



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

Date of decision: 19th SEPTEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 10451/2023**

NEHA THAKUR

..... Petitioner

Through: Ms. Silky Wadhwa, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Anil Soni, CGSC, Mr. Archil Misra with Mr. Devvrat Yadav, Advocates.

Mr. S. W. Haider and Ms. Pooja Dua, Advs for R-2, 4 & 5.

Mr. Avishkar Singhvi, Mr. Naved Ahmed, Mr. Vivek Kr. Singh, Advs for Delhi Police with Insp. Vikas Rana, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for a direction to the Respondents No.1, 2 & 3 to include her name in the list of the selected athletes to represent the country in the event of Kurash in the forthcoming Asian Games which are to be held in Hangzhou, China from 23.09.2023 to 08.10.2023.

2. It is stated that the Petitioner, who is aged about 30 years, is a Kurash Athlete and has participated in 52 Kgs category in various State, National events and has represented India in International sporting events. It is stated



that for the purpose of selection of athletes to represent the country in the event of Kurash in the forthcoming Asian Games, first round of trials were held in Pune in 2022 wherein the Petitioner had secured third position. It is stated that these trials were cancelled due to technical reasons. It is stated that the trials were once again conducted and this time the first round of trials were held in Bhopal on 08.04.2023. It is stated that in the said trial, the Petitioner herein was placed at 7th position whereas as per the Rules of the game, she should have been placed at the 6th position. It is stated that the Petitioner approached the officials and Respondent No.7 herein, who is an International Observer, International Kurash Association, after re-watching the video of the bout, placed the Petitioner herein at the 6th position. It is stated that the next trials were to be held at Tyagraj Stadium in Delhi on 24.06.2023. It is stated that on 24.06.2023 a fight broke out between the players and they refused to play with the Petitioner herein and forfeited the match and the trials were postponed to 25.06.2023. It is stated that since the other athletes refused to play with the Petitioner herein, then as per the rules if a player refuses to play with the other player, the player refusing to compete with the other player is deemed to have lost the match and, therefore, the Petitioner herein ought to have been selected to represent the country in the forthcoming Asian Games. It is stated on 25.06.2023 the Petitioner was intimidated and the trials were postponed to 09.07.2023. It is stated that on 08.07.2023 the trials were cancelled and the athletes were asked to meet at the office of the Sports Authority of India, Jawaharlal Nehru Stadium on 10.07.2023. It is stated that a document was signed by all the athletes stating that they will abide by the decision taken by the Sports Authority of India. It is stated that on 12.07.2023, a fresh notice was sent by



the Kurash Association of India informing all the athletes that re-selection trials would be held on 14.07.2023. It is stated that in the final list of athletes who were selected to represent the country in the event of Kurash in the forthcoming Asian Games, the name of the Petitioner herein was not included. It is stated that since the Petitioner's name was not included in the list of selected athletes, she wrote a letter to the Prime Minister, Ministry of Youth Affairs, President of the Indian Olympic Association, Chairman of Kurash Association of India. It is stated that since no response was forthcoming, the Petitioner approached this Court by filing the present Writ Petition.

3. The Writ Petition came up for hearing on 08.08.2023. On 18.08.2023, learned Counsel for the Respondents No.2, 4, 5 objected to the draw of fixtures filed by the Petitioner herein which shows that the Petitioner had secured 6th position in the trials conducted on 08.04.2023 in Bhopal stating that it is a manipulated and fudged document. Respondent No.7, who is the International Observer, International Kurash Association, has filed an affidavit stating that initially the Petitioner was placed at 7th position but after having a second look at the video recordings, it was decided that the Petitioner should be placed at 6th position. Respondents No.2, 4 & 5 were directed to file the draw of fixtures, which, according to them, is the correct draw of fixtures.

4. The draw of fixture filed by the Petitioner is as under:



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Annexure P-3.

 First total Bhopal
 19th Asian Games 2023
 Date = 8/04/2023

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KURASH ASSOCIATION OF INDIA

TOURNAMENT NAME 19th ASIAN GAMES TRIAL - 2023

VENUE: T.T. NAGAR BHOPAL

DATE: 08/APRIL/2023

BOYS/GIRLS GIRLS

FIXTURE

Senior
CADET/JUNIOR

WT. CATEGORY: 52 kg CADET/JUNIOR/SENIOR

A1		B1	
1	Pinky Bilkara (Del)		Malprabha (KAR)
17	Cham (HAR)		Paiyanka (PUN)
9	Smida (KAR)		Bhanti (HAR)
25	Mansi (HAR)		Simmam (HAR)
3	Nidhi (HAR)		Tanya Jashi (MP)
19	Krushpavit (HAR)		Pooja Malik (HAR)
11	Nancy (UK)		Smrita Rani (M.P.)
27	Gagathi Takar (Del)		Janika Singh (Del)
A2		B2	
5	Imurani (C.G)		Suchi (HAR)
21	Nisha Tarnani (Bihar)		Khushboo (UP)
13	Pooja Prajapati (M.P.)		Sakshi (HAR)
25	Nidhi (HAR)		Ramam (UP)
7	Sangita (HAR)		Tamara Mani (Del)
23	Rohini Patil (KAR)		Annu (HAR)
15	Tina (PUN)		Neha Akhaur (DEL)
31			

POS	NAME	STATE	POINTS
I			10
II			5
III			2
IV			2

 Neha Thakur 6th
 Position during
 Bhopal total

TECH. CHAIRMAN

Signature Not Verified

 Digitally Signed
 By: RAHUL SINGH
 Signing Date: 21.09.2023
 21:04:48

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5. The draw of fixtures filed by Respondents No.2, 4 & 5 is as under:

Annexure-R2/200

KURASH ASSOCIATION OF INDIA

TOURNAMENT NAME 19th ASIAN GAMES TRIAL - 2023

VENUE : T.T. NAGAR BHOPAL

DATE : 08/APRIL/2023

BOYS/ GIRLS GIRLS Senior
GADET/JUNIOR

FIXTURE

WT. CATEGORY :- 52 kg GADET/JUNIOR / SENIOR

A1		B1	
1	Pinky Balhara (DEL)	8	Mallprabha (KAR)
17	Sham (HAR)	19	Pajpranka (PUN)
9	Smita (KAR)	9	Bharti (HAR)
25	Mansi (HAR)	25	Simmam (HAR)
3	Nidhi (HAR)	10	Tanya Jishi (UP)
19	Khushbhar (HAR)	20	Pooja Malik (HAR)
11	Nancy (UP)	11	Smita Rani (M.P.)
27	Gayatri Tokar (DEL)		tanika Singh (DEL)

A2		B2	
5	Tamurani (C.G.)	12	Suchika.T (HAR)
21	Nisha Kumari (Bihar)	21	Khushban (UP)
13	Pooja Prajapati (M.P.)	13	Sakshi (HAR)
29	Nidhi (HAR)	26	Sammam (UP)
7	Sangeeta (HAR)	14	Tamru Mam (DEL)
23	Rohini Patil (KAR)	22	Annu (HAR)
15	Tina (PUN)		Neha Rakur (DEL)

SR	NAME	STATE	POINTS
1	PINKY BALHARA	DEL	20
2	NISHA KUMARI	BIHAR	0
3	BHARTI	HAR	0
4	SUCHIKA.T	(HAR)	0
5	SANGEETA	(HAR)	0
6	POOJA MALIK	(HAR)	0
7	Neha Rakur	(DEL)	0

TECH. CHAIRMAN



6. On 22.08.2023, this Court perused both the documents and found that there were differences in them and directed the Registrar General of this Court to send both the documents to the office of Special Commissioner, Delhi Police, who was directed to investigate into the issue and file a report. The Special Commissioner, Delhi Police, was also given liberty to take aid of the Forensic Department, if necessary.

7. An application, being CM APPL. 45729/2023, was filed by the Petitioner seeking recall of the Order dated 22.08.2023 contending that the draw of fixtures, as filed by the Petitioner, was procured by the Petitioner by clicking a photograph of the draw of fixtures at the time of the trials and when the Petitioner was not selected for the Asian Games, she filed a complaint dated 03.07.2023 with the Ministry of Youth Affairs & Sports and to explain it to the authorities and for their convenience, she had taken a printout of the photograph of draw fixture and highlighted certain portions of it to draw the attention of the authorities to the actual rank obtained by the Petitioner.

8. The said application was dismissed by this Court vide Order dated 04.09.2023.

9. The Delhi Police has filed its enquiry report and the same reads as under:

“Most respectfully, it is submitted that this Hon'ble Court vide its order dated 22.08.2023, directed the office of the Special Commissioner of Police, Crime Branch, Delhi to investigate into the issue of the discrepancy in documents of the draw of fixtures filed by the petitioner and the respondent No.2, 4, 5. It was also directed that the Crime Branch is also at liberty to take aid of the Forensic Department with a request to give a report as



expeditiously as possible, preferably within a period of 5 days from the receipt of the documents.

2. *In pursuant to the aforesaid order, an enquiry was conducted into the matter. During the course of enquiry, Mr. Dharmender Malhotra (respondent No.4) being the President of the respondent No.2 (Kurash Association of India) joined the enquiry. During enquiry his statement was recorded wherein he stated that the respondent No.2 is a private body. The respondent No.2/Association had received an e-mail from the International Kurash Association and the Indian Olympic Association for conducting trial of Kurash for Asian Games, 2023. Accordingly, the respondent No.2/Association had booked Tatya Tope Stadium, Bhopal, Madhya Pradesh for conducting trial for Asian Games, 2023 and in this regard a notification was also issued, which was also sent to all the States Associations. Further, a Selection Committee comprising of the President, General Secretary, Secretary, Technical Council and Referring Director was constituted for conduction of the trial. The respondent No.7 was also invited as Observer for conducting trial for 05 Weight Categories viz. 52 Kg (Girls), 87 Kg. (Girls), 66 Kg. (Boys), 81 Kg. (Boys) and 90 Kg. (Boys). Total of 30 girls attended trial in 52 Kilogram category at Bhopal, Madhya Pradesh wherein 06 players were to be shortlisted for the second round of trial at New Delhi. Further out of those 06 players, only 02 players of Kurash were to be selected for representing India in Asian Games, 2023.*

3. *The respondent No.2 further stated that after completion of the trial, out of the 30 girls in the 52 Kilogram category, 05 players namely (1) Pinky Balhara, (2) Nisha Kumari, (3) Bharti, (4) Suchika T. (5) Sangeeta were finalized. Further the match was conducted between Ms. Pooja Malik and Ms. Neha Thakur (petitioner) for sixth place in which Ms. Pooja Malik was declared as*



winner by match referee and she was finalized as the sixth player, which was not opposed by the petitioner. He also stated that in case, if the petitioner had any objection pertaining to the match, she could lodge her objection by submitting an application along with a fee of Rs.500/- for reviewing, but she did not do so. The entire trial process was got video graphed and the same was also uploaded on the YouTube Channel namely 'Sports Free' with the titles as "Asian Games Selection Trial, Kurash-2023" for men's (-66 Kg., -86 & -99 Kg.) and for women's (-52 Kg. & -82 Kg.), which is still available on YouTube. After completion of the process of the trial, the respondent No.7 informed him that the petitioner showed the Video of her Bout /Match with Ms. Pooja Malik. The respondent No.7 advised the respondent No.4 to keep the petitioner at the Position No.7 as an additional player is also required for practice. As such, the petitioner was kept as the Player No.7 additionally in the category of 52 Kilogram.

4. The respondent No.2 further stated that the second trial of the selection process in the 52 Kilogram category was conducted amongst the 06 shortlisted Players at Tyagraj Stadium, New Delhi, where the petitioner had already been working as a Coach and due to this reason, the petitioner got mentioned her name in the list of the players for second trial of the selection process. The petitioner was to be played with Ms. Suchita T, who secured 4th position in the first trial of the selection process conducted at Bhopal, Madhya Pradesh, but she refused to play with the petitioner being the Player No.7 additionally. Hence, the Selection Committee had decided to not to allow the petitioner in the second round of trial of Kurash in the 52 Kilogram category. Thereafter, the second trial of the selection process was got conducted amongst 06 shortlisted Players, wherein Ms. Suchita T. and Ms. Pinky Balhara secured the 1st and 2nd rank respectively. During further course of enquiry, the respondent No.5 also joined the



enquiry, who also reiterated the statement made by the respondent No.4.

5. During further course of enquiry, the respondent No.7 also joined the enquiry and his statement was recorded, wherein he stated that the respondent No.2/Association had invited him as Observer for conducting trial of Kurash at Tatya Tope Stadium, Bhopal, M.P. organized on 08.04.2023. He further stated that in the 52 kilogram category women, after completion of the trial, 05 players namely (1) Pinky Balhara, (2) Nisha Kumari, (3) Bharti, (4) Suchika T. (5) Sangeeta were selected. The match for the 6th position was held between Ms. Pooja Malik and Ms. Neha Thakur (petitioner), further he declared Ms. Pooja Malik as winner and she was finalized as the 6th player. He also stated that after completion of the trial, the petitioner showed him the Video of her Bout /Match with Ms. Pooja Malik to him (respondent No.7) and other members of the Selection Committee in the stadium. After seeing the said Video, he had advised that as per his observation, the petitioner won the match for sixth player, whereupon the respondent No.5 had informed the petitioner that she has the sixth position. He had telephonically informed Mr. Somvir Singh, Coach of Ms. Pooja Malik, who stated that they had already left the Stadium and they will abide by the decision of the Selection Committee whatsoever. The respondent No.7 further stated that his signatures as an observer had to be obtained on the documents pertaining to Fixer, Weight Sheet and Final Result etc.; but the same were not obtained.

6. During further course of enquiry, the petitioner also joined the enquiry and her statement was recorded, wherein she stated that the Match Referee had declared Ms. Pooja Malik as the winner for Player No.6 in the first trial of the selection process. After completion of the first trial, the petitioner had requested the members of the Selection Committee and the respondent



No.7/Observer for review, whereupon the respondent No.5 initially asked her to deposit Rs.500/- for reviewing and seeing the Video; but later on, the respondent No.5 waived off the same. Thereafter, the video of the bout/match between her and Ms. Pooja Malik was seen by the members of the Selection Committee and Observer. The respondent No.7/observer stated that the petitioner was supposed to be declared as winner for 6th position, which was also inclined by the other members of the Selection Committee and they said that the petitioner will participate in the second trial of the selection process which was to be conducted in Tyagraj Stadium, New Delhi. She further stated that she had taken the photograph of the Draw Fixture from the Notice Board. whereupon the names of the players were mentioned and after getting its printout, she had submitted the same before this Hon'ble Court. She further stated that she herself mentioned on the top side of the printout of Draw Fixture that "First trial Bhopal 19th Asian Games 2023 Date: 8/04/2023 " and on the bottom of the paper as "Neha Thakur 6th Position During Bhopal Trial " and also highlighted the match in the draw fixture to indicate her name. She had also prepared the complete file in the similar manner and sent the same to the Sports Minister, SAI Office, Jawahar Lal Nehru Stadium and Kurash Association of India/ Respondent No.2. The petitioner further stated that she had mentioned her name at 6 position as she was under impression that she had been selected as the Player No.6 at Bhopal, Madhya Pradesh.

It is pertinent to mention here that petitioner has also filed another petition before this Hon'ble Court wherein vide Para 6, she specifically mentioned that "the insertion of words has been done only for the convenience of explaining document, i.e. specifically one bout' and vide Para 8 that the unaware of the legal intricacies and had no intention mislead this Hon'ble



Court which is further established by the fact that the either form does not affect the case of the petitioner'.

As per the enquiry conducted so far, it is revealed that the documents are entirely different. Document filed by the petitioner is draw sheet of Kurush trial held on 08.04.2023 at Bhopal, Madhya Pradesh, where no merit of players is mentioned. Whereas, the document filed by the respondent is draw sheet of Kurush trial held on 08.04.2023 at Bhopal also showing the final result/positions secured by the participants. The petitioner has not only made addition on the blank draw sheet on her own handwriting as- on the top side of the printout of Draw Fixture that First trial Bhopal 19" Asian Games 2023 Date : 8/04/2023" and on the bottom of the paper as "Neha Thakur 6th Position During Bhopal Trial" but she has relied upon the same to claim that she secured 6th position in the trail held on 08.04.2023 at Bhopal, Madhya Pradesh. However, the undersigned is ready to abide by directions as may be passed by this Hon'ble Court, if any."

10. Learned Counsel for the Petitioner reiterates her contentions made in the Writ Petition. She contends that the Petitioner had secured 6th position but had been wrongly placed at 7th position and on protest, the Petitioner was placed at 6th position. She states that in the second round of trials which were held in Delhi on 24.06.2023 other players refused to play with the Petitioner herein. She states that as per rules, if an athlete refuses to play with the other athlete during trials, then it is termed as a walk-over and the athlete who refuses to play is deemed to have lost the match. She, therefore, states that since other players had refused to play with the Petitioner, the Petitioner ought to have been selected to represent the country in the forthcoming Asian Games.



11. Per contra, learned Counsel for Respondents No. 2, 4 & 5 contends that for the purpose of the selection of athletes in the first round of trials, which were conducted in Bhopal, the Selection Committee consisted of the following persons:

- i. Mr. Ravinder Dahiya – Secretary of the Technical Council and a Three Star International Referee.
- ii. Mr. Chanderpal Saini – Referring Direction of the Kurash Association.
- iii. Mr. Lal Singh – General Secretary of Kurash Association and International Referee.
- iv. Mr. Ravi Kapoor – International Referring Director of International Kurash Association.
- v. Mr. Dharmender Malhotra – President of Kurash Association.

12. He states that the Petitioner had stood 7th in the trial which was held in Bhopal and was not selected for second round trials which were to be conducted at Tyagraj Stadium, Delhi. He further submits that the Petitioner being a coach at the Tyagraj Stadium appeared on her own on the day of second round of trials and insisted that she should be considered for the purpose of selection. Learned Counsel for the Respondents No.2, 4 & 5 relies on the enquiry report and states that after completion of the process of first round of trials at Bhopal, Respondent No.7 advised Respondent No.4 to keep the Petitioner at 7th position as an additional player for the purpose of practice. He states that the Petitioner was not kept at 6th position, as claimed by the Petitioner, and, therefore, she could not have been considered for the purpose of selection for the Asian Games. He states that in the second round



of trials only two players, i.e. Ms. Pinky Balhara and Ms. Suchita T, were selected to represent the country in the Asian Games.

13. Heard the counsels and perused the material on record.

14. The enquiry report very categorically states that the draw of fixtures, which has been filed by the Petitioner has been interpolated by the Petitioner. She has inserted "*Neha Thakur 6th Position During Bhopal Trial*" in the draw sheet which is not there in the correct draw of fixtures. The enquiry report categorically states that the Petitioner has not only mentioned "*Neha Thakur 6th Position During Bhopal Trial*" at the bottom of the draw of fixtures but has also written "First trial Bhopal 19th Asian Games 2023 Date: 08/04/2023" on the top side of the printout of Draw Fixture and has also highlighted the match in the draw fixture to indicate her name. This Court is of the opinion that the Petitioner has tried to mislead the Court to emphasize that even as per the draw of fixture she has obtained 6th position in the first round of trials, which is not correct. The Petitioner moved an application for recall of the Order dated 22.08.2023, wherein this Court had directed the Special Commissioner, Delhi Police, to conduct an enquiry, stating that the Petitioner had highlighted and inserted certain words in the draw of fixtures only for the convenience of the authorities. This does not absolve the Petitioner from filing a fudged document in the Court. The enquiry report suggests that the draw of fixtures submitted by the Respondents No.2, 4 &5 is the correct draw of fixtures which also shows the final positions secured by the athletes. Considering the age and future of the Petitioner, this Court is desisting from taking any action against the Petitioner for filing a fudged document in the Court which is actually an offence under Sections 191, 192, 193, 195, 199 of the Indian Penal Code,



1860. This Court is also desisting from initiating action under Section 340 of the Cr.P.C against the Petitioner and also from initiating criminal contempt against the Petitioner.

15. To satisfy the conscience of the Court, this Court has examined the facts of the case on merits to satisfy itself as to whether the Petitioner deserves to represent the country in the forthcoming Asian Games or not even though she has filed forged documents in the Court.

16. Material on record indicates that barring Respondent No.7 all other members of the Selection Committee were of the opinion that the Petitioner has secured 7th position in the first round of trials which were held in Bhopal. The enquiry report reveals that Respondent No.7 advised Respondent No.4 to keep the Petitioner at 7th position as an additional player. The enquiry report further reveals that the Petitioner is working as a coach in Tyagraj Stadium where the second round of trials were to be conducted and the Petitioner got her name mentioned in the list of players for the purpose of selection process. It is revealed from the enquiry report that since the Petitioner was kept at 7th position, other players refused to play with her and the trials were conducted amongst the first six short-listed players. Technically the Petitioner was not entitled to participate in the second round of trials. There is no material on record to show that Respondents No.2, 4 & 5 are inimical to the Petitioner. No doubt the Respondent No.7, who was also a member of the Selection Committee, has given an affidavit that the Petitioner had objected to have been placed at 7th position and after re-watching the bout it was decided that the Petitioner should be placed at 6th position but this fact has not been accepted by other members of the Selection Committee. Therefore, out of five members of the



Selection Committee, only one member was of the opinion that the Petitioner should be placed at 6th position and four members were of the opinion that the Petitioner has secured 7th position after her match with Pooja Malik. The fact is that the Petitioner, who was otherwise not entitled to be in the second round of trials was allowed to be a part of the second round of trials but not as a player but as an extra player for practice and, therefore, she was not entitled to be considered for the purpose of selection for the forthcoming Asian Games. Material on record also shows that Ms. Suchita T., who has been selected to represent the country in the forthcoming Asian Games has defeated the Petitioner herein in the first round of Trials which were conducted in Bhopal.

17. It is well settled that writ courts must not substitute their opinions to the opinions arrived at by the experts unless the court is satisfied that the decision taken by the experts is perverse or illegal. The function of the Court is only to see that the decision has been arrived at in a good faith and the experts have acted reasonably. It is not the function of the courts to sit in judgment over the decision arrived at by the experts, if the said decision has been taken in good faith and is not perverse, as it would be risky for the Courts to tread an unknown path while upsetting such decisions.

18. In Shumel v. Union of India and Ors., **2010 SCC OnLine Del 4706**, a Co-ordinate Bench of this Court 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 Swastika Ghosh v. Table Tennis Federation of India, (2022) 4 HCC (Del) 213, another 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. On a total consideration of the facts of this case, this Court is of the opinion that the opinion of Respondent No.7 alone will not tilt the balance in favour of the Petitioner herein. The opinion of the majority of the members of the Selection Committee was that the Petitioner has secured 7th position in the first round of trials and, therefore, she was not entitled to be considered for selection. The fact that other players chose not to compete with the Petitioner in the second round of trials would not amount to a walk-over to



the Petitioner as the Petitioner was not entitled to participate in the second round of trials. Once the Petitioner was not entitled to participate in the second round of trials, the fact that other players chose not to compete against the Petitioner will not give any advantage to the Petitioner herein. The selection has been conducted in a free and fair manner and two athletes have been selected to represent the country in the forthcoming Asian Games. The process adopted by the Respondents No.2, 4 & 5 does not warrant any interference from this Court while exercising its jurisdiction under Article 226 of the Constitution of India.

23. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

SEPTEMBER 19, 2023

Rahul