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

+ W.P.(C) 9488/2022 & CM APPL. 28331/2022

SWASTIKA GHOSH

..... Petitioner

Through: Mr.Arijit Prasad, Sr.Adv. with
Mr.Keshav Ahuja, Advocate

versus

TABLE TENNIS FEDERATION OF INDIA AND ORS.

..... Respondents

Through: Mr.Moazzam Khan, Mr.Aman Gupta
and Mr.Brijesh Ujjainwal, Advocates
with Mr.S.K.Tandon, Manager for
TTFI/R-1.

Mr.Harshit Jain, Ms.Poonam Das,
Ms.Yashima Sharma and Mr.Prakhar
Sharma, Advocates for R-2/ Sports
Authority of India.

Mr.Vineet Dhanda, CGSC with
Mr.Sarvan Kumar, Advocate for UOI.

Mr.Deepak Biswas, Ms.Shilpa
Gamvani and Ms.Atmaja Tripathi,
Advocates for R-6 (Diya Chitale)
Ms.Ritika Jhurani and Mr.Dinesh
Sharma, Advocates for R-7.

+ W.P.(C) 9490/2022, CM APPL. 28333/2022 & CM APPL.
28335/2022

MANUSH SHAH THROUGH UTPAL SHAH

..... Petitioner

Through: Mr.Deepak Biswas, Ms.Shilpa
Gamvani and Ms.Atmaja Tripathi,
Advocates

versus

TABLE TENNIS FEDERATION OF INDIA AND ORS.

..... Respondents

Through: Mr.Moazzam Khan, Mr.Aman Gupta and Mr.Brijesh Ujjainwal, Advocates with Mr.S.K.Tandon, Manager for TTFI/R-1.
Mr.Harshit Jain, Ms.Poonam Das, Ms.Yashima Sharma and Mr.Prakhar Sharma, Advocates for R-2/Sports Authority of India.
Mr.Vineet Dhanda, CGSC with Mr.Sarvan Kumar, Advocate for UOI.
Mr.Vikas Lakra, Adv. for R-7.

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Date of Decision: 20th June, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The writ petition bearing W.P.(C) No.9488/2022 has been filed by the petitioner with the following prayers:

a) A Writ of Mandamus or a Writ in the nature of Mandamus directing the Respondent No. 1 to include the Petitioner in the list of 4 selected players for the women's table tennis team for the Commonwealth Games 2022;

b) A Writ of Mandamus or a Writ in the nature of Mandamus directing Respondent No.2 to revoke the ratification granted to the 4 players selected by Respondent No.1 for the women's table tennis team for the Commonwealth Games 2022, in violation of

the existing criteria and in contravention of the provisions of the Code;

c) A Writ of Mandamus or a Writ in the nature of Mandamus directing Respondent No. 2 to refrain from ratifying any selections made by Respondent No. 1 for the women's table tennis team for the Commonwealth Games 2022, without strictly adhering to the Existing Criteria and the provisions of the Code.

2. The writ petition bearing W.P.(C) No. 9490/2022 has been filed by the petitioner with the following prayers:

A) A Writ of Mandamus or a Writ in the nature of Mandamus directing the Respondent No. 1 to include the Petitioner in the list of 4 selected players for the men's table tennis team for the Commonwealth Games 2022;

B) A Writ of Mandamus or a Writ in the nature of Mandamus directing Respondent No. 2 to revoke the ratification granted to the 4 players selected by Respondent No. 1 for the men's table tennis team for the Commonwealth Games 2022, in violation of the Existing Criteria and in contravention of the provisions of the Code;

C) A Writ of Mandamus or a Writ in the nature of Mandamus directing Respondent No.2 to refrain from ratifying any selections made by Respondent no.1 for the men's table tennis team for the Commonwealth Games 2022, without strictly adhering to the Existing Criteria and the provisions of the Code.

3. The sum and substance of the grievances of the petitioners is that their names have not been included in the final selection list by the Selection Committee and the Committee of Administrator despite fulfilling the selection criteria as laid down by the federation. The grievances of the

learned counsels for the petitioners is that the process of the selection has not been adopted correctly and the persons who have been included in the list or being proposed to be sent to participate in the commonwealth game are much below in the ranking as compared to the petitioners before this court. The learned counsel for the petitioners have also challenged the credentials of the members of the Selection Committee on the ground that some of the members are who either themselves in person or their spouse are running the academy and therefore they should not entitled to be included in the selection committee. The plea of the petitioners is that their names should be included in the names of the panel to be sent for participating in the commonwealth games.

4. *Per contra*, the plea taken by respondent No.1 is that this court does not have domain to enter into the selection process of the selection criteria. It has been submitted that the names have already been finalized and have been sent to the Indian Olympic Association on 07.06.2022 and now the Indian Olympic Association might have sent the names further. Mr.Moazzam Khan, learned counsel for respondent no.1/TTFI has relied upon *Shumel vs. Union of India*, 2010 SCC OnLine Del 4706 and *Neha Rathi vs. Union of India*, 2010 SCC OnLine Del 4707. Learned counsel submits that a bare perusal of these judgments makes it clear that the courts are not an appropriate forum to make the selection of players to participate in the games and it is only for the expert bodies to decide.

5. Mr.Vineet Dhanda, learned Central Government Standing Counsel has also submitted that this court under Article 226 of the Constitution of India does not have jurisdiction to enter into the nitty gritty of the selection process. It has been submitted that the names of the petitioners were duly

considered by the Selection Committee and the Committee of Administrators. The Committee of Administrators after due deliberation has finalised the names and therefore this court has no jurisdiction to entertain the present petition.

6. In rebuttal, Mr.Arijit Prasad, learned Senior counsel and Mr.Deepak Biswas learned counsel for the petitioners have submitted that the names could not have been sent by the Federation in view of the order dated 16.06.2022 passed by the High Court Karnataka in Writ Petition No.11644/2022. Learned counsel for respondent no.1 reaffirmed that names have been finalised and sent to Indian Olympic Association much before 16.06.2022.

7. I have considered the submissions and perused the record carefully.

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 vs. UOI & Ors.**, W.P.(C) 6008/2011 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 Vs. State of Rajasthan AIR 2003 SC 2889 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 (2005) 6 SCC 454. Similarly, in Taherakhaton Vs. 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. N.C.T., thr. Secy. Labour 131 (2006) 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 Vs. Presiding Officer, Labour Court MANU/DE/9235/2006 by refusing to interfere in exercise of discretionary powers inspite of holding the reasons given by the Labour Court to be not convincing.

9. This court in **Punjabi University's** case (*supra*) 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 *Ms.Manika Batra (supra)* 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 the respondent no.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 no.1 will acquiesce their administrative duties to the Committee of Administrators, while the staff engaged by the respondent no.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 the respondent no.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 the respondent no.1, as also to avail the services of the staff already employed by respondent no.1.

v. All communications on behalf of the respondent no.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 no.1. All the banks where the respondent no.1 federation have bank accounts, are directed to treat the members of the Committee of Administrator as being authorised signatories of respondent no.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 sport person 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. vs. 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 vs. 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 7th and 8th August 2010 is either arbitrary or unreasonable.

14. In *Sushil Kumar vs. 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 concerned national sports federation. The judgment in *Sushil Kumar* (supra) was also followed by this Court in *Karamjyoti vs. Union of India*, W.P.(C) 6815/2016 dated 11.08.2016 whereby it was inter alia held as under:

42. I am in complete agreement with the view taken in the case of Sushil Kumar (Supra) 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 concerned national sports federation 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 vs. 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 specialized 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* (W.P. (C) 6815/2016 decided on 11.08.2016) and *Shumel v. Union of India* (W.P. (C) 5034/2010),*

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 analyze 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 R7 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 R6 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 *Ms.Manika Batra vs. Table Tennis Federation of India through the President and Ors.* W.P.(C) 10590/2021 vide judgment dated 11.02.2022. 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 concerned federation. However, I do not find any such arbitrariness or perversity in the such order and furthermore, Mr.Moazzam Khan, learned counsel for respondent no.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 sports person 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 malafide 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.

19. Thus, I consider that there is no substance in the present petitions. Accordingly, the petitions alongwith all the pending applications are dismissed.

20. *Dasti* under the signatures of the Court Master.

DINESH KUMAR SHARMA, J
(VACATION JUDGE)

JUNE 20, 2022

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