



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

Date of decision: 6th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 12752/2023**

KARM KUMAR

..... Petitioner

Through: Mr. Avi Singh and Mr. Shikhar Garg,
Advocates.

versus

SQUASH ASSOCIATION OF DELHI & ORS. Respondents

Through: Mr. Utkarsh Joshi, Advocate for R-1.
Mr. Aditya Verma, Mr. K. Rigved
Prasad and Mr. Samar Singh,
Advocates for R-2.
Mr. Vikash Singh, Mr. Sagar
Chaurasia and Mr. Piyush Kumar,
Advocates for R-4.
Mr. Anil Soni, CGSC with Mr. Sahaj
Garg, Mr. Devvrat Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging a notification dated 13.09.2023 notifying dates for trials for selection of the Delhi State Squash Team for the 37th National Games scheduled to be held in November, 2023. The last date of registration was 24.09.2023 and trials were to be conducted from 30.09.2023 to 01.10.2023.
2. The notification states that the applicant must be an Indian Citizen (Passport holder). The Petitioner, who is a British citizen with an Overseas Citizen of India card (OCI), seeks to challenge that portion of the



notification which restricts eligibility of participation in the National Games only to Indian Citizens (Passport holder).

3. The contention of the Petitioner primarily is that as an OCI cardholder, the Petitioner enjoys the status of an Overseas Citizen of India but is not an Indian Passport holder. He states that the colour of the passport cannot decide the eligibility for the participation in the National Games. It is stated that permission to participate in the National Games cannot be on the basis of a Passport and such distinction is violative of judgment dated 01.10.2008 passed by this Court in Karm Kumar v. Union of India & Ors., W.P.(C) 3049/2008. W.P.(C) 3049/2008 was filed by the Petitioner challenging the denial to participate in the National Squash Championship conducted by the Squash Rackets Federation of India on the very same ground that participation was restricted only to Indian Citizens holding a valid Indian Passport. He states that such restrictions on non-Indian Passport holders to participate in the National Games has been set aside by this Court *vide* judgment dated 01.10.2008 in W.P.(C) 3049/2008 in Karm Kumar v. Union of India & Ors., It is stated that the rules which were under challenge in the writ petition permitted players over 16 years having an Indian Passport to participate in the games and the said rule laying such a condition was set aside. He states that this Court in the said judgment has held that allowing foreign nationals below the age of 16 years to participate in the National Games, and disallowing players above 16 years without having an Indian Passport from participating in the National Games, is arbitrary. It is stated that the judgment also holds that players who are Overseas Citizens of India should be allowed to participate in National Games and cannot be



denied participation in National Games just because they are not Indian passport holders. Learned Counsel for the Petitioner states that the Petitioner is a sports enthusiast and that he wants to represent the State of Delhi in the National Games.

4. It is contended by the Petitioner that there was no restriction on the players who did not have Indian passports representing their States for National Games in the 36th edition. The Petitioner states that he was born in India, is domiciled in India, and has lived his entire life in India. It is also stated that the eligibility criteria were never communicated to the Sports Federations. It is, therefore, stated that the decision is completely arbitrary and has been taken only to exclude a few sportspersons.

5. Learned Counsel for the Petitioner also states that the Petitioner is not barred from competing under the criteria laid down under the Sports Code and the Olympic Charter and the World Squash Organisation's Championship Regulations and the Asian Squash Federation Guidelines and the Sports Federation of India Guidelines.

6. Notice was issued on 26.09.2023. Replies have been filed by the Respondents.

7. In the reply, the stand taken by Respondent No.2 is that the eligibility criteria of the participant to be Indian Citizen (Passport holder) and the decision of permitting only those participants having Indian Passport is based on the rules framed by the Indian Olympic Association which is followed by Respondent No.2.

8. Reliance is also made on the letter dated 03.10.2023 of the Games Technical Conduct Committee (GTCC) for the 37th National Games



wherein it is stated that only athletes holding Indian Passports alone have been permitted to participate.

9. Heard learned Counsel for the Petitioner and learned Counsel for the Respondents and perused the material on record.

10. By the time the writ petition was heard finally on 31.10.2023, petition had become infructuous as the teams had been selected and were ready to participate in the National Games. However, since the issue is likely to arise in subsequent years, and the learned Counsel for the Petitioner requested that the case be adjudicated as the said restriction will again come in the Petitioner's way in the following years. In view of the submission, this Court is proceeding further to adjudicate on the question which arises in the writ petition.

11. A similar question, as to whether only those athletes with Indian Passports alone should be permitted to represent India for international sporting events was considered by a Coordinate Bench of this Court in the case of the same Petitioner in Karm Kumar v. Union of India & Ors., **2010 SCC OnLine Del 2579**. While answering this question, the Coordinate Bench of this Court considered the Judgment dated 01.10.2008 passed by this Court in Karm Kumar v. Union of India & Ors., **W.P.(C) 3049/2008**, and was of the opinion that the power to decide as to who should be eligible to participate in the sporting events is a matter of policy.

12. The learned Single Judge observed that consequent to the said Judgment dated 01.10.2008 in **W.P.(C) 3049/2008**, the Ministry of Youth Affairs and Sports came out with an announcement by way of a communication dated 26.12.2008. The said communication which brings out



the policy reads as under:-

*“No. F.45-5/2008 SPI.I.
Government of India,
Ministry of Youth Affairs & Sports,
Department of Sports,
Shastri Bhavan, New Delhi.*

Dated: 26.12.2008

*To
The President/Secretary General,
Indian Olympic Association,
B-29, Qutab Institutional Area,
New Delhi.
The President/Secretary Generals of All recognized National Sports
Federations,*

Sir,

In the matter of Karam Kumar v. Union of India, the Hon'ble High Court of Delhi has directed Government to review the matter of participation of foreign nationals of Indian origin in the national teams and bring out a uniform national policy in the best interest of sports in the country.

The matter has, in pursuance to the above direction of the Hon'ble High Court of Delhi, been carefully considered after seeking comments of Indian Olympic Association, recognized National Sports Federations and others concerned.

Based on this consultation, an overwhelming view has emerged that the best interest of Indian Sports would be served by ensuring that players who are Indian citizens only represent the country in the National teams. This would ensure that the limited resources available are invested optimally in building world-class athletes. This would also provide the opportunity of giving international exposure and training to deserving local talent, which would further improve them to world class performance levels. Finally, it would serve the long term interests of the country to emerge as a front



runner in the field of sports. In view of the above, it has been decided that, henceforth only players who are citizens of India would be entitled to receive government support for representing the country in the national teams. Further, the above policy decision would also be applicable in the consideration of proposals for the participation of the national teams in international sports events.

*Yours faithfully,
Sd/-
Shankar Lal
Under Secretary to Govt. of India."*

13. The said judgment also noted that a Press Release was issued by the Ministry of Youth Affairs and Sports which stated that after consulting all National Federations and the Indian Olympic Association, it had been decided that since the financial assistance from government is given only for Indian players, the National Games should also be restricted to Indian nationals.

14. The decision to restrict participation only to Indian citizens, with an Indian Passport, to represent the country has been taken to ensure that the limited resources available are invested optimally to help develop world class athletes and to nurture local talent which will further improve such players to compete on international platforms. The letter indicates that the decision to restrict participation to players holding an Indian Passport would serve the long-term interest of the country to emerge as a global leader in the field of sports.

15. The learned Single Judge, in Karm Kumar v. Union of India & Ors., **2010 SCC OnLine Del 2579**, upheld the policy decision taken by the government restricting right to represent India in national sporting events to



Indian Passport holders only. Paragraph 39 of the said judgment reads as under:-

“39. This Court is of the view that the policy decision taken by the Government of India as announced on 26th December, 2008, as subsequently clarified on 12th March, 2009, restricting the right to represent India in international sporting events to Indian passport holders, cannot be said to be arbitrary, irrational or unreasonable. There is a justification in insisting that only Indian passport holders should represent India in an international sporting event. Those with foreign passports obviously owe their allegiance to the country of which they hold the passport. As long as the policy of the Government of India does not recognize dual citizenship in all aspects, this Court cannot accept the submission that even foreign passport holders should be permitted to play for India in international sporting events. Ultimately the decision whether Indians alone should be allowed to represent India in an international event is a matter of policy of the Government of India. The scope of the powers of this Court under Article 226 of the Constitution of judicial review of such policy decision is extremely limited.”

16. It is well settled that players who participate in National Games are often selected to represent the country in international events. If the aim of the policy is to ensure nurturing of national talent i.e., to give exposure to Indian nationals so that they can ultimately represent the country, then it automatically follows that only Indian nationals should be permitted to represent their respective States in a national championship. If a person who does not have an Indian Passport represents a State, then it deprives an Indian citizen of an opportunity to participate in the national event to



showcase his talent so as to be eligible to be considered for international events.

17. Section 7B of the Citizenship Act, 1955, deals with conferment of rights on Overseas Citizens of India. The Petitioner contends that there is no bar under Section 7B of the Citizenship Act disentitling the Petitioner to participate in the National Games.

18. Undoubtedly, the Petitioner is correct that under Section 7B, there is no bar for the Petitioner to participate in the National Games but the government has taken a decision to not permit the Foreign/Overseas Citizens of India to participate in the National Games creating a condition for representing the country in international events. There is no bar on the Petitioner to attend any event in the country other than National Games. As stated above, persons who participate in the National Games and win medals, are the probable players who end up representing the country in international games. If a person who is not an Indian Passport holder and who cannot participate in the international games for the country is permitted to represent a State, then it would deprive a person having Indian Passport to participate in the National Games to showcase his talent so that he/she would be able to represent the country.

19. In view of this matter, the decision taken by the Games Technical Conduct Committee (GTCC) restricting participation of players in the National Games to only those having an Indian Passport and may consequently be able to represent the country in international events cannot be said to be completely arbitrary or unreasonable which calls for interference under Article 226 of the Constitution of India.



20. It is well settled that Courts do not interfere in the matters of policy. The Apex Court in MP Oil Extraction & Anr. v. State of M.P. & Ors., (1997) 7 SCC 592, has observed as under:-

“41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of



judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.”

(emphasis supplied)

21. Similarly, the Apex Court in Ugar Sugar Works Limited v. Delhi Administration, (2001) 3 SCC 635, has observed as under:-

“18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.”

(emphasis supplied)

22. The decision taken by the government and by the Games Technical Conduct Committee to allow only Indian Passport holders to participate in the National Games has been done to ensure that the best players in the country are able to showcase their talent in the National Games so that they



may be able selected to participate for the country in international games. This policy does not call for any interference. An Indian passport holder and a person who is an Overseas Citizen of India but not a Citizen of India are two different classes and the decision which is challenged in the writ petition cannot be said to violative of Article 14 of the Constitution of India inasmuch as equals are not being treated unequally. A player with a foreign Passport might or might not represent the country because he has alternatives to represent other countries. This has the potential of not only jeopardizing the interests of the country, but hindering other players from participating in both National and International games. Permitting participation of a player who does not have an Indian Passport, as stated above, will deprive an Indian citizen to represent the State as well as ultimately take away their ability to be considered for international events. In view of this matter, this Court does not find that the decision taken is so unreasonable that it calls for interference under Article 226 of the Constitution of India. The executive authority knows what is best for the country and it is well settled that unless the policy is completely perverse and without any rationale, Courts while exercising jurisdiction under Article 226 of the Constitution of India should not interfere.

23. The writ petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2024

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