
(2014) 09 DEL CK 0357

In the Delhi High Court

Case No : W.P. (C) 6232/2014 and C.M. No. 15071/2014

Diya Correa

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 09 DEL CK 0357

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rahul Mehra and Roma Bhagat, Advocate for the Appellant; Sanjay Jain, ASG, Monika Arora, Pallavi Shali, Akash Nagar, Noor Anand, Anil Grover, Noopur Singhal, Ajit Warriar, Tarunima Vijra and Shreya Munoth, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Vibhu Bakhru, J.—The petitioners have filed the present petition inter alia praying as follows:-

"B. Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent No. 1 to grant administrative approval to include the Petitioners in the Indian Yachting contingent by reinstating the participation in their Class at the Asian Games 2014;

C. Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing Respondents No. 1 and 3 to give an undertaking to this Hon'ble Court that a prior sanction letter for the Petitioners' participation at the Asian Games 2014 will be issued in time for the Petitioners to participate at the Games;

D. Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent No. 1 to allow the Petitioners to participate in the forthcoming Asian Games 2014 in 420 Class in the Under - 19 age group

at no cost to the Respondents;"

2. The brief facts of the case are that the Asian Games at Incheon, South Korea are scheduled to commence from 19th September, 2014. The petitioners are sportspersons who aspire to participate in the sport of Yachting- "420 Class - under 19 age group" in the forthcoming Asian Games. The petitioners were selected by Yachting Association of India to participate in the aforementioned event as a part of the Indian Yachting Contingent.

3. The selections for the sportspersons are stated to have been made on 21.07.2014. Thereafter, the names of the selected players including the petitioners were forwarded to the Indian Olympic Association (hereafter referred to as "IOA"). Since the petitioners were minors, they were asked to submit Parental Consent Forms for participation in the said games on 02.09.2014.

4. Apparently, the IOA and the Olympic Committee of Asia (OCA) cleared the names of the petitioners for participation as a part of the Indian Contingent. And, subsequently, Accreditation Cards were issued to the petitioners for participants in the games. In view of the petitioner's selection at the trials, they arranged for the boats and sailing equipment to be sent to the host country i.e. South Korea at a considerable expense. Since the arrangement for transporting the boats and sailing equipment takes about five to six weeks, the said boats/equipment were shipped in July, 2014.

5. The administrative approval by respondent No.1 was issued on 9th September, 2014 and the petitioners' names did not feature in the list of approved participants. Apparently, respondent No.1 had decided to have no participation in the event for which the petitioners had been training (i.e. 420 class-under 19 age).

6. Since the Asian Games are Scheduled to commence on 19.09.2014, the respondents were directed to produce the file pertaining to the decision for selection of players. Pursuant to the said directions the respondents produced the file of respondent No.1 which contained only a tabular statement and there was no other material on record to indicate the basis on which the approval was granted for participation of the sportspersons. It was submitted on behalf of respondent No.1 that the approvals were granted based solely on the recommendations from the concerned project officers and, obviously, without any other material (since none was found in the file). As per the Office Order dated 21.06.2012, one Mr. Sudhir Jain was appointed as the Project Officer for several sports, namely, "Volleyball, Kayaking and Canoeing, Yachting, Rowing and Swimming". Accordingly, Mr. Sudhir Jain was directed to be present with all relevant material on the basis of which he had made his recommendation. Mr. Sudhir Jain had produced a file, which he claimed to be the original file, containing material on the basis of which he had made his recommendations. A perusal of the file indicated that it is neither numbered nor paginated and also did not contain original documents but was a compilation of photocopies of

certain documents and other documents which Mr. Jain claimed to have downloaded from the internet.

7. The said file contained a report titled "Asian Games Classes review". This document is neither signed nor indicates the name of its author. Mr Sudhir Jain stated that this document was the report of the Chief Coach. The said file also contained a tabular statement which purported to be the analysis of the performance details of the Indian Yachting Team. Mr. Jain further stated that pencil notings were made for the benefit of the Court.

8. The learned ASG referred to the tabular statement which indicated the performance of the petitioners in other events. The petitioner No.1 had participated in 420 World Championships held between July and August, 2014 and was placed 5th amongst the Asian countries who had participated in that event. Similarly, petitioner No.2 had also participated in International events and was also placed in the 5th position amongst teams from Asian Countries in their respective events/competitions.

9. The learned ASG also referred to the purported report of the Chief Coach which indicated that although petitioner No.1 had given credible performance she was inexperienced and it was stated that "she was without any track record of success". As far as petitioner No.2 is concerned, the report indicated that he had finished in the 23rd position in the ISAFYW but in comparison to other Asian Nations was placed 5th and ahead of Korea. The learned ASG stressed that the report indicated that the chances of the petitioners winning a medal were non-existent.

10. The learned counsel for the petitioners has contended that the National Sports Development Code of India, 2011 (in short "Sports Code") is mandatory and in terms of the Sports Code, the selection by the National Federation cannot be interfered with. He submitted that since the National Federation had held trials and selected the petitioners their names could not be subsequently dropped. He also referred to para 15.1 of the Sports Code which provides that the selection criteria ought to be circulated between players. The relevant passage referred to by the counsel is extracted below:-

"Introduction of transparent selection procedures at all levels. Where possible and practical, NSF will be required to introduce seeding and ranking systems which will provide an automatic and transparent system of selection. The selection criteria as notified by the NSF, shall be circulated and explained to all the athletes concerned at least two to three years in advances as far as major competitions such as Commonwealth/Asian/Olympic Games is concerned and in respect of other important championships, this shall be done at least six months in advance."

11. I have heard the learned counsel for the parties.

12. It is not disputed that the petitioners are sportspersons of some repute and

have participated in several international events. Even according to the respondents, the petitioners had been placed at the 5th rank amongst Asian Nations who had participated in international competitions that were open to countries all over the world. It was also not disputed that although the petitioner Nos. 1 and 2 were ranked 5th amongst Asian countries in 420 World Championship 2014 and ISAFYW 2014 respectively, the said championships did not have any age bar and, therefore, had wider participation.

13. It is also not disputed that the petitioners had successfully participated in the selection trials and had been selected. In the given circumstances, the credibility and skill of the petitioners as sportspersons is not in doubt.

14. After the National Sports Federation (respondent No.3) had selected the petitioners, the IOA had also issued the Accreditation Cards for the 17th Asian Games at Incheon, South Korea to the petitioners. According to the respondents, the said cards are only issued after final approval by respondent No.1.

15. In the given circumstances, the question to be addressed is whether the petitioners can be withheld from participation after their selection and after the Accreditation Cards for the games have been issued to them.

16. The petitioners have been training for the event and apparently have spent a considerable amount of time and effort in preparation of the said games. After successful completion of the selection trials and having secured the Accreditation Cards, the petitioners have a legitimate expectation to be a part of the Indian contingent. The respondents' action in not approving their names at a belated stage after they were provided Accreditation Cards, clearly fails the test of fairness. The petitioners on the strength of being selected have already taken steps and sent their boats and equipment to Korea.

17. The participation of the petitioners in the games has no monetary consequences on the respondents as the petitioners are independently funded and are only seeking to participate in the games at their own costs. Thus, indisputably, no prejudice is caused to the respondents in any manner in permitting their participation.

18. The learned ASG referred to the decision of the Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, and Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another, and contended that the role of a Court in exercising powers under Article 226 of the Constitution of India is limited and the Court would not supplant its views over that of the executive or its agents. He pointed out that the judicial review under Article 226 of the Constitution of India was only limited to the decision making process. The propositions canvassed by the learned ASG are well settled. Judicial review under Article 226 of the Constitution of India is limited to examining the decision making process and arbitrariness in state action. It is also well established that administrative action has to be adjudged on the test of "fair- play" and reasonableness. The Supreme Court in Man Singh Vs. State of Haryana and

Others, explained the test of "fair-play" as a facet of Article 14 of the Constitution of India. The relevant extract of the said decision reads as under:-

"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."

19. In the facts of the present case, the action of the respondents in deleting the names of the petitioners on 09.09.2014, clearly, fails the said test. Indisputably, the boats and equipments required for participation in the event were to be transported five or six weeks in advance. Admittedly, there was no indication to the petitioners prior to 09.09.2014 that their names would be removed from the list of participants. In fact, on 02.09.2014, parental consent of the petitioner was sought for participation in the events. The actions of the respondents have to be tested on the anvil of fairness and reasonableness. The only reason for dropping the names of the petitioners by the respondent is that they are not medal probables. Whatever be the thought behind this decision, it is contrary to the spirit in which sporting events are played. The Olympic creed - "The most important thing in the Olympic Games is not win but to take part, just as the most important thing in life is not the triumph but the struggle. The essential thing in life is not conquering but fighting well." - seems to be lost on the respondents as they have decided to avoid participation in the event, rather than face the prospect of not winning medals. Although, this decision may not be amenable to challenge on merits, it certainly can be assailed on account of in the manner and the stage at which it is made. Admittedly, this criteria had not been disclosed to the players either prior to their selection trials or even thereafter. The petitioners were led to believe that they would be participating at the games. Accreditation cards were also issued to them. Viewed in the aforesaid perspective, the conclusion that the decision of respondent no.1 in dropping the names of the petitioners is unfair and unreasonable, is inescapable.

20. The course of events clearly indicates that the petitioners were led to believe that they are part of the Indian contingent, they were expected to train and prepare for the games. Petitioners have also spent considerable amount of money in transporting their boat and equipment to Korea. Indisputably, the shipping of the boats and equipments had to be done much prior to 09.09.2014

and obviously on the basis of their selection by the concerned National Sports Federation.

21. If one examines the decision making process, one finds that respondent no.1 based its decision entirely on a recommendation of a Project Officer. The Project Officer's file (if the said file can be stated to be one) also does not disclose any notes or discussions or any evaluation process. According to the Project Officer, he simply followed the advice of the chief coach. The alleged documents containing the said advice is neither signed by the coach nor does that document indicate that it is authored by the chief coach. There is also no covering letter and there is no indication as to when the said document was received and assimilated. The veracity of that document itself is doubtful. It is apparent that no record of discussion or evaluation, if any, was maintained by the Project Officer and yet a vital decision to drop the names of players was initiated by him.

22. The learned ASG, on instructions confirms that an Accreditation Card is issued to sportsperson only after his/her final approval. Yet, in this case the said Accreditation Card for participation in the games was issued to the petitioners and the respondent's decision has the effect of withdrawal of the same. It is apparent that the decision making process was fundamentally weak, to say the least. And, fails the test of "fair-play" and reasonableness.

23. The relevant consideration that sportspersons had taken steps pursuant to their selection - which they, obviously, were expected to take given the time required for shipping the equipments - was also not considered by the respondents.

24. In the given circumstances, the petition is allowed and the respondents are directed to forthwith grant the administrative approval for petitioners to participate at the Incheon Games in the event of Yachting- "420 Class-under 19 age group".

25. The Project Officer, Mr. Jain has produced a file which was stated to be the original file on the basis of which he had made his recommendations. A bare perusal of the file indicates the following:-

(a) It is not numbered or paginated.

(b) None of the documents bear any signatures.

(c) The Documents do not seem to be original but are photocopies.

26. Although, "Asian Games Classes Review" is stated to be a report of the National Coach, however, there is no covering letter, no signatures and no indication that it is authored by the said Coach. It, prima facie, appears that the said file cannot be the record of respondent No.1 and yet has been produced in Court as such. In the given circumstances, the Secretary of Ministry of Youth Affairs and Sports, Government of India is directed to hold an inquiry as to whether the file forms part of the original records of respondent No.1 and

whether it conforms to the standards required. It is also required to be investigated as to when such file was created and in what manner. The Registrar General is directed to place the file in a sealed cover and forward the same to the Secretary of Ministry of Youth Affairs and Sports, Government of India for further investigation. It is further directed that the inquiry report relating to the said file be placed before this Court within a period of six weeks from today.

27. The writ petition is disposed of with the above directions.

Dasti under the signature of Court Master.