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

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Date of Decision: 3rd August, 2018

+ LPA 425/2018

EKTA YADAV & ANR.

..... Petitioners

Through: Mr. Dhruv Mehta, Senior
Advocate with Mr. Sandeep
Grover, Ms. Pankhuri
Bhardwaj, Mr. Tarang Agarwal
& Mr. Anant Gautam,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Monika Arora, CGSC with
Mr. Kushal Kumar, Mr. Harsh
Ahuja & Mr. Vibhu Tripathy,
Advocates for UOI
Mr. Hemant Phelphn & Mr.
Varsh Manchanda, Advocates
for respondent No.3
Mr. Ajit Warriar & Mr. Aditya
Nayyar, Advocates for
respondent No.4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

CM Nos.31107-08/2018

Allowed, subject to all just exceptions.

The applications are disposed of.

LPA No.425/2018, CAV No.703/2018& CM No.31106/2018

Ekta Yadav and Shaila Charles have filed the present intra court appeal under Clause-X of the Letters Patent, impugning the order dated 2.8.2018, deciding CM Nos.30753-54/2018, passed in WP(C) No.7042/2018.

2. The operative portion of the said order directs that the Indian Olympic Association ('IOA') shall hear the representation of the appellants and Varsha Gautam, the 4th respondent before us, who are vying for selection to represent India in the event of 49er FX, Double Handed Women's Skiff in the 2018 Asian Games at Jakarta, Indonesia from 18.8.2018 to 2.9.2018. The IOA would have benefit of results of both the events, i.e., Regatta at Chennai and the Asian Sailing Championship, which have to be taken into account as per the selection policy. In addition, the IOA would be also made aware of the past performance of both the teams. The order further directs that the only consideration that the IOA would bear in mind while making the selection, would be "which of the two teams represents a better chance for India at the Asian Games, 2018. No other consideration would prevail."

3. In terms of the aforesaid directions, the IOA, in its meeting held on 2.8.2018 at 12:00 noon, had considered and evaluated chances of the appellants and the 4th respondent. By communication/mail dated 3.8.2018, the IOA, after reviewing merits of the sailors has decided to select the 4th respondent and

Ms. Shweta Shervegar to represent India in 49er FX, Double Handed Women's Skiff in the coming 2018 Asian Games.

4. The appellants have not enclosed copy of the letter/communication dated 3.8.2018 along with the appeal paper book. This letter obviously would not also form part of the writ records, as it reflects decision of the IOA in terms of the directions issued vide the order dated 02.08.2018.

5. Learned Senior Counsel appearing for the appellants submits that the impugned order requires interference, as the learned Single Judge has interfered with the selection policy, by directing that the past performance of both the teams should be taken into consideration by the IOA. Further, Yachting Association of India ('YAI'), and not the IOA, should have been directed to make the selection.

6. We have referred to the observations/directions of the learned Single Judge made in the impugned order, dated 02.08.2018. However, for the purpose of clarity, we may reproduce paragraphs 13 and 14 of the impugned order, which read as under:

"13. Be that as it may, the situation as it stands is that the IOA has heard the representation of both the sport persons. The IOA had the benefit of the results of both the events (Regatta at Chennai and the Asian Sailing Championship), which were required to be taken into account as per the Selection Policy. In addition, the

IOA is also made aware of the past performance of both the teams.

14. The only consideration that the IOA needs to bear in mind for making the decision is to evaluate as which of the two teams represents a better chance for India at the Asian Games, 2018. No other consideration is required to be taken into account by the IOA.”

The paragraphs state that the IOA would have benefit of two events - Regatta at Chennai and the Asian Sailing Championship, which were required to be taken into consideration as per the Selection Policy. Thereafter, it observed that the IOA would be made “aware” of the past performance of both the teams. We do not find the aforesaid direction, in any manner, falls foul and amounts to change or alteration in the selection procedure stated in the policy for selection. Paragraph 14 appropriately records that the IOA, while evaluating, should select the team with a better chance for India. We would now elaborate.

7. Relevant portion of the Selection Policy, as placed on record, reads as under:

“8. Selection Event

8.1 In order to arrive at selection of best athletes to represent India at the Asian Games 2018, a Selection

Regatta is being conducted off Chennai, India during 16- 22 April 2018.

9. Nomination Event

9.1 The best two performing athletes/team at the Selection Regatta in each of the competing classes shall be selected to participate at the Asian Sailing Championship 2018 being conducted during 18-25 Jun 2018 at Jakarta, Indonesia.

9.2 The results of Indian athletes/team at the Asian Sailing Championship 2018 will be provided to the internal and external selectors so as to select the best athletes/teams to represent India at the Asian Games 2018.

9.3 Since, YAI is fully dependent on the MYAS/SAI for financial assistance to send athletes/teams to the Asian Sailing Championship 2018, such of the athletes/teams not approved for financial assistance by the MYAS/SAI, will be permitted to participate at the Asian Sailing Championship 2018 at "No Selection and Nomination Policy document issued 01 Feb 2018. A nominal grant of INR 25,000 may be provided by the YAI to such of the athletes/teams, subject to submission of an affidavit certifying that they have not received funding support from any other Government department/Semi Government department/Sponsor, prior to their departure to Jakarta, Indonesia. This

grant will be disbursed on return from Asian Sailing Championships 2018.”

8. Notwithstanding the selection policy, requiring that the Selection Committee would consider result of Asian Sailing Championship at Jakarta, the YAI, vide communication dated 11.6.2018, had declared selection of the appellants for the forthcoming Asian Games, at Jakarta. Aforesaid declaration even before the nomination events at the Asian Sailing Championship, 2018 was wrong and clearly presumptuous and disclosed premeditated disposition of the YAI.

9. In the Asian Sailing Championship, 2018, held at Jakarta between 22nd and 27th June, 2018, the 4th respondent had secured the second position, ahead of the appellants, who had secured the third position. At Jakarta itself, the 4th respondent came to know that the YAI had issued a letter, stating that the appellants had been selected to represent India in the 49er FX, Double Handed Women’s Skiff in the 2018 Asian Games at Jakarta.

10. YAI, in the meanwhile, it is apparent to us, to put a stamp of acceptance to their earlier communication dated 11.06.2016 had convened a selection meeting which was held on 30.6.2018. The meeting was purportedly to consider the results of the 49er FX, Double Handed Women’s Skiff in the 2018 Asian Games. The Selection Committee reiterated the selection of the appellants on the ground that they were “more consistent”. It

was observed that the difference between the scores of the appellants and the 4th respondent at Regatta in Chennai was as wide as 5 points, whereas the difference in the scores at the nomination event, i.e., Asian Sailing Championship at Jakarta, in which the 4th respondent had secured the second position, ahead of the appellants, was one point.

11. The 4th respondent had thereupon filed WP(C) No.6823/2018 before the Delhi High Court. This writ petition was disposed of vide order dated 6.7.2018, with the following directions:

“12. The next question to be examined is whether any interference by this Court is warranted in the selection of the sportspersons.

13. It is apparent from the above that both the sports persons, namely, the petitioner and Ms Ekta Yadav are very close in their level of skill. Although, the Selection Committee had initially ignored the results of the Nomination Event, for selecting the sports person to represent India, the Committee had post facto considered the results of the Nomination Event at their meeting held on 30.06.2018 and have provided their reasons for preferring Ms Ekta Yadav over the petitioner. This Court is certainly not equipped to evaluate the merits of their decision and the same is beyond the scope of judicial review in these proceedings.

14. In view of the above, this Court is not persuaded to accept that any interference with the decision of the Selection Committee is warranted.

15. Having stated the above, it is necessary to note that the learned counsel for the parties also agree that the final decision in selecting or not selecting the athletes to represent India rests with IOA. This is also expressly stated by YAI in paragraph 4 of the Selection Policy.

16. In view of the above, the IOA must consider the results of the Nomination Event and the minutes of the meeting held on 30.03.2018, if not considered earlier. It will be open for the petitioner to move IOA for the said purpose.

17. The petition and all the pending applications are disposed of.”

12. Upon consideration, the IOA had issued a press release dated 7.7.2018, stating that the 4th respondent had been selected to represent India, in place of the appellants.

13. This prompted the appellants to file WP(C) No.7042/2018. Vide order dated 10.7.2018, with the consent of the parties, the IOA was requested to consider the representation made by the appellants before finalising the names of the Indian team.

14. The IOA had thereafter passed the order to the following effect:

“Decision

The Selection Committee of the YAI is headed by Chief of Naval Staff Admiral Sunil Lamba, PVSM AVSM ADC, who is also President of YAI. We have no reason to discard the decision of the Selection Committee of YAI, as they are the governing body for yachting with subject expertise.

It is thought that we should agree with the decision of Yachting Association of India and its Selection Committee dated 30th June 2018. Since the Selection Committee has considered the overall performance of both the events, Selection Regatta and the 2018 Asian Sailing Championship, the original selection of Ms. Ekta Yadav and Ms. Shaila Charls should be send in 49efFX Team for the 2018 Asian Games.

This would be subject to any order passed by the Hon'ble High Court also the private trials agreed to be conducted by YAI for Ms. Gautam (and her crew) against Ms. Yadav (and her crew).

The last date for entry by name was 30 June 2018 and corrections were to be completed by 10 July 2018. Further to which, any corrections would be subject to approval of INASGOC. The IOA will try

its best to replace the names of the athletes, if required.”

15. The aforesaid decision was placed before the learned Single Judge in the W.P.(C) No.7042/2018 on 13.7.2018. Before the Court, recording of the meeting conducted by the IOA was also produced and played. Recording revealed veiled threats by Rear Admiral Atul Anand, VSM, Secretary General, YAI. The order specifically reproduces one such statement. *Prima facie*, the learned Single Judge found that this conduct was unbecoming of an officer.

16. The next hearing in W.P.(C) No. 7048/2018 before the learned Single Judge held on 19.7.2018, records that the YAI, in the meeting held on 10.7.2018, had decided to hold a final Regatta at Jakarta and the winning team would represent India at the Asian Games-2018. This was acceptable to the two vying teams. The order dated 19.7.2018 passed by the learned Single Judge in para 15 refers to the Regatta to be held at Chennai and the Asian Sailing Championship and it was observed:

“15. The said representation stated that at the Selection Regatta held at Chennai (Selection event) “a total of 12 races were completed out of 12 scheduled”. Admittedly, this is incorrect as 15 races were scheduled and only 12 were completed. This is not as innocuous as it appears for the reason that one of the arguments presented by the Secretary General

YAI in favour of the petitioners is that in the Asian Sailing Championships, 2018 (where respondent no.4 and her teammate had secured a silver position ahead of the petitioners), total 10 races were completed out of the 12 scheduled. It was also suggested that if two remaining races were held, the petitioners would have finished ahead of respondent no.4. This is plainly speculative. The fact is that only 12 of the 15 races were held in Chennai and, given how closely the two teams are matched, it was equally open for anyone to suggest that had the three races held in Chennai, respondent no. 4 and teammate may have scored better. But such consideration was precluded because it was stated that all the scheduled races were held at Chennai.”

17. Thereafter, the order refers to the meeting of the IOA held on 10.7.2018, wherein the Secretary General of the YAI was present. Recording of the said meeting, lasting over 25 minutes, was referred to and portions of the said recording were reproduced in paragraph 17 to observe that veiled threats were held out to the 4th respondent. This, the learned Single Judge, observed was objectionable. However, further action was not taken, in view of the unqualified apology tendered by the Secretary General and the assurances given by him. The order records that the Secretary General had assured that a final

Selection Regatta at National Sailing Centre, Ancol, Jakarta, Indonesia would be held, wherein the appellants and the 4th respondent could take part. The order refers to the schedule, which was confirmed by the YAI. The YAI had agreed that all the expenses for the two teams, including air-fare etc., would be paid by the YAI. Order states that the YAI would be bound by the assurance recorded. The YAI had also assured that the 4th respondent would not be victimised in any manner. We would observe that the order dated 19.7.2018 is not under challenge in the present appeal.

18. The final Regatta for selection at Jakarta was not held.

19. In the meanwhile, Rear Admiral Atul Anand, Secretary General of YAI had sent a representation to the IOA and also had discussions with the President of the IOA. Clearly, the Secretary General was supporting the case of the appellants, in preference over the 4th respondent. This was notwithstanding the order dated 13.7.2018 of the High Court and the earlier order dated 6.7.2018 in W.P.(C) No. 6823/2018, in which the YAI had agreed that the IOA would select the team.

20. Thereafter, the YAI and the 4th respondent filed two applications, CM Nos.30753-43/2018, which have been decided by the impugned order dated 2.8.2018. The YAI had expressed its inability to hold the selection event at Jakarta, as was promised and assured, when the order dated 19.7.2018 was passed. The 4th respondent had filed an application, seeking

recall of the order dated 19.7.2018, in view of the changed circumstances.

21. The impugned order dated 2.8.2018 disposed of the said applications, with a direction given in paragraphs 13 and 14, which have been quoted above.

22. We do not find the appellants, at this stage, can be allowed to argue that the selection has to be made by the concerned federation, i.e., the YAI and not by the IOA. The argument has to be rejected, in view of the order dated 6.7.2018 passed in WP(C) No.6823/2018 and the order dated 10.7.2018 passed in WP(C) No.7042/2018. Given the past history, reflecting blarney and partisan approach from the beginning, the directions given to the IOA were just, fair and equitable. YAI has failed to maintain objectivity and fairness and abjure personal prejudice in selection which was required and necessary when one of the two teams had to be selected, given the fact each team had performed better than the other in the selection and nomination event/rounds. Neutrality and even-handedness in the beginning could have avoided this litigation, which has transposed the sporting rivalry and competition between the two talented youngsters into a bitter battle in the Court.

23. Further, in the present case, the appellants had secured a better position in the selection event and the fourth respondent has secured a better position in the nomination event. Thus,

there was in a way tie between them. Therefore, the direction given by the learned single Judge that the IOA would be made aware of the past performance was correct and justified. Pertinently, selection committee of the YAI in their meeting held on 30th June, 2018 had selected the appellants purportedly in view of their more persistent performance.

24. In view of the aforesaid facts, we do not find any good reason to interfere with the impugned order. The appeal is dismissed. Pending application is dismissed. Caveat is disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 03, 2018
Tp/VKR