



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

Date of decision: 20th NOVEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 6923/2020**

PRASANTA KARMAKAR

..... Petitioner

Through: Mr. Varun Singh, Mr. Amit Kumar Sharma, Mr. Satayam Singh, Ms. Mudrika Tomar, Ms. Alankriti Dwivedi, Mr. Rohan Chandra, Mr. Sanjeev Gupta, Ms. Aarti Singh and Mr. Diwas Kumar, Advocates.

versus

PARALYMPIC COMMITTEE OF INDIA THROUGH ITS
CHAIRMAN & ORS. Respondents

Through: Mr. Naveen Kumar Chaudhary, Advocate for R-1.
Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition has been filed under Article 226 of the Constitution of India challenging the Order dated 07.02.2018 passed by Respondent No.1/Paralympic Committee of India suspending the Petitioner herein from participating and him being sponsored in any sports event organized by the Respondent No.1 for a period of three years w.e.f 20.01.2018 and directing that recommendations be made to the Haryana Sports Department, where the Petitioner is working, to take strict disciplinary action against him. The Petitioner is an Arjuna Awardee and is a



commonwealth and Asian Games medalist swimmer. The Petitioner was also appointed as a swimming team coach for 2016 Rio Paralympic Games. The Respondent No.1 is Paralympic Committee of India (PCI) which is the body interested in the activities of organizing State and National level sports meet for the disabled.

2. Shorn of unnecessary details, facts leading to the filing of the instant writ petition are as under:

- a) The XVI-National Para Swimming Championship was held in Jaipur, Rajasthan from 31.03.2017 to 03.04.2017. It is stated that the Petitioner was a coach in the said event. It is stated that the Petitioner gave a camera to one of his associates and asked him to make videos of female swimmers during the event. It is stated that when the parents of swimmers objected to the said person who was making videos, they were informed that it was being done on the direction of the Petitioner herein. The said person was stopped from making such videos. However, it is stated that later on, the Petitioner continued to make the videos of female swimmers with a camera on tripod despite objections from the parents. It is stated that the Petitioner was called by the Chairman asking him for explanation but the Petitioner misbehaved with the Chairman. It is stated that the Petitioner also asked the Chairman and other office bearers of Respondent No.1 to show written objections from the parents regarding the video recordings made by the Petitioner and his associate. It is stated that seven complaints were received from various persons objecting to the filming of female swimmers who participated in the event.



- b) On receiving the complaints, the Petitioner was detained by the Police and was later released after he agreed to delete the photographs and videos made by him and his associate. It is also stated that the Petitioner went to various complainants, abused the Chairman and other office bearers of Respondent No.1/Paralympic Committee of India (PCI) and threatened them. It is further stated that the Petitioner gave interviews to various TV Channels accusing the Chairman and other officer bearers of PCI by levelling allegations against them.
- c) It is stated that a Show-Cause Notice was sent on 16.08.2017 by Respondent No.1 to the Petitioner to explain his position regarding the complaints received by the parents in respect of the videos and photographs taken by the Petitioner and his associate during the XVI-National Para Swimming Championship. It is stated that the Petitioner gave a reply on 28.08.2017 to the said Show-Cause Notice denying the allegations and he demanded copies of documents relied on by Respondent No.1.
- d) It is stated that the Petitioner was called for a personal hearing on 20.01.2018 by the Disciplinary Committee of Respondent No.1. It is stated that Dr. V.K. Dabas, who was the Chairman of Respondent No.1 was also called. It is stated that the Petitioner and Mr. V.K. Dabas appeared before the Disciplinary Committee and a hearing was conducted. The Disciplinary Committee, thereafter, passed the Impugned Order dated 07.02.2018 suspending the Petitioner from participating and his being sponsored in any sports event organized by the Respondent No.1 for a period of three years w.e.f 20.01.2018.



3. Challenging the aforesaid Order dated 07.02.2018 passed by the Respondent No.1/PCI, the Petitioner has filed the instant writ petition with the following prayers:

“A. Quash and set aside 3 Years suspension given to Para Swimmer Prasanta Karmakar pursuant to the disciplinary proceeding conducted against him vide the order dated.7.02.2018;

B. Direct the respondent PCI to allow the Petitioner to take part in swimming related activities with the immediate effect;

C. Grant damages/ compensation to the Petitioner for being arbitrarily, capriciously and illegally debarred from the swimming competition for 3 years by respondent PCI in violation of his fundamental right enshrined under article 19(1)(g);

D. Pass any such and further order which this Hon’ble Court may deem fit and proper as per the facts and circumstances of this case in the interest of justice and equity.”

4. Notice was issued in the writ petition on 08.10.2020. Pleadings are complete.

5. Learned Counsel appearing for the Petitioner draws attention of this Court to the Bye-laws of the Respondent No.1 applicable at the relevant point of time to contend that the punishment of suspension cannot be imposed on the Petitioner. He draws attention of this Court to Clause 19.7.3 of the Bye-laws to contend that punishment of suspension can be imposed only under circumstances which arise under Clause 4 which specifically deals with the punishment of suspension. He states that a reading of Clause 4 postulates that a member can be suspended only in the cases of failure to



pay annual membership/renewal fee, not fulfilling the criteria for membership and not complying with the obligations of members as defined in the Constitution of Respondent No.1. He states that there is no power with the Respondent No.1 to impose the punishment of suspension on account of mis-conduct.

6. Learned Counsel for the Petitioner further contends that the punishment of three years of suspension is completely disproportionate. He further states that the Petitioner is an Arjuna Awardee and has brought accolades to the country. He states that the Petitioner was a coach and a participant in the event and that he did not commit any misconduct which will bring disrepute to the sport. He states that recordings of videos of swimmers is not prohibited in Rules and Regulations nor is it prescribed in the Code of Conduct. He states that the videos were made by the Petitioner only for the purpose of training his students in order to enhance their performance and efficiency and, therefore, the same cannot amount to misconduct. He states that the practice of making such videos in competitions is accepted world-wide and it is an accepted norm to watch videos of competitors.

7. Learned Counsel for the Petitioner further states that the inquiry was conducted in a biased manner and that the Petitioner has not been afforded appropriate opportunity to defend himself and also the material on which the Disciplinary Committee relied on has not been supplied to the Petitioner.

8. *Per contra*, learned Counsel for the Respondent No.1 draws attention of this Court to Clause 19.1.6 which prescribes that under no circumstances can the athletes be permitted to misbehave or use uncivilized language or indulge in unlawful acts against the interests of the Committee and welfare



and development of Para Sports and such persons who are guilty of such misconduct are liable to be debarred from participation for a minimum period of one year or more as per the decision of the Governing Body or by the Disciplinary Committee. He also draws attention of this Court to various complaints received against the Petitioner for his unruly behavior. He states that the Petitioner has been afforded adequate opportunity to represent his case before the Disciplinary Committee and a fair opportunity hearing has been afforded to the Petitioner. He states that the Petitioner has abused the Chairman, the members of Respondent No.1 and the parents of swimmers which amount to misconduct. He states that only after considering the gravity of the allegations against the Petitioner, the punishment of debarring the Petitioner for a period of three years has been imposed and this Court while exercising its jurisdiction under Article 226 of the Constitution of India should not interfere with the quantum of punishment.

9. Heard learned Counsel appearing for the Parties and perused the material on record.

10. The Impugned Order suspending the Petitioner for a period of three years was passed on 07.02.2018. On the day when the instant writ petition came up for final hearing, the Petitioner has already gone through entire period of suspension. However, in order to satisfy the conscience of this Court as to whether there was any power with the Respondent No.1 to suspend the Petitioner or not, this Court decided to examine the case on merits.

11. Clauses 4, 19.1.2, 19.1.6 and 19.7.3 of the Bye-laws of the Respondent No.1/PCI reads as under:

“4. Suspension of Membership:



4.1 Failure of pay the annual membership/renewal fee as stated above at section 3.2

4.2 Not fulfilling the criteria for Membership stated in the Constitution.

4.3 Not complying with the obligations of Members as defined in PCI constitution.

4.4 Before a Member is suspended, the Member shall have the right to be heard either in person or in writing by the Governing Board.

4.5 The Governing Board shall inform the General Body about all suspensions for its ratification.

4.6 A member under suspension loses all rights and privileges of Membership. In Particular, a Member shall not be entitled to be heard expect with respect to their suspension, attendance/voting at meeting in General Assembly of Members and/or enter Athletes in competitions and/or participate in PCI activities.

19.1.6 Under no circumstances the Athletes in case of misbehavior by using of uncivilized language or indulging in unlawful acts against the interest of the Committee and welfare and development of Para Sports shall be tolerated and is/are liable to be debarred from participation for minimum one year or more as per the discretion of the Governing Board or by the Disciplinary Committee. In such cases decisions of the Governing Board shall be final.

19.7.3 SUSPENSION - As per Section 4 of PCI Bye Laws. ”
(emphasis supplied)



12. Clause 19 of the Bye-laws prescribes the General Code of Conduct for athletes participating in the Paralympic event. It is stated that the Petitioner was a coach. It cannot be said that the Petitioner who was a coach need not follow the General Code of Conduct. Although, it is stated that the Petitioner has participated in the event, this Court is not going into that question. However, it is suffice to state that what applies to an athlete would automatically apply to a coach as well. It cannot be said that the General Code of Conduct should only be followed by the athletes and not by a coach. The General Code of Conduct must equally apply to athletes and to all the members of the team, including the support staff of athletes and coaches. The discipline of the event cannot be permitted to be broken by any person who is participating in the event either as an athlete or as a coach or as a support staff of an athlete. Rule 19 would, therefore, apply on all fours.

13. Clause 19.2 specifically provides for Code of Conduct for Coaches and Team Officials and Clause 19.7 deals with Disciplinary Sanctions. It cannot be said that there is no power to suspend a coach for any misbehavior or use of any uncivilized language during the event. The rules regarding the Code of Conduct cannot be read in a straight jacket formula which will promote indiscipline by a coach or any support staff of an athlete. Any such interpretation which would go against the very purpose of providing a Code of Conduct and cannot be permissible. Therefore, the word athlete used in Clause 19.1.6 would mean to include a coach and a support staff of an athlete who participates in the games and all of them cannot be permitted to misbehave or use of uncivilized language or indulge in unlawful acts or act against the interest of Committee and welfare and development of Para



Sports. Any other interpretation given to the interpretation of the Rules would go against the spirit of Clause 19 of the Bye-laws.

14. It is well settled that while exercising jurisdiction under Article 226 of the Constitution of India, the Courts, while interfering with the decision of Disciplinary Committee, only look into the decision making process. If the decision making process is fair then Writ Courts do not interfere with the findings of a Disciplinary Committee.

15. The facts of the present case show that the Show-Cause Notice has been given to the Petitioner and a hearing was conducted. The material against the Petitioner has been evaluated and the decision has been arrived at by the Disciplinary Committee. The petitioner has not been able to demonstrate as to how the procedure adopted by the Disciplinary Committee is not reasonable or fair or is violative of principles of natural justice.

16. The Apex Court in Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 has held as under:

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary



authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

17. It is well settled that when a statute/law/bye-law gives a discretion to an administration to take a decision, the scope of judicial review remains limited and it is not permissible, unless the decision is contrary to law or has been taken without considering the relevant factors or where irrelevant factors have been considered or the decision is one which a prudent man would not have arrived at. The Writ Courts while exercising jurisdiction



under Article 226 of the Constitution of India should loathe to interfere with the decision taken by the Authority.

18. The facts of the present case indicate that there were complaints against the Petitioner, who was a coach, regarding the videos and photographs of female swimmers taken by him and his associate. The Petitioner behaved in a rude manner with persons who were there in the stadium. The Petitioner has abused the Chairman and the officials of Respondent No.1. The Petitioner has also indulged in giving press interviews bringing down the interests of Respondent No.1. Therefore, the decision taken by the Disciplinary Committee of Respondent No.1 cannot be said to be unfair or unreasonable warranting interference under Article 226 of the Constitution of India.

19. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 20, 2023

S. Zakir