

(2014) 09 DEL CK 0369

In the Delhi High Court

Case No : W.P.(C) 6542/2014 and CM No. 15601/2014

Shubh Gulati

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0369

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rahul Mehra and Roma Bhagat, Advocate for the Appellant; Monika Arora, CGSC, Rajeev Yadav, Abhishek Chaudhary, Ranvijay Guliera, Puneet Dhawan, Noopur Singhal, Anil Grover and Aditya Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.

CM No. 15601/2014

Exemption is allowed subject to all just exceptions.

The application stand disposed of.

W.P.(C) 6542/2014

1. The petitioners are stated to be sportspersons who were selected by the Amateur Soft Tennis Federation of India (ASTFI) for participation in Soft Tennis events in the 17th Asian Games being held at Incheon. The petitioners have, inter alia, prayed as under:-

"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 by reinstating the participation in their Class at the Asian Games 2014."

2. Essentially, the grievance of the petitioners is that respondent no.1 has excluded India's participation in the discipline of Soft Tennis in the 17th Asian Games.

3. The petitioners have referred to the entry form dated 29.10.2013 whereby the Indian Olympic Association (hereafter IOA) had entered the participation of India in the said sport. The learned counsel submits that this indicates a decision to include a team for the sport of Soft Tennis as a part of the Indian Contingent for the Asian Games, had been taken as early as in 2013. The learned counsel has further stated that coaching camps for preparation of the Asian Games were held with the sanction of respondent no.1 and in July 2014 a team comprising of the petitioners and two other persons were selected.

4. In the given circumstances, it is submitted that the decision of respondents to exclude the Indian participation in the sport of Soft Tennis is arbitrary and unreasonable.

5. The learned counsel for respondent no.1 contended that a list of approved sportspersons was declared on 09.09.2014 and the Asian Games commenced on 19.09.2014. Thus, the present petition is highly belated and does not warrant consideration.

6. The learned counsel for respondent no.1 also referred to a file noting dated 04.09.2014, which indicates that two meetings were held on 01.09.2014 and 02.09.2014 between the officials of the Government of India, Sports Authority of India as well as the IOA and a decision was taken that teams in the disciplines of Bowling, Tenpin, Fencing, Football, Handball, Rugby, Modern Pentathlon, Soft Tennis, Triathlon, Volleyball (women) , Beach Volleyball be not recommended for participation in the 17th Asian Games because the said teams did not meet the qualifying standards matching to the 8th position of the last Asian Games.

7. It is further contended that IOA had sent entries for participation of the Indian teams in multi disciplinary events without seeking prior permission of the Government of India and neither the ASTFI nor IOA had sought prior permission for sending the names of the athletes for the Asian Games. It is further contended that Soft Tennis is included in the Asian Games but is not included either in Commonwealth Games or in Olympics. The learned counsel for respondent no.1 pointed out that Soft Tennis Teams as well as players (both men and women) in individual events were eliminated in the pre-quarter finals in the last Asian Games and the result was no better in the last Asian Championship held at Taipei. It is contended that keeping the same in view, respondent no.1 had taken a decision to not participate in the sport of Soft Tennis.

8. In view of the above, the limited question to be addressed in the present proceeding is whether the decision of respondent no.1 for team India not to participate in the sport of Soft Tennis is arbitrary or unreasonable.

9. Admittedly, the entry for participation in Asian Games had been sent by the

IOA in 2013. It is also not disputed that thereafter coaching camps were held in preparation of the Asian Games, 2014. The petitioner has placed on record a letter dated 21.05.2014 which indicates that the Government of India had sanctioned an amount of Rs. 15.87 lacs for organising coaching camps for Soft Tennis in preparation of the Asian Games, 2014. Thereafter, coaching camps were held from 13.06.2014 to 04.07.2014 for preparation of the Indian Team and 30 players had participated in the said camp. Another camp was held from 15.07.2014 to 29.07.2014 where participants had been scaled down to 20 (10 men and 10 women) and thereafter, the sportspersons for the Indian team were selected. It is noted that the coaching camps referred to by the petitioners were held prior to their selection by ASTFI and there is no material on record to indicate that respondent no.1 had granted its approval (facit or express) to any of the players after their selection.

10. The question whether to include India's participation in a particular discipline or not is a question of policy that calls for little interference by Courts, nonetheless, the manner in which respondents had conducted the exercise of approving participation in the Asian Games clearly leaves much to be desired. The National Sports Code which sets down the timelines required for selection of the sportspersons has, clearly, been ignored.

11. The learned counsel for the petitioners pointed out that although the disciplines of Football and Handball were also excluded by respondent no.1, as indicated by the file note dated 04.09.2014, yet the same have been subsequently included. The learned counsel for respondent no.1 has referred to the file and informed the Court that only reason stated for including the said disciplines after 04.09.2014 was that it was in "larger interest of sports". In the circumstances, the grievance that the criteria adopted by respondent no.1 has been applied on a "pick and choose" basis and in an arbitrary manner is, clearly, justified.

12. However, the fact that respondent no.1 has relaxed its own criteria in some cases would not necessarily imply that the petitioners would be entitled to the same. The decision of respondent no.1 to not participate in certain disciplines is clearly a policy matter. And, it is well settled that Court cannot supplant their opinion with that of the administrative authorities. In the present case, the decision of respondent no.1 to exclude the sport of Soft Tennis is on account of the performance of the sportsperson in the past games. The petitioners may disagree with the view that participation in sports should be limited only in those disciplines where the Indian teams/sportspersons have achieved the certain rank, nonetheless, the said view cannot be said to be perverse so as to warrant interference under Article 226 of the Constitution of India.

13. It is well settled that the scope of interference of the court in the policy decisions of the government is limited and the court would not ordinarily interfere unless the action of the government is held to be capricious arbitrary or unreasonable. In the case of State of U.P. and Others Vs. Chaudhari Ran Beer

Singh and Another, , the Supreme Court held as under:-

"13. in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government."

14. The learned counsel for the petitioner referred to the decisions of this Court in *Diya Correa and Anr. v. Union of India and Ors.*: W.P.(C) 6232/2014, decided on 18.09.2014 and in the case of *Saurav and Ors. v. Union of India and Ors.*: W.P. (C) 6478/2014, which was delivered earlier today and contended that the facts of the present case are similar in all material aspects. I am unable to accept this contention in the case of *Diya Correa and Anr.*(supra) , the athletes had already sent their equipments prior to the decision of respondent no.1 on 09.09.2014. This was necessary because it takes 4-5 weeks for shipping the said equipments. Thus, by necessity, the selection of the sportsman had to take place much prior to 09.09.2014. The facts clearly indicated that the athletes had acted on the necessary implication that their selection had the approval of respondent no.1. In *Saurav and Ors.*(supra) , the Government had approved the selected candidates to be trained for participation in the Asian Games and had granted their express approval for the athletes to travel to Tehran for training as a run up to their participation in the Asian Games. No such representation can be inferred in the facts of the present case. Although the manner in which respondent no.1 has proceeded to conduct its business in selection of the Indian contingent is dispiriting, the decision of respondent no.1 to not participate in the discipline of Soft Tennis in the Asian Games cannot be interfered with in these proceedings.

15. The petition is, accordingly, dismissed. The parties are left to bear their own costs.

Dasti under the signatures of Court Master.