

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

% **Date of decision: 18th May, 2016.**

+ **W.P.(C) No. 8184/2015 & CM No.17119/2015 (for directions)**

VINOD KUMAR **..... Petitioner**

Through: Mr. Rahul Mehra, Adv.

Versus

UNION OF INDIA & ORS **..... Respondents**

Through: Mr. Sanjay Jain, ASG with Mr. Vikram Jetley, Ms. Namisha Gupta, Mr. Vidur Mohan & Mr. Akash Nagar, Advs. for UOI.
Mr. Anil Grover with Ms. Noopur Singhal, Mr. Mishal Vij & Mr. Satish Kapoor, Advs. for R-2/SAS.
Mr. Sumeet Verma & Mr. Amit Kala, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India was filed (i) seeking a mandamus to the respondent No.1 Union of India (UOI) to annul the award given to wrestling coach Mr. Anup Singh (respondent No.4) and to award the same to the petitioner, being a more deserving candidate; and (ii) alternatively seeking a mandamus directing the respondent No.1 UOI, respondent No.2 Sports Authority of India (SAI) and respondent No.3 Dronacharya Award Selection Committee to additionally award the

Dronacharya Award to the petitioner for his performance as a coach based, on merit as per the point system.

2. The petition came up first before this Court on 26th August, 2015 when notice thereof was issued. On the next date i.e. 28th August, 2015, the respondent No.1 UOI was, by way of an interim order, directed to include the name of the petitioner in the list of awardees for the Dronacharya Award 2015.

3. The respondent No.1 UOI appealed and vide order dated 29th August, 2015 in LPA No.383/2015 (i) the presentation of the Dronacharya Award to the respondent No.4 as scheduled was permitted to go on but the decision of the Selection Committee conferring the said award on the respondent No.4 was ordered to be not treated as conclusive and was made subject to the outcome of this petition; and, (ii) it was further directed that in the event of this petition succeeding, the respondent No.1 UOI will take appropriate steps that may be directed in the judgment in this petition, including of conferment of the award on the petitioner.

4. Counter affidavits have been filed by the respondent No.1 UOI, respondent No.2 SAI and the respondent No.4 Mr. Anup Singh and to which rejoinders have been filed by the petitioner.

5. The counsels were heard on 16th November, 2015, 17th November, 2015 and 20th November, 2015 and judgment reserved.

6. It is the case of the petitioner:

(i) that the respondent No.1 UOI confers the Dronacharya Award for excellence in the field coaching of sportspersons;

(ii) that the nominations for Dronacharya Award are invited by the Ministry of Sports and Youth Affairs in the month of January each year from all National Sports Federations recognised by the Government of India, from the Indian Olympic Association, from the Sports Promotion and Control Boards and from State / Union Territory Governments;

(iii) that the respondent No.1 UOI has formulated a point system in accordance with the criteria for conferring Dronacharya Award and all nominations for the said award from the year 2013 onwards have been based on the point system;

- (iv) that the petitioner was also nominated with 420 points;
- (v) that the respondent No.1 UOI and the respondent No.2 SAI have evolved the system of reducing the points to a percentage in order to create a level playing field;
- (vi) that the petitioner was the National Wrestling Chief Coach during the relevant period with Mr. Yashbir, Mr. Virender, Mr. Anil Mann, Mr. Sujit Mann and the respondent No.4 Mr. Anup Singh being his assistant coaches;
- (vii) that Mr. Virender with 97 points and the respondent No.4 Mr. Anup Singh with 377 points were also nominated;
- (viii) that a coach is judged on the performance of the player he has coached and as such takes the points of the player;
- (ix) that the petitioner coached Mr. Sushil Kumar, Mr. Virender Dutt, Mr. Amit Kumar, Mr. Narsingh Yadav, Mr. Satyavart Kadiyan, Mr. Bajrang, Mr. Rajiv Tomar and Mr. Pawan Kumar who are all national champions and internationally acclaimed wrestlers;

(x) that in the video coverage of all the various competitions, it is the petitioner who is on the mat at the matches as is the normal practice for any coach;

(xi) that as per Clause 5.1 of the Dronacharya Award Scheme, the last four years immediately preceding the year of the award but not including the year of the award are to be counted;

(xii) that additionally Clause 6.8 of the Scheme states that international achievements in the year of the award as well as the three years immediately preceding the same shall be counted towards the points tally;

(xiii) that the Scheme provides for five awards to be given with two being for lifetime achievement in sports and three others;

(xiv) that as per the Scheme, if two coaches claim to have trained the same player(s), the Selection Committee can ask for affidavits from the sportsperson(s) in question in order to ascertain the veracity of the claim;

(xv) that along with the nomination of the petitioner, affidavits sworn by sportspersons in support of his claim were filed;

(xvi) that both, the petitioner and the respondent No.4 Mr. Anup Singh claimed credit for the performance of the same sportspersons and thus the affidavits of the sportspersons became important;

(xvii) that the point system was introduced pursuant to the order of the Court and to ensure transparency and fair play, with only 10% discretion vested in the Selection Committee;

(xviii) that as per Clause 11.7 of the Scheme, the decision of the Government pertaining to the award is final, with no appeal permitted thereagainst;

(xix) that the petitioner had been overlooked in favour of the respondent No.4 Mr. Anup Singh who had a lower aggregate of points than the petitioner.

7. The respondent No.1 UOI has opposed the petition contending:

(a) that the petitioner was nominated for Dronacharya Award for the year 2015 by Mr. Yogeshwar Dutt, a Rajiv Gandhi Khel Ratna Awardee (Wrestling);

- (b) that the nomination of the petitioner was placed before the Selection Committee headed by Mr. Dipankar Bhattacharya, a sportsperson of eminence;
- (c) that the Selection Committee was also apprised that the petitioner had been conferred with the Dhyan Chand Award in 2012 which is an equally prestigious award in the field of sports, also given by the respondent No.1 UOI;
- (d) that Dhyan Chand Award for lifetime achievement in sports and games is given to honour those sportspersons who had contributed to sports by their performance and continued to contribute to promotion of sports even after their retirement from active sporting career;
- (e) that the petitioner had also been conferred with Dhyan Chand Award in the year 2012 in recognition of his achievements as a sportsperson and his contribution to the promotion of sports after retirement from active sports;
- (f) that the Selection Committee for Dronacharya Award 2015 took note of the fact that the contribution of the petitioner as coach

had already been given due recognition by way of awarding Dhyan Chand Award in the year 2012;

(g) that the respondent No.4 Mr. Anup Singh also nominated / recommended for Dronacharya Award in the year 2015 had secured 80 marks (absolute marks 377.50) as compared to 76.82 marks (absolute marks 362.50) of the petitioner on the basis of the medals won by their trainees;

(h) that the Selection Committee gave 15 marks out of 20 discretionary marks to the respondent No.4 Mr. Anup Singh and 5 marks to the petitioner;

(i) that while the overall marks of the respondent No.4 Mr. Anup Singh were 95 out of 100, the overall marks of the petitioner were 81.82 out of 100;

(j) that one of the athletes Mr. Narsingh Yadav had on 22nd September, 2015 submitted a statement before the respondent No.1 UOI that he had not given any affidavit to any other coach apart from that given to Sh. Jagmal Singh thereby falsifying the claim of the petitioner;

(k) that this Court ought not to enter into the arena of sports and reassess the merits.

8. The respondent No.2 SAI in its counter affidavit has pleaded:

(i) that the Dronacharya Awards are awarded as per the Scheme for Dronacharya Award as amended on 23rd February, 2015, for Outstanding Coaches in Sports and Games and as per Clause 11.6 of the Scheme, it is only the respondent No.1 UOI which can grant or annul the award;

(ii) that the respondent No.2 SAI has no power under the Scheme to grant or annul the award;

(iii) that the role of the respondent No.2 SAI is only to forward the verification report of the nominees to the Screening Committee established under Clause 8 of the Scheme and the respondent No.2 SAI otherwise has no role;

(iv) that the final recommendation list is also made by the Selection Committee as per the marks obtained in terms of the criteria indicated in the Scheme and which is in turn placed before the respondent No.1 UOI to take a final decision.

9. The respondent No.4 Mr. Anup Singh in his counter affidavit has pleaded:

(a) that he had been selected for the Dronacharya Award in the year 2015 by a Selection Committee comprising of eleven members constituted for the said purpose in accordance with the Scheme;

(b) that the petitioner had never received any cash award as a personal coach which is given on the recommendation of the player by the Government; in comparison, the respondent No.4 had been recommended by two players namely Ms. Geetika Jakhar, once World No.2 Women Wrestler and Arjuna Awardee and Mr. Amit Dhankhar, Gold Medal Awardee in Senior Asian Wrestling Championship 2013 and two times Gold Medal Awardee in Commonwealth Wrestling Championship 2011 and 2013;

(c) that the petitioner was a wrestling coach from 2010 till he was sacked on 14th May, 2015; during this tenure four other wrestling coaches were conferred with the Dronacharya Award and the claims of the petitioner therefor were rejected twice, once in 2013 and the other in 2015;

(d) that the respondent No.4 Mr. Anup Singh had been selected and conferred the Dronacharya Award 2015 in accordance with the Scheme;

(e) that as per the amended Dronacharya Award Scheme 2015, the discretionary weightage with the Selection Committee is not 10% but 20%.

10. Need to refer to the rejoinders filed is not felt.

11. The counsel for the petitioner in his opening submissions reiterated his case as pleaded in the petition.

12. The learned ASG took me through the Scheme for Dronacharya Award for outstanding coaches in sports and games as amended on 23rd February, 2015 and drew attention to:

(i) Clause 5.1 to show that to be eligible for the award, the coach should have produced outstanding achievement over a period of four years immediately preceding the year in which the award is to be given and that the nominated coach will have to submit details of periods for which he/she coached the disciple(s) in question against whose performance he/she is seeking the award and to further show

that the Ministry reserves the right to seek affidavit from the sportsperson concerned, where it was found that more than one coach was claiming credit for achievements of a sportsperson;

(ii) Clauses 6.1 & 6.2 to show that who all can make nominations and that nominations beyond maximum of two will not be considered and if more are made, only the first two nominations sent by the nominating agency will be considered;

(iii) Clause 7 providing the procedure for scrutiny of nominations;

(iv) Clause 9.1 to show the constitution of the Selection Committee and argued:

(a) that the petitioner at the National Coaching Camp for Senior Free Style Wrestlers from 25th November, 2012 to 31st March, 2013 was Chief Coach of Delhi and not the Chief Coach of the camp;

(b) that though the petitioner along with his nominations submitted affidavits of the players coached by him but all the affidavits are of the same date and in the same language and have been encrypted on stamp papers brought in seriatim;

- (c) that one of the said affidavits is disputed as the signature of the sportsperson thereon differ from the signatures of that sportsperson on his passport;
- (d) that though the respondent No.4 Mr. Anup Singh had along with his nomination not submitted any affidavit but it was not mandatory to submit the affidavits;
- (e) that all the persons whom the petitioner claimed to have coached were marked for the petitioner;
- (f) that as per the amended Scheme, the Selection Committee has 20% discretionary marks;
- (g) that the claim of the petitioner on the basis of being the Chief Coach as compared to the respondent No.4 Mr. Anup Singh who was merely a Coach, is faulty;
- (h) that it is not the case of the petitioner that the selection of the respondent No.4 Mr. Anup Singh is owing to any ill will towards the petitioner or owing to any favour practiced in favour of the respondent No.4 Mr. Anup Singh;

- (i) reliance was placed on ***Punjabi University Vs. Union of India*** MANU/DE/3400/2011 where I have observed that in matters relating to sports, judicial review is entertainable only on charge of bad faith in declaring the winner and not on the charge of error of judgment in declaring the winner;
- (j) ***Union of India Vs. S.L. Dutta*** (1991) 1 SCC 505 to contend that nothing in the Constitution warrants a rejection of an expert's conclusion;
- (k) ***Dr. Basavaiah Vs. Dr. H.L. Ramesh*** (2010) 8 SCC 372 also laying down that Courts should show deference to recommendation of experts committee, particularly when no *mala fides* have been alleged against experts constituting the committee;
- (l) ***Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly*** JT 2010 (3) SC 510 to contend that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material /

important facts which have bearing on the adjudication of the issues raised and it was argued that the petitioner had not done so;

(m) *Union of India Vs. Bilash Chand Jain* (2009) 16 SCC 601 to contend that the Court cannot dictate the decision of the statutory authority and cannot direct the statutory authority to exercise its discretion in a particular manner and can only command the statutory authority to perform its duty in accordance with law.

13. The counsel for the respondent No.4 argued:

(I) that the petitioner had approached the Court with unclean hands and had not disclosed the controversy about the affidavits submitted by him and regarding Mr. Narsingh Yadav who had denied having given any affidavit to the petitioner;

(II) that the entire case of the petitioner is premised on the petitioner having scored 420 points but which is not borne out from the record;

(III) that the petitioner pegged his case on the Scheme without noticing the amendment thereto and thereby misled the Court (I must record that the counsel for the petitioner fairly admitted his mistake to the said effect);

(IV) that the case of the petitioner was further premised on the discretionary marks being 10% instead of 20%;

(V) that the claim of the petitioner was yet further premised on he being the Chief Coach at the Camp aforesaid at Sonapat when the status of the petitioner was the same as that of the other coaches at the said Camp and the words 'Chief Coach' against the name of the petitioner were used only because Delhi which had nominated the petitioner had sent two coaches instead of one coach and of which two coaches, the petitioner was described as Chief Coach; however the same did not make the petitioner "Chief" of the respondent No.4 Mr. Anup Singh nominated by Haryana;

(VI) that the petitioner, in his claim for Dhyan Chand Award during the same period, had also described himself as a Chief Coach;

(VII) that the reliance by the petitioner on the affidavits filed along with his nominations is misconceived as the affidavits of the sportspersons were to be asked by the Selection Committee, if they so desired and were not required to be submitted by the nominees along with their nomination;

(VIII) relied on *Shri Krishna Janmotsav Samiti, Punjabi Bagh (Regd.) Vs. MCD* 182 (2011) DLT 155, *Oswal Fats and Oils Limited* and *Dr. H.L. Ramesh* supra.

14. The counsel for the petitioner in rejoinder:

(A) drew attention to judgment dated 4th October, 2013 of this Court in W.P.(C) No.5674/2012 titled *Shaikh Abdul Hameed Vs. Union of India* where, while dealing with a challenge to the conferment of Arjuna Award, it was opined that the Government of India must necessarily consider framing of appropriate criteria / guidelines to be adopted by Selection Committee while making recommendations for conferment of Arjuna Award since in the absence of any guidelines / objective criteria, there is always a possibility of arbitrariness and sometimes favouritism creeping in the

recommendations of the Selection Committee, irrespective of the status of the persons constituting the Selection Committee;

(B) argued that the contention of the respondents denying that the petitioner was not 'Chief Coach' is an afterthought; it is shown that though RSPB had also sent two coaches to the Sonapat Camp but both were described as 'Coach' only with neither being described as 'Chief Coach';

(C) invited attention to the Certificate dated 19th August, 2015 of Wrestling Federation of India certifying that the petitioner was the Chief Coach of Indian Senior Free Style Wrestling Team;

(D) showed from the counter affidavit of the respondent No.4 Mr. Anup Singh that the respondent No.4 Mr. Anup Singh also considered the petitioner as the Chief Coach;

(E) argued that the Chief Coach, as distinct from other coaches, sits in the selections as the National Coach;

(F) contended that the respondent No.4 has been wrongly awarded 40 points for coaching Ms. Geetika Jakhar at Lucknow as he could not be at Sonapat and at Lucknow at the same time;

(G) drew attention to the analysis done by the Selection Committee of the various nominees;

(H) contended that the petitioner could not be non-suited for the mistake in filing the wrong (un-amended) Scheme;

(I) argued that the fact that the petitioner was a Dhyan Chand Awardee is no ground to deny him the Dronacharya Award;

(J) argued that 80 points besides 20 discretionary points have also been arbitrarily dealt with;

(K) contended that the respondent No.4 Mr. Anup Singh was in the enclosure in only two tournaments during the year 2010-2014, when the petitioner was present in all the tournaments;

(L) contended that Mr. Narsingh Yadav had given the letter relied upon as he is an employee of SAI.

15. The learned ASG clarified that Mr. Narsingh Yadav is not a part of respondent No.2 SAI as was suggested but an employee of Maharashtra Police. It was further contended that though in the petition there are no pleas of *mala fides* or challenge to the points given by the Selection

Committee to the respondent No.4 Mr. Anup Singh, the same were pleaded as an afterthought in the rejoinder.

16. I am sure the Courts, as originally perceived, were not meant to adjudicate disputes as the present. I am further sure, if we proceed in the direction in which this writ petition is directed, the day is not far when the power of the High Courts of judicial review will be invoked also with reference to the decision of the Umpires / Referees on the sports field and to axiomatically have the outcome / result of a tournament / sport event / match annulled. The question which thus arises is, whether the Courts should allow themselves to be drawn into such disputes.

17. I have in this context in *Punjabi University* supra, concerned with the challenge to the conferment by the UOI and the Association of Indian Universities of Maulana Abul Kalam Azad trophy, to be given to overall top performing university in Inter University Tournaments of preceding year, *inter alia* held:

“12. I am further of the opinion that if the power of judicial review were to be extended to in matters such as these also, it would adversely affect the sports. This Court cannot appropriate to itself a position as of a Super Umpire or a Super Referee. If the powers were to so extend, then there would be no limit to the extent to which the Court will

*be called upon to exercise the same. The decision as to whom to award the Trophy, though based on an elaborate procedure still remains a decision as of a Referee or an Umpire in a Sport and the Court ought not to exercise domain over the same. Similar doubts were raised in **Law v. National Grey Hound Racing Club Ltd.** [1983] 1 WLR 1302 where it was held that if such matters are made to fall within the public law then “Where should we stop”. The majority Judgment in **Zee Telefilms v. UOI** 2005 (4) SCC 649 also found merit in the argument that if sporting bodies as Board for Control of Cricket in India (BCCI) were to be amenable to Writ Jurisdiction it would open the flood Gates of litigation under Article 226 and 32 of Constitution of India 1950. (See para 34 of the Judgement)*

14. One cannot also lose sight of the fact that the guidelines for selection for the Trophy make the decision of the MYAS to be final and binding. The petitioner made a claim for the Trophy agreeing to the guidelines which provide for the decision of the Government to be final and binding on all. Considering the nature of the claim, the decision of MYAS is found to be final and not interfere able even in exercise of powers under Article 226 and binding on the petitioner especially when there are no allegations of mala fide or bias. As aforesaid, there is an elaborate procedure for selection, with the Scrutiny Committee of AIU invites applications and claims, computes and prepares a statement of marks with the help of members of IOA, SAI and prominent sportspersons and the same is submitted to the Selection Committee constituted by MYAS and which Selection Committee as aforesaid also comprises of eminent sportspersons. Such experts having applied their mind, not only once but twice and having reached a conclusion that the respondent no.3 Guru Nanak Dev University deserves the Trophy for the year 2009-2010, the self-imposed limit of judicial interference prohibits this Court from looking further into the matter.

15. The counsel for the petitioner, has from the documents on record also urged that there are obvious mistakes in the computation done. It is however a settled principle that a mere mistake is not sufficient for this Court to exercise powers under Article 226. The Authority/Body whose decision under the Rules/Guidelines has been conferred finality and against whose decision no appeal is permitted, even if makes a mistake, such mistake is no ground for the powers under Article 226 to be exercised. A Six Judge Bench of the Apex Court as far back as in ***Hari Vishnu Kamath v. Syed Ahmad Ishaque*** AIR 1955 SC 233 held that Certiorari will not issue as the cloak of an appeal in disguise. It exists to correct error of law where revealed on the face of an order or a decision or irregularity or absence of or excess of jurisdiction where shown. It was further held that for a Writ of Certiorari to be issued, it should be something more than a mere error. Again, in ***Damoh Panna Sagar Rural Regional Bank and Anr v. Munna Lal Jain*** AIR 2005 SC 584 it was held that this court would not interfere with the decision unless it is illogical or suffers from procedural impropriety or shocks the conscience of the court in the sense that it is an defiance of logic or moral standards; the court would not go into the correctness of the choice open to the person vested with the power to make such choice and the court should not substitute it's decision over that of the said person. The scope of Judicial Review is limited to deficiency in decision making process and not the decision. In the present case, neither is there anything shocking the conscience of the court nor any error pointed out in the decision making process. It is the decision which is said to be erroneous and which adjudication is outside the ambit of exercise of powers of Judicial Review.

16. I am of the opinion that in matters relating to sports, Judicial Review is entertain able only on charge of bad faith in declaring the winner and not on the charge of an error of Judgment in declaring the winner. This has been evolved as the principle, though in cases seeking Judicial Review of

decisions of umpire and Referee made on the sports field but I see no reason to not apply the same to decision though not made on the sports field but of the like nature.

17. It was held as far as back in 1945 in the case of **SHAPIRO v. Queen County Jockey Club** 184 Misc. 295 [53 N.Y.S.2d 135], that in more than one sense officials such as Referees/umpires are truly judges of the fact and their decisions should receive great credence and consideration than the complaints of a disgruntled loser of a wager. It was further held that where there is no charge of bad faith against the steward, Judges/Referee or other officials of the sports, it can't ordinarily be the duty of the court to substitute its decision for that of those persons who were specifically charged with the duty of determining the winners. There is nothing to suggest that in India the position is any different or that it was intended to impose upon the courts any duty of decision in such matters. Similarly in **Michael Discenza, v. The New York City Racing Association, Inc** 134 Misc.2d 3 (1986) it was held that fear of a lawsuit for damages by anyone disappointed by decision of the Referee/umpire as a result of good faith determination rendered pursuant to broad discretion necessarily granted to such official would have a drastic inhibiting effect on their exercise of discretion and their professional judgment; that the decision of such officials who are otherwise well qualified must be final and binding. It was held that in the absence of a showing of fraud, collusion, gross abuse of discretion or a palpable abuse of authority amounting to illegality, interference by the courts cannot be invited. The Supreme Court of Georgia in **Georgia High School Association V. Waddell et al** 248 Ga. 542, 285 S.E.2d 7 (1981) went to the extent of saying that courts of equity are without authority to review decisions of Referee and umpires because those decisions do not present judicial controversy. I do not see the position of the Scrutiny Committee and the Selection Committee in the present case to be any different.

18. Supreme Court in *State of U.P. Vs. Johri Mal* (2004) 4 SCC 714 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 yet further held that decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. 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.

19. The Dronacharya Award with which this petition is concerned is an award for excellence in the field of coaching in sports. Such excellence is to necessarily depend on the perception of the person/s conferred with the

power of selection and may vary from person to person. The very fact that the Scheme for conferment of the award drawn up on the direction of this Court itself, though laying down the parameters of selection, confers the Selection Committee with a discretion of as much as 20%, is indicative of the selection being guided not by reason but by choice. Owing to the same, the person who has secured the highest marks as per the parameters laid down in the Scheme can still be denied the award by using the discretionary 20% marks. The said scheme is not under challenge.

20. In my view, jurisprudentially there can be no exercise of the power of judicial review over any administrative function which is based on such 'choice'. Judicial review as has been repeatedly said is of the decision making process and not of the decision. The power of judicial review can thus be exercised only when the decision making process is without any element of 'choice' and there can be no judicial review of a decision which is guided by 'choice' and not by reason. To hold otherwise would amount to the Court making a 'choice' and which the Courts ought not to and are not to make.

21. I find that Justice K.G. Balakrishnan sitting as a Single Judge of the High Court of Kerala in ***William John @ Gandeewan Vs. Minister for***

Cultural Affairs MANU/KE/0489/1993 concerned with a challenge to the presentation of “Ezhuthachan Award” observed that conferring of Awards and the mode of selection would always be subject to opposition and criticism and that even the Award of Nobel Prize is not free from such things but held that for matters like this, the principles of judicial review could not be applied and the Court cannot assume the role of the decision-making authority and do contrary to what has been done by the authorities. It was yet further observed that in the absence of any plea of any external considerations having motivated the conferment of the Award, the choice/selection made by the authorities empowered to do so could not be interfered with by the Court.

22. The Division Bench of this Court in *Vijay Shankar Pandey Vs. Union of India* 108 (2003) DLT 383, concerned with the challenge to the conferment of President's Police Medal for gallantry *inter alia* on the ground that the person selected for the Award had not shown any gallantry, also observed that in the absence of any allegations of *mala fides*, the decision could not be interfered with.

23. The High Court of England and Wales in ***Mckeown Vs. British Horseracing Authority*** MANU/UKWQ/0169/2010 also, citing earlier precedents, emphasised the desirability of affording bodies exercising jurisdiction over sporting activities as great a latitude as is consistent with the fundamental requirements of fairness and the fact that sports regulating bodies ordinarily have unrivalled practical knowledge of the particular sport that they are required to regulate. It was further held that the Courts must be slow to review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the Courts. It was yet further observed that the decisions of such bodies should not be tested on the anvil of the procedure and the reasoning followed by the Courts.

24. Similar view has been echoed by the American Courts also as noted in the judgment of the Court of Appeals for the Third Circuit in ***Jilin Pharmaceutical USA, Inc. Vs. Michael CHERTOFF*** MANU/FETC/0234/2006. It was held that where there is no meaningful standard of review for an administrative decision within a statute's text, the decision is not subject to judicial review. It was further held that a Court would have no meaningful standard of review against which to judge the

exercise of discretion. Finding that the parameter on which the decision of which judicial review was sought was required to be taken was “what the Secretary deems good and sufficient cause” it was held that it was so vague as to be useless as a guide to a reviewing Court.

25. I may add that even in the context of appointment of Members of Tribunals, Supreme Court as far as back as ***R.K. Jain Vs. Union of India*** (1993) 4 SCC 119 held that (a) judicial review is concerned with whether the incumbent possessed of the qualifications for appointment and the manner in which the appointment came to be made or the procedure adopted was fair, just or reasonable; (b) exercise of judicial review is to protect the citizen from the abuse of the power etc by an appropriate Government or department etc; (c) granting the compliance of the power of appointment has been conferred on the executive and when a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office, the Courts cannot sit over the choice of the selection and have to leave it to the executive to select the personnel as per law or procedure in this behalf. Supreme Court again in ***Centre for PIL Vs Union of India*** (2011) 4 SCC 1, concerned with the challenge to the appointment of the Central Vigilance Commissioner, reiterated that the Court cannot sit in

judgment over the choice of the person made by the Central Government so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment.

26. It is not the case of the petitioner that the respondent No.4 was not nominated in accordance with the scheme for Dronacharya Award or was/is not eligible for the award or that the constitution of the Selection Committee was not as per the Scheme or that the Criteria for giving Dronacharya Award prescribed in the Scheme was not followed. What the petitioner points out is errors in application of the Criteria. However as per Clause 1 of prescribed Criteria, 80% weightage will be given for the medals won in various International Championships by the sportspersons trained by the Coach for at least 240 days immediately preceding the tournament and as per the Clause 4 of the Scheme, 20% weightage has to be given to the marks given by the Selection Committee for assessment of the eligible coach keeping in view the profile and standard of the sports events in which his trainees have won medals. Clause 9 of the said Criteria further provides "Selection Committee may not mechanically recommend Dronacharya Award to the recipient of the highest marks across disciplines. But in a particular sport discipline, the award will be recommended only for the recipient of the

highest aggregate marks”. Clause 10 further provides “the marking criteria will not apply to coaches to be selected on the basis of lifetime contribution in coaching. Selection Committee will give its recommendations for such two coaches taking into consideration the contribution made by them over a period of 20 years or more in terms of producing outstanding sportspersons”. Clause 11 makes a decision of the Union Minister of Youth Affairs and Sports final.

27. It will thus be seen that besides laying down the point-wise criteria, sufficient leeway has been given to the Selection Committee to make the choice of the recipient for the Dronocharya Award.

28. I am also pained to see that the challenge is being made by the petitioner himself, claiming to be entitled to the award instead of the respondent No.4 who has been selected therefor. In this context it may be noted that as per the Scheme aforesaid, it is not open to any person to nominate himself for the award. The persons who are entitled to nominate have been specified in the Scheme. The grievance if any for non-selection by the Selection Committee of the petitioner should have been of the person/body who had nominated the petitioner and ought not to be of the

petitioner who was nominated. Need is felt to remind the petitioner that “Dignity does not consist in possessing honours. But in deserving them”, as was said by Aristotle.

29. At the same time need is felt to remind the respondent No.1 UOI that though our Constitution vide Article 18 abolished titles but need for awards such as the Dronacharya Award have been justified under Article 51A(j) as an incentive to the citizens to strive towards excellence so that the nation constantly rises to higher levels of endeavour and achievement. However such awards would lose their sheen and cease to be coveted and perceived as indicative of the excellence of the holder thereof if they are conferred on persons not deserving thereof or if selection thereof is guided not by the spirit of award and identifying excellence but for extraneous reasons. All that can be observed is that utmost care and transparency should be observed in the selection of the recipient of such awards and the awards ought not to be conferred on those who are not perceived by those having expertise in the subject as deserving thereof.

30. I should not be perceived as critical of the Scheme vesting an element of discretion in the conferment of the award. The selection for excellence in

sports cannot be scientific and mathematical and necessarily entails a discretion.

31. The petitioner has not made out any ground within the confines whereof the choice made and the discretion exercised by the respondent No.1 UOI can be interfered with. There is thus no merit in the petition which is dismissed.

No costs.

MAY 18, 2016
bs/pp/mp



RAJIV SAHAI ENDLAW, J.