

(2018) 04 DEL CK 0081

In the Delhi High Court

Case No : LPA 208 of 2018

PARALYMPIC COMMITTEE OF INDIA

APPELLANT

Vs

NARESH KUMAR SHARMA AND ANR

RESPONDENT

Date of Decision : 18-04-2018

Acts Referred:

Citation : (2018) 04 DEL CK 0081

Hon'ble Judges : S. RAVINDRA BHAT, A.K. CHAWLA

Bench : Division Bench

Advocate : Kanwal Chaudhary, Naveen Kumar Chaudhary, Chandan Sharma, Sumeet Anand, Ashok Kumar Singh, Nikhil Goel, Gurpreet Hora,

Final Decision : Allowed

Judgement

////////

S. RAVINDRA BHAT,////////

1.The present appeal has been filed by the Paralympic Committee of India (hereafter ""the Committee"") impugning the order of a learned single judge",////////

dated 09.04.2018 passed in a writ petition preferred by the petitioner. By the impugned order, the single judge allowed Naresh Kumar Sharma (""the",////////

petitioner"") to participate in the R7 event at 2018 Korean World Championship and gave directions to the Committee to do the needful. Learned",////////

counsel for the petitioner, who is present in court, accepts notice. With consent of counsel, the appeal was heard finally.",////////

2.The Committee, a Karnataka registered society was established for the upliftment of Para Athletes and development of sports amongst the",////////

physically handicapped sportspersons of India. Before 2016, the Committee had

not formulated any selection policy for the para shooting team",,,,,,,,,

representing India in various international sporting events. In December 2016, owing to growing domestic competition amongst para-shooters, the",,,,,,,,,

Committee formulated a selection policy after consulting the relevant stakeholders. In accordance with its selection policy, the Committee conducted",,,,,,,,,

trials at the 61st National Shooting Championship in Kerala, in which over 100 shooters participated. Based on the results of this national competition,",,,,,,,,

athletes were selected by the Committee to represent the country at the Al Ain World Cup in 2018. With the exception of three shooters, the same",,,,,,,,,

team was scheduled to represent the country at the 2018 World Shooting Para Sports Championships, Cheongju, Korea. The Committee failed to",,,,,,,,,

select the petitioner to represent India for any events; aggrieved, he preferred a writ petition for a direction that he be sent for the 2018 Al Ain",,,,,,,,,

Championship and the 2018 Korea Championship. He attacked the policy of the Committee, issued on 08.11.2017 as "draconian" and arbitrary,",,,,,,,,

inasmuch as it set unrealistic goals as the qualifying criteria for selection of shooters; specifically the grievance was that the MQS set for the R7,,,,,,,,

shooting event (1137 points) was arbitrary. The petitioner had urged that his non selection was despite his winning the gold and two more medals in,,,,,,,,

the recently concluded national championship.Â",,,,,,,,,

3.During the course of hearing of the Writ Petition, the petitioner admitted that he would not be able to prepare himself in time for the 2018 Al Ain",,,,,,,,,

Championship. He therefore only wished to participate in the 2018 Korea Championship. The learned single judge of this Court ordered that in order to,,,,,,,,

ascertain the performance of the petitioner (in the writ proceedings), the Committee would conduct a trial on 29.03.2018 and the score obtained by the",,,,,,,,,

petitioner in that trial would be compared as against the score obtained by the other shooters in the 2018 Al Ain Championship. The petitioner's trial,,,,,,,,

was to be held in respect of R1, R3, R6 and R7 events.",,,,,,,,

4.In accordance with the learned single judge's directions, the trial for the petitioner was held and the Committee furnished a report to the Court of the",,,,,,,,,

comparison of the petitioner's performance at the trial with the performance of

the other selected shooters at the 2018 Al Ain Championship. The,,,,,,,,,,,,,
scores were measured against the Minimum Qualifying Score (MQS) set by the
Committee as well as the MQS set by the International Paralympic,,,,,,,,,,,,,
Committee (IPC) for participation at the 2018 World Championship at Korea.
After analyzing the results of the tests conducted by the Committee,
the",,,,,,,,,,,,,
learned single Judge held prima facie that although the petitioner had scored
better in the trial than some/all of the selectees had in the 2018 Al Ain,,,,,,,,,,,,,
Championship, such as in the R1, R3 and R6 events, he was not considered for
selection in those events. The single judge held that though the court",,,,,,,,,,,,,
directed trial was to look at the petitioner's qualification to be sent for the 2018
Korean Championship, yet the Committee refused to so send him,",,,,,,,,,,,,,
relying on his previous performances at the 2017 Hannover and the 2017
Bangkok Championships. The learned single judge found this to be,,,,,,,,,,,,,
contradictory, on part of the Committee and that therefore, it was not justified in
not selecting the petitioner. Even judged according to his performance",,,,,,,,,,,,,
at the 2017 Hannover Championship, the petitioner should in the least have been
selected for the R7 event. Having so found, the learned single judge",,,,,,,,,,,,,
ordered that the petitioner should be allowed to participate, if not in all the
events, then at least in the R7 event. This appeal by the Committee",,,,,,,,,,,,,
challenges that direction.

5.It is argued by the Committee that the impugned order failed to appreciate
that in issue in this case was the decision to send or not send a
particular,

athlete to a sporting event, an evaluation based on policy and one that the Court
was not competent to review. It is urged that in trying to select the"

best athletes to represent the country at the 2018 Championships, the
Committee had to reflect on a multitude of considerations, including not
just"

individual performances at particular trials or competitions, but take a complete
view keeping in mind the likelihood of athletes winning medals for the"

country as well as the overall aim of promotion of para shooting in the
country.

6.It is also urged that the Committee has to keep in mind the funds or the
budget available in which to send the athletes to these competitions.

Therefore, the expenditure incurred in sending a particular athlete to a

competition has to be weighed in by the Committee. In this regard, it is" ,,,,,,,,,, highlighted that some athletes who did well in particular events, have been sent for other events as well, though they have not done as well in those" ,,,,,,,,,, other events, so as to reduce cost, by not having to send different athletes for different events." ,,,,,,,,,,

7.Moreover, it is contended that while selecting athletes, the Committee also has to keep in mind the age of the athletes and prefers to give chance to" ,,,,,,,,,, younger athletes, who in the longer run, with the exposure they receive at these competitions, are likelier to win medals for the country. It is lastly" ,,,,,,,,,, urged that in such purely policy decisions, the Court cannot interfere and supplant its own wisdom with that of the authority tasked with performing the" ,,,,,,,,,,

particular function - in this case, selecting the para shooters to represent the country." ,,,,,,,,,,

8.Counsel for the petitioner supported the impugned order and contended that the Committee acted vindictively as far as the petitioner is concerned ,,,,,,,,,, solely because he had previously highlighted irregularities and arbitrariness in the selection process of the Committee. It was contended that the ,,,,,,,,,, approach of the Committee was manifestly arbitrary inasmuch that it considered different selection parameters at different times for selection for the ,,,,,,,,,, various events. While in certain cases, it had considered the MQS fixed by the IPC, at others it considered the MQS fixed by itself which was often" ,,,,,,,,,, higher than the MQS fixed by the IPC.Â ,,,,,,,,,,

9.It is further contended that despite the Court ordered trial evidencing the eligibility of the petitioner for selection to the 2018 Korean Championship," ,,,,,,,,,,

as compared to the other selected athletes, the Committee had acted in a mala fide manner by still not sending the petitioner for the various events for" ,,,,,,,,,,

which the petitioner had evidently met the MQS set by the IPC and fared better than the others who had been selected. It is also argued that the ,,,,,,,,,,

Committee adopted differential standards vis-à-vis the petitioner. For all other events, it refused to consider the petitioner's score at the Court" ,,,,,,,,,,

ordered trial, instead choosing to rely on old scores of the petitioner's performance at the 2017 Bangkok and 2017 Hannover Championships." ,,,,,,,,,,

However, in respect of the R7 event, the Committee did not consider the petitioner's performance at the 2017 Hannover Championships and

instead",,,,,,,,,,

relied on the performance at the 61st NSC and the Court ordered trial, to find that the equivalent of the petitioner's performance at the 2018 Al Ain",,,,,,,,,,

Championships would mean that the petitioner would have finished 16th out of 19 shooters in the Championship. It is therefore contended that the,,,,,,,,,

Committee's approach and selection is clearly arbitrary and the petitioner should be selected in the least for the R7 event.,,,,,,,,,,

10.Before proceeding to analyze the merits of this dispute, this Court, for convenience has prepared a table listing the performances of the various",,,,,,,,,,

selected shooters (and the petitioner) at various events, in different competitions and trials. This, in the court's opinion, is necessary to undertake",,,,,,,,,,

an all-inclusive comparative analysis, unrestricted to a shooter's performance at any one event or any one competition or trial, but would rather be",,,,,,,,,,

useful in evaluating the shooter's performance of late as a whole.,,,,,,,,,,

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NSC", "61st

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Bangkok

(a)/2017

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R6,,Deepak,,609.4,,604.7 (a),,597.2,,610.2,,603,

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R7Â,, "Responde

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(Naresh)",,1109,,1120 (b),,1113,,1137,,1110,

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."

15. Similarly, another factor that the Committee has to weigh in is the cost element. In the budget that it has and in terms of directions of the Sports"

Authority of India, the Committee had to select para shooters for the various events keeping in mind the cost of sending the athletes for these",

international sporting events. Therefore, in certain cases, the same athlete has been sent for multiple events, even though he or she may have",

performed well in only one of those events and may not have performed as well in the other(s) as compared to the petitioner. Among other things,"

selecting the same athlete for multiple events means that the same rifle can be used across events, thereby proving to be cost effective. Therefore, for",

some events, the Committee decided to send the same athletes in order to cut costs, even though the petitioner's performance may have been in some"

senses, better in that particular event, considered individually. However, considered overall the Committee took the most appropriate alternative, in the"

circumstances, given the financial means at its disposal. This Court does not find any fault with such rationale adopted by the Committee. While",

cutting corners and reducing costs in sending athletes, on a principle level, may not be the best idea in the long run so far as the sporting future of the"

country is concerned, the burden to change that status quo and adopt measures for a better future where financial reasons do not impede or influence",

decision making by sporting authorities and where talent and performance are the sole criteria for selection, would be on the Committee and all other"

concerned sporting authorities, and not this Court. In the existent circumstances, this Court discerns nothing illegal or arbitrary in the decision taken by"

the Committee on this score.

16. In the case of event R7, the petitioner is the only contestant who could have been sent by the Committee for the 2018 Korean Championship. In"

the trial held pursuant to the order of the learned single judge, the petitioner

scored 1113 and it is stated that in the 2017 Hannover Championship, he",,,,,,,,,

scored 1120. Here, what must be considered is that one of the factors that the Committee consistently weighs in, while making its decision of selecting",,,,,,,,,

athletes, is the chances or the probability of the athlete winning a medal for the country. It is stated that if the petitioner's performance at the trial is",,,,,,,,,

considered, he would have finished at 16th place out of 19 athletes at the 2018 Al Ain Championship, based on the athletes' scores at the said event. It",,,,,,,,,

is stated that since the 2018 Korean Championship is an even larger and more competitive sporting event, the petitioner's performance would not hold",,,,,,,,,

any chance of winning a medal. Even if his score at the 2017 Hannover Championship is considered, his performance is still a far-cry from being a",,,,,,,,,

medal hope for India. It was therefore decided by the Committee to not send any athlete for the particular event. Here too, this Court cannot fault",,,,,,,,,

with the approach of the Committee. Given the financial constraints highlighted above and taking into consideration the chances of the petitioner,,,,,,,,,

winning a medal at the said event, the Committee's decision to not spend the amount required to send the petitioner for only one event, that too one",,,,,,,,,

where his medal chances seemed rather bleak, seems reasonable to this Court. Its decision to not send anyone at all for this event therefore, cannot",,,,,,,,,

be faulted, given that one major factor that the Committee considers in making its selection is the likelihood of the athlete returning with a medal for",,,,,,,,,

the country.,,,,,,,,,

17.From the above discussion, it is apparent that wide gamut of factors have to be considered by the Committee in making its decision of selecting",,,,,,,,,

athletes to represent the country. It is not an exercise as simplistic as comparing scores based on individual performances. Different factors have to,,,,,,,,

be weighed in. Which is precisely why, the Courts should not ordinarily interfere in this process in exercise of its power of judicial review. Absent",,,,,,,,,

manifest or evident arbitrariness or mala fides, both of which are not discernible here, the Court cannot direct the Committee to select the petitioner",,,,,,,,,

for any particular event(s). Even otherwise, this Court is of the opinion that without deciding the challenge to the underlying policy (or absence",,,,,,,,,

thereof) of the Committee in selecting athletes for various paralympic sporting events, the learned single judge, could not have, by way of an interim",,,,,,,,,

order, directed the Committee to send the petitioner for the R7 event, if not the other events as well. This court is also of the opinion that granting an" ,,,,,,,,,

interim direction of the nature that the impugned order did, without considering the main challenge to the criteria setting exercise or the criteria, and" ,,,,,,,,,

based upon a one off court ordered test, is fraught and may not have been resorted to. For these reasons, with respect we disagree with the impugned" ,,,,,,,,,

order which has to be set aside.Â ,,,,,,,,,

18.The observations made in the course of the order, it is clarified are not a reflection on the merits of the writ petition; all contentions of the parties" ,,,,,,,,,

are kept open. ,,,,,,,,,

19.In the circumstances therefore, the learned single judge's order is set aside. The appeal is allowed.Â" ,,,,,,,,,

Order dasti under the signatures of Court Master. ,,,,,,,,,