



2024:DHC:5013-DB



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

% Judgment reserved on: 03.07.2024
Judgment delivered on: 09.07.2024

+ LPA 500/2024, CM APPL. 35331/2024, CM APPL. 35332/2024,
CM APPL. 36168/2024

SONALI CHHABURAO GITE Appellant

versus

UNION OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Debesh Panda, Mr. Ishan Puri, Mr. Yasharth Misra, Mr. Sanchit Suri, Advocates.

For the Respondents : Mr. Rohan Jaitley, CGSC with Mr. Hussain Taqvi, Mr. Dev Pratap Shai, Advs. for R-1.
Ms. Manpreet Kaur Bhasin, Adv. For R-2.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. The present appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the judgment dated 24.05.2024 passed by the learned Single Judge of this Court dismissing the W.P.(C) 7611/2024

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titled “*Sonali Chhaburao Gite vs. Union of India & Ors.*” filed by the appellant.

2. The facts germane to the present appeal, shorn of unnecessary details and as culled out from the appeal, are as under:

2.1 The appellant claims to be an international powerlifter who has achieved multiple titles including winning a gold medal at Asian Powerlifting Championship 2018 and states to also be an Indian Railways Powerlifting player and its employee since 2015. She is a member of the respondent no. 3/Powerlifting India.

2.2 The respondent no. 2 is the National Anti-Doping Agency (hereinafter referred to as “NADA”), a purportedly autonomous body originally established by the Government of India as a society registered under the Societies Registration Act, 1860, in the year 2005, with the larger objective of acting as the independent national anti-doping organization of India. It is claimed that respondent no. 2/NADA receives its funding entirely from the respondent no. 1/Union of India which purportedly exercises deep and pervasive control over the respondent no. 2/ NADA.

2.3 The facts of the present case as averred in the petition is that the respondent no. 2/NADA collected a urine sample from the appellant on 12.08.2023, in order to ascertain presence of any prohibited substance therein.



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- 2.4 The appellant received a Adverse Analytical Finding Notice (hereinafter referred to as “*AAF Notice*”) dated 19.09.2023 from the respondent no. 3/Powerlifting India as well as an email sent by the respondent no. 2/NADA, forwarding a notice containing adverse analytical findings issued by the respondent no. 2/NADA. In the said AAF Notice, it was alleged that *Drostanolone Metabolite (3a-Hydroxy-2a-methyl-5a-androstan-17-one)* was found in the urine sample of the appellant. As per the AAF notice, the respondent no. 2/NADA imposed a provisional suspension on the appellant while noting that the appellant may choose to not accept the finding of A-Sample if she chooses to apply for B-Sample opening and analysis.
- 2.5 The appellant submitted the B-Sample Arrangements Form on 26.09.2023 to the AAF Notice thereby rejecting the finding of the A-Sample. On 06.12.2023, the respondent no. 2/NADA replies to the application of the appellant for B-Sample testing and asked the appellant to submit lab charges amounting of Rs. 17600/- and the appellant duly paid the requisite amount on the same day.
- 2.6 The respondent no. 2/NADA issues the Notice of Charge dated 27.12.2023 against the appellant.
- 2.7 On 03.04.2024, Anti-Doping Disciplinary Panel (hereinafter referred to as “*ADDP*”) constituted the Hearing Panel, purportedly under the provisions of 2021 Rules.



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2.8 The appellant filed a Writ Petition (C) 7611/2024 before this Court and the learned Single Judge had dismissed the Writ Petition (C) 7611/2024 *in limine* filed by the appellant *vide* the impugned order dated 24.05.2024. Hence, the appellant filed the present appeal.

3. Mr. Debesh Panda, learned counsel for the appellant challenges the impugned order passed by the learned Single Judge on the ground that the learned Single Judge had not considered the argument of the appellant that the 2021 Rules, are in the nature of an executive fiat and not a delegated legislation. He submitted that the said 2021 Rules are not based on any Act of the Parliament and as such, have no legal sanctity which could grant legal enforceability. He submitted that since the 2021 Rules are in the nature of an executive fiat and do not have the force of law, the provisions of the same could not be enforced against the appellant to her detriment. According to the learned counsel, the Rules under which penalty proceedings have been initiated against the appellant being void, such proceedings are wholly without jurisdiction, arbitrary and violative of the fundamental rights enshrined in the Constitution of India.

4. Learned counsel further contended that the Parliament finding a lack of effective legislation in regard to the anti doping laws, had passed the Bill and enacted a legislation being the National Anti Doping Authority Act, 2022 (hereinafter referred to as "*NADA Act*"). However, the same was left to the wisdom of the respondent no. 2/NADA as to when the provisions of the said statute would come into force in terms of



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Section 1(2) thereof. He submitted that unfortunately, despite passage of more than two years, the said NADA Act has not been brought into force till date. According to Mr. Panda, the said non enforcement of the NADA Act is deliberate in-as-much as, the blatant abuse and unjust exercise of excessive powers by the respondent no. 2/NADA under the 2021 Rules would be taken away. He submitted that the said Act once enforced will ensure substantial loss of powers which have been arrogated by the respondents upon themselves. It is for this reasons that the respondents are not enforcing the NADA Act.

5. Another argument urged by the learned counsel is in respect of the purported implementation of the mechanism created by the World Anti Doping Authority (hereinafter referred to as “WADA”) and as to how the Parliament has sought to enact NADA Act, which is at variance with the WADA Code purely to ensure that the domestic athletes are not subjected to any harassment at the national or international sporting events.

6. That apart, learned counsel referred to the provisions of 2021 Rules, particularly to Article 2 of the Rules regarding anti doping rule violations. He particularly referred to sub Article 2.1.1 to submit that the onus to discharge the innocence is placed on the athletes. In other words, learned counsel submitted that the burden of proof has been squarely placed upon the athletes to establish that no prohibited substance has entered their bodies which would be onerous. He submitted that there could be myriad situations where such prohibit substances may be introduced into the bodies of the athletes innocently by consumption of articles provided by



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others. This according to learned counsel would leave the athletes vulnerable to any such substance misuse.

7. Learned counsel submitted that despite the respondents having collected the urine samples from the appellant, the reports in respect thereto, i.e. laboratory documents have not been provided to the appellant till date. He submitted that in such circumstances, relegating the appellant to appear before ADDP by the learned Single Judge would be violative of her constitutional and fundamental rights. He submitted that once the appellant subject herself to such proceedings, she would not be able to challenge the *vires* of the 2021 Rules, which according to him, are unconstitutional.

8. Learned counsel also submitted that the learned Single Judge ought to have decided the issues raised by the appellant one way or the other rather than relegating the appellant back to the Authority whose jurisdiction and authority have been challenged by the appellant. Leaving the question of law open, by the learned Single Judge in the impugned order, according to the learned counsel is neither here nor there as it leaves the appellant susceptible to gross misuse of provisions of 2021 Rules by the respondents.

9. He submitted that even in the previous rounds of litigations in respect of the similar rules formulated in the year 2015, the challenge by certain other athletes was almost on identical grounds. In those cases, learned counsel submitted that since the samples showed negative results, those athletes were discharged from the disciplinary proceedings. Having



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regard thereto, the previous challenge to 2015 Rules did not reach their logical conclusions. He submitted that the present case indicates and demonstrates as to how the athletes vulnerable to gross misuse of the anti doping rules by the respondents time and again.

10. Learned counsel referred to the provisions of NADA Act to submit that this Court must consider the provisions therein, though not enforced, to conclude that the intention of the Parliament in such provisions is to dilute the rigors of the 2021 Rules and provide succor to the aggrieved athletes.

11. Learned counsel also vehemently attacked the 2021 Rules which were purported to have been revised according to the WADA Code, 2021, on the ground that these rules have not even been notified in the Gazette and as such, have no force of law at all. He submitted that once the rules have not even been notified, the question of the respondents initiating disciplinary proceedings against the appellant under the said 2021 Rules, would be illegal, unlawful and void *ab-initio*. For the same reason, he submitted that ADDP constituted under the purported provisions to consider the case of the appellant would also be unlawful and void *ab-initio*. He submitted that as such, the notice dated 03.04.2024 issued by ADDP under the 2021 Rules would be void *ab-initio*. All subsequent proceedings too would be unlawful and void *ab-initio*.

12. This Court has heard the arguments of Mr. Panda, learned counsel appearing for the appellant.



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13. The law regarding power of the writ court to issue a mandate to the legislature is well settled. No Constitutional Court can issue a writ of mandamus to the legislature to enact/notify a particular subject in a particular manner. This Court is fortified in its view by the judgements of the Supreme Court in **Supreme Court Employees' Welfare Association vs. Union of India**, (1989) 4 SCC 187 and **State of Jammu and Kashmir vs. A.R. Zakki**, 1992 Supp (1) SCC 548. The relevant paragraphs of the aforesaid judgements are extracted hereunder:-

Supreme Court Employees' Welfare Association, (supra)

"51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

A.R. Zakki, (supra)

"10. In our opinion there is considerable merit in this submission. A writ of mandamus cannot be issued to the legislature to enact a particular legislation...."

It is apparent from the above that a Constitutional Court is precluded from issuing any writ of Mandamus to the Government to notify an act and bring it into force. Thus, the argument of the learned counsel for the appellant placing reliance upon the NADA Act is misplaced and is rejected in view of the aforesaid judgements.

14. So far as the arguments of learned counsel regarding the 2021 Rules not having been notified and thus, not having the force of law, as



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also the other arguments on facts are concerned, this Court deems it fit to keep it open and reserved to the parties, as of now, since there are disputed question of facts which would need adjudication by the ADDP. Moreover, it cannot be countenanced that there would be no regulations in place to monitor, supervise and regulate the sports persons/ athletes who are aspiring to participate in international sports events in the meantime.

15. It is important to highlight that India has ratified United Nations Educational, Scientific and Cultural Organisation International Convention against Doping in Sport (“Anti-doping Convention”) on 7th day of November, 2007, which has been framed bearing in mind the Code adopted by the WADA. Therefore, in effect, India, having ratified the convention, has also agreed to make the domestic standards compliant with the WADA Code.

By virtue of Article 73 of the Constitution, the Executive power of the Union extends, in the absence of parliamentary legislation, to the matters with respect to which the Parliament has power to make laws, subject of course, to constitutional limitations. Further, Article 73(1)(b) of the Constitution provides that executive power of the Union shall also extend to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

Treaty obligations of the Indian state have been provided under Article 51(c) of the Constitution, which states:

“51. Promotion of international peace and security.— The State shall endeavour to:

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(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another;”

The aforesaid Article was interpreted by the Supreme Court in **Commissioner of Customs, Bangalore v. G.M. Exports**, (2016) 1 SCC 91 wherein it was held as under:—

“23. A conspectus of the aforesaid authorities would lead to the following conclusions:

(1) Article 51(c) of the Constitution of India is a directive principle of State policy which states that the State shall endeavour to foster respect for international law and treaty obligations. As a result, rules of international law which are not contrary to domestic law are followed by the courts in this country. This is a situation in which there is an international treaty to which India is not a signatory or general rules of international law are made applicable. It is in this situation that if there happens to be a conflict between domestic law and international law, domestic law will prevail.

(2) In a situation where India is a signatory nation to an international treaty, and a statute is passed pursuant to the said treaty, it is a legitimate aid to the construction of the provisions of such statute that are vague or ambiguous to have recourse to the terms of the treaty to resolve such ambiguity in favour of a meaning that is consistent with the provisions of the treaty.

(3) In a situation where India is a signatory nation to an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred. The interpretation of such a statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.

(4) In a situation in which India is a signatory nation to an international treaty, and a statute is made to enforce a treaty obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty. This is for the reason that in such cases what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory



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nations in a manner that leads to the same result in all the signatory nations.”

Further, in **Vishaka v. State of Rajasthan**, (1997) 6 SCC 241, the Supreme Court has held that in the absence of a suitable legislation in any sphere, international convention and norms so far as they are consistent with constitutional spirit, can be relied upon.

Hence, even where India is not a party to an international treaty, rules of international law which are not contrary to domestic law are followed by the courts in this country. Further, where India is signatory and a statute is made pursuant to the said treaty, the statute would be given a "purposive" construction in favour of the treaty. Even if there is a difference between the language in the statute and the corresponding provision of the treaty, the statutory language should be construed in the same sense as in the treaty. This is for the reason that in such cases, what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations.

In light of the above, the position that emerges is that India, having ratified the Anti-doping Convention, is under an obligation to follow the international doping standards and NADA Rules, 2021, which are framed in consonance with the WADA Code and in exercise of powers under Article 73(1)(b) of the Constitution, will have effect of law till National Anti-Doping Act, 2022 comes into force.



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Thus, it would be apposite to wait for the ADDP to adjudicate all issues and questions of fact placed before it before interfering in the present matter. Moreover, it is informed that the 2021 Rules have been brought in alignment with the WADA Code which is applicable internationally for the international sports events. It would, *prima facie*, be an aberration in case this Court were to hold that there are no anti doping regulations in place and simultaneously expect the international sports community to accept our athletes and sports persons, that too, without testing the same on constitutionally laid parameters. Suffice it to state that such situation has not arisen yet.

16. Learned counsel relied on the judgement of the Supreme Court in **Aeltemesh Rein, Advocate, Supreme Court of India vs. Union of India & Ors.**, (1988) 4 SCC 54. In that case too, the Supreme Court has observed that a writ court cannot issue a writ directing the government to bring the act into force, but the Court can still issue such a writ to the government to consider the same in a time bound manner. Thus, it is clear that it is not incumbent upon the Constitutional Court to pass any such direction in the nature of mandamus. The decision to pass direction in the nature of requesting the government to consider notifying an Act is based on discretion of the Court. As of now, this Court is not inclined to pass any such directions.

17. We have perused the impugned order passed by the learned Single Judge. It is clear that the learned Single Judge had not examined the case on its merits or examined the question of law and had merely granted



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liberty to the appellant to challenge the order to be passed by the ADDP. We too are of the opinion that in the facts of the instant case and keeping in view the fact that the ADDP stands constituted which is to consider the case of the appellant, it would not be appropriate to interdict the proceedings at this stage.

18. In view of the aforesaid analysis, we find no reason, much less any cogent reason to interfere with the impugned judgment passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs reserving the appellant the liberty granted by the learned Single Judge.

19. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J.

ACTING CHIEF JUSTICE

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