Selection Board

shortlisted 24 players, based on their performance and the petitioners were also included therein. It was thereafter that, a coaching camp was conducted at Thriprayar and members of the Selection Board also camped at Thriprayar, taking earnest efforts and pains so as to assess the performance of the players in the coaching camp as well. It is stated that performance of the petitioners was below the performance of the others selected and included in the 'first twelve', based on the merit, skill and ability. The Selection Committee identified the first twelve players from the 24 players who participated in the coaching camp and the petitioners were also included as the 'reserves' in the team. It is pointed out that, if any vacancy arises in the team, the petitioners also will be considered and as such, the plea that they have been excluded or eliminated is far from the track of truth.

7. With regard to selection of the petitioners for participating in the Federation Cup, it is pointed out that three players in the State Team were employees in the Indian Railways, who have to play for the Railways' Team in the Federation Cup and as such, there arose three vacancies in the State team for the Federation Cup. It was accordingly, that the petitioners got a chance to be

included in the team. It is also pointed out that no separate selection was done and the coaching camp held at Thriprayar was common for both the National Games and the Federation Cup. Particulars of the players, who were selected and included in the 'first twelve', along with the particulars of the players included as 'reserved' (which includes the petitioners as well), duly signed by the members of the Selection Committee, has been produced as Annexure R2(a). It is asserted that there was no bias or prejudice against the petitioners and that there was no violation of any norms, adding that the selection was strictly following all the relevant guidelines issued by the Sports Council.

8. Heard the Mr.K. Ramkumar, the learned Senior Counsel appearing for the petitioners, Mr. K. Anand, the learned Senior Counsel appearing for the 1st respondent Sports Council, Mr. U.K. Devidas the learned counsel appearing for the 2nd respondent and Mr. Sreelal Warriar, the counsel appearing for the 3rd respondent.

9. When the matter came up for consideration before this Court on 04.02.2015, the following interim order was passed:

"The learned Senior Counsel for the petitioners points out that, despite the credentials of the petitioners, who have represented the Nation and have won gold on

different occasions and in spite of the fact that, one of the petitioners happened to be the Captain of the Senior National Team as explained in paragraphs 1 and 2 of the writ petition, they stand excluded from participating in the National Games, whereas the persons now selected and included as the 'first six' have never represented the country at any point of time and they stand much on the lower pedestal.

2. The learned Standing Counsel for the 1st respondent is required to make available the file regarding selection.

List the matter for further consideration on 06.02.2015."

Pursuant to the above order, the learned Standing Counsel for the 1st respondent has made available the file regarding the selection, wherein particulars of all the persons selected and included in the team have been given, referring to their achievements.

10. The basic question to be considered is whether there is any conscious exercise or arbitrary proceeding to eliminate the petitioners herein, who are stated as outstanding players and to fill up the slots by less meritorious candidates. In other words, whether there is any attempt on the part of the respondents 1 and 2 to extend any undue favours to any undeserving candidates, compromising with the quality/performance/skill of the participants

and whether this has adversely affected the rights and interests of the petitioners to be included in the State Team for the National Games, if they are otherwise meritorious and rated better than the others, is the point to be considered.

11. It is settled law that in matters like this, Court has got only a limited roll and selection of a sports personnel is an exclusive affair job of the selectors/experts. This Court does not have any machinery or expertise to ascertain the merit, skill or performance of the participants. Nor is it proper for the Court to substitute its views with that of the competent authority, who is to conduct the selection. Scope of the scrutiny is only to see whether the process of selection was transparent and above board, or is it tainted in any manner, either by the violation of relevant norms/guidelines or by showing undue favoritism brought out by the materials on record.

12. Mr.K.Ramkumar, learned Senior counsel appearing for the petitioners points out that, this Court can very well examine the facts and figures in this regard and the respondents 1 and 2 cannot claim any exemption, they being authorities vested with some public duty. Reliance is sought to be placed on the decision

rendered by a Division Bench of this Court reported in **Kerala Roller Skating Association V. Ernakulam District Roller Skating Association & Others (2015 (1) KLJ 362)**. Similarly, there cannot be any undesirable exclusion denying the rights of the candidates causing infringement of Article 14, 19 and 21 of the Constitution of India, in the light of the ruling rendered by the Apex Court in **2015 (1) SCC 192** (cited supra).

13. With regard to the public duty and the scope of scrutiny of the affairs of the respondents 1 and 2, no dispute is raised by the said respondents that they are beyond the reach of this Court. Similarly with regard to the law laid down by the Apex Court in **2015 (1) SCC 192** (cited supra) dealing with the principle of equality of opportunity also, there is no dispute. It was a case where membership was denied to the concerned petitioner in an association as a cine make up artist and hairstylist, for the reason that, as per the bye-laws, women could not be given membership as Cine makeup artists and hence they could function only as hairstylists. Various aspects governing the principle of equality and gender discrimination were discussed and the challenge raised against the course pursued by the concerned association was

upheld and interfered with, giving appropriate directions to the authorities under the Trade Union Act to redress the grievance, also giving a positive declaration that women were of course entitled to work as Cine Makeup Artists / Hairstylists as well. The said decision, no way comes to the support of the petitioners herein, as no gender discrimination is involved and the question is only with regard to who among the available were to be selected.

14. There cannot be any doubt that the very purpose of selection is to identify and select the best available candidates. The learned Senior counsel appearing for the petitioners points out that the level of performance of the petitioners cannot be disputed in so far as they have already been selected in the same selection process, to be member of the State team to participate in the Federation Cup. In response to the said contention, Mr. K.Anand, learned Senior counsel appearing for the 1st respondent submits that performance of the petitioners herein was evaluated to be of lesser merit than that of the others. But they were given placement as "reserves" in the State Team to participate in the National Games. Same was to be the team for the Federation Cup as well, but for the fact that 3 of them by name Poornima, Soumya

and Terin Antony happened to be employees of the Railways who could represent only the Railways in the Federation Cup. As such, they had to be relieved from the State Team for the Federation Cup; by virtue of which 3 slots arose, when the petitioners became fortunate to be invited and included as members of the team, as they were already enlisted as 'reserves'.

15. The learned counsel further points out that, the complaint of the petitioners is mainly with regard to the inclusion of the players by name Jini K.S, Sruthy M and Sruthy Johny(named in paragraph 3 of the writ petition) . It is asserted that the player by name Jini (Positioned as 'Setter') had represented the Junior Indian Team twice and has participated in the current Junior Asian Championship and South Asian Championship. The player by name Sruthy was a member of the senior National Team (runner up) youth National winner and All India University winner (Positioned as 'Attacker'). The third person by name Sruthy Johny is the Youth National runner up and Junior National Participant (Positioned as 'Blocker') and also All India Inter University runner up and also the 'Best Attacker' award winner. All the above three persons stand on a better pedestal than the petitioners herein and hence were

selected accordingly. It is also pointed out that, in the Federation Cup tournament in the last week, the State team consisting of the petitioners as well had lost to the Railways team. But when it came to the finals, the petitioners were not made to play and the others already selected and included in the team proved their worth and defeated the Railways, thus winning the Gold medal on 5.2.2015. This by itself justifies the selection and hence the same is not assailable under any circumstances, submits the learned Counsel.

16. The ability, skill and performance of a player may not be consistent always, which may vary from time to time and the best need not be the best always. The petitioners may be good players. But at a given point of time, the performance of the others came to be rated better and hence included in a better position. Merely for the reason that one of the petitioners happened to be the captain of National team at one point of time or that they had represented the Nation or the State by itself is not the sole yardstick to have them included in the Team for ever. The traits of the participants in the coaching camp were meticulously analysed along with their performance. It is seen that the members of the Railways' team who are selected to represent the State in the National Games are

by name Poornima, Soumya and Terin Antony. The player by name Poornima participated in the last Asian Games and represented India five times and is positioned as a 'Blocker'. The player by name Soumya had participated in the last Asian Games and had represented India 8 times, who is positioned as 'Attacker'. The other player by name Terin Antony had participated in the last Asian Games and had represented India 8 times (positioned as 'Setter') and she is the current Indian Captain.

After hearing both the sides and also going through the pleadings and proceedings and the contents of the file produced before this Court, it is seen that, the selection conducted is perfectly within the four walls of law and is not assailable under any circumstance. No tenable ground has been brought out to call for interference. The writ petition fails and the same is dismissed accordingly.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd/sp
pn/kp