
(2016) 06 DEL CK 0063

In the Delhi High Court

Case No : W.P.(C) 4514 of 2016 & CM APPLs. 18841, 22426 of 2016

Sushil Kumar

APPELLANT

Vs

Union of India & Others

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 230 DLT 427

Hon'ble Judges : Manmohan, J.

Bench : Single Bench

Advocate : Mr. Amit Sibal, Senior Advocate with Mr. Kaushik Moitra, Mr. Kumar Sudeep, Mr. Abhishek Malhotra, Mr. Namit Suri, Mr. Dron Parashar and Ms. Aahna Mehrotra, Advocates, for the Appellant; Ms. Monika Arora, CGSC with Mr. Jitendra Kumar Tripathi, Mr. Kushal K

Final Decision : Dismissed

Judgement

Manmohan, J.—The Issue

1. Petitioner's argument "All I am asking is a trial for Rio Games" makes interesting sound-bite, but the issue is whether this argument is legally tenable and in consonance with the facts of the case.

Essential Facts

2. By way of the present writ petition, petitioner has challenged selection of respondent No. 5 by respondent No. 4-Wrestling Federation of India (hereinafter referred to as "respondent No. 4-WFI") for the 74 kg Men's Freestyle Wrestling event at the Rio Olympics Games 2016 commencing 5th August, 2016. It is pertinent to mention that respondent No. 5 had secured a berth for India in the 74 kg men's free-style category for the Olympics by winning a bronze medal in the World Championship 2015 held in Las Vegas in September, 2015. The trials to select a wrestler to represent India in the said event at the World Championship were held in July, 2015, in which the petitioner did not participate.

While the petitioner states that he did not participate in the trial because he was nursing an injury, respondent No. 4- WFI and respondent No. 5 dispute the said fact.

Arguments on behalf of petitioner

3. Mr. Amit Sibal, learned senior counsel for petitioner stated that as a wrestler represents the country in international events, once the wrestler attains the qualifying position in the tournament, the wrestler merely secures a berth for the country and not for himself. He contended that the National Sports Development Code, 2011 [for short "Code, 2011"] stipulates that trials have to be conducted for selecting athletes to represent India in major international sporting events. Consequently, according to him, even after the berth had been secured, a trial has to be held. In support of his contention, he relied upon the following portion of the Code, 2011 as well as guidelines dated 18th September, 2008 issued by Ministry of Youth Affairs and Sports, Department of Sports, Government of India:-

A) National Sports Development Code, 2011

"13. Selection Procedure

13.1 NSFs are primarily responsible for judicious selection of national teams for participation in major international events bases on merit and with the objective of enhancing national prestige and bringing glory to the country. As such the best sports-persons/team has to be chosen for representing the country.

13.2 The Selection Committee will be constituted by the Federation comprising of the President, the National Coach and eminent ex-sports-persons. The Government will appoint an Observer for priority and general category disciplines receiving financial grant, who will be associated with all the activities of the National Federation. It will be mandatory for the Federation to inform him or her about Selection Committee Meetings, important national and international competitions. The Government Observer will have to oversee the selection process in order to ensure that it is fair and transparent."

B) Guidelines issued for more efficient management of coaching camps, selection of coaches & selection of athletes issued by Ministry of Youth Affairs and Sports, Department of Sports, Government of India:

"3. Selection of Athletes

(i) The selection of sports-persons for participation in major international events shall be the responsibility of National Sports Federations (NSF) concerned, and Government and the Sports Authority of India, will not have direct involvement in the selection process, except to ensure that it is fair and transparent.

(ii) The selection criteria/norms shall be clearly communicated by the NSFs to all concerned viz., players, coaches, Government Observers etc. well in advance and be put up on the website of the NSF concerned and also be forwarded to SAI and the Ministry to be put up on their respective websites.

XXXX XXXX XXXX XXXX

(v) In team events the Selection Trials should be held two months in advance and in the case of contact games, the selection trials should be held at least one month in advance of the competition event."

4. Mr. Sibal pointed out that a Division Bench of this Court in *Indian Olympic Association v. Union of India*, (2014) 212 DLT 389 (DB) has upheld the legality and validity of the Code, 2011.

5. Mr. Sibal emphasised that selection of wrestlers for all other weight categories had been conducted in March 2016 excluding the category of 74 kg Men's Freestyle event for which trials had been held thirteen months before the Rio Olympic Games 2016. He stated that no subsequent trials in the 74 kg category had been held to determine the current form of the athletes so as to assess who would be most likely to secure a medal at the Rio Olympic Games 2016.

6. According to him, the reason for non-holding of trials is that respondent No. 4-WFI is offended due to petitioner's non-participation in the Pro Wrestling League, 2015.

7. Mr. Sibal contended that the selection criteria adopted by respondent No. 4-WFI according to its own admission was "discreet", i.e., contrary to fair and transparent manner as required by Code, 2011. He submitted that a Coordinate Bench of this Court in *Amit Kumar Dhankar v. Union of India*, W.P.(C) 3914/2014 decided on 3rd July, 2014 has held that the Code, 2011 is enforceable against respondent No. 4-WFI and that selection through trial is mandatory. The relevant portion of the judgment relied upon by Mr. Sibal is reproduced herein below:-

"1. This batch of three writ petitions involves a challenge to the inaction of a National Sports Federation (NSF) in the country i.e. Wrestling Federation of India (WFI) for not selecting Wrestling team for Commonwealth Games 2014 in accordance with the National Sports Code ("Code" in short) as formulated by the Ministry of Youth Affairs and Sports, Government of India.

XXXX XXXX XXXX XXXX

40. I hold, keeping in view the position of law referred above, the petitioners can seek, and this Court in its jurisdiction under Article 226 of the Constitution issue a writ of mandamus, requiring the respondent No. 1, to ensure compliance of the guidelines issued by it vide letter dated September 18, 2008.

41. Having held that, a writ of mandamus can be sought by the petitioners for holding selection trials in accordance with the Code, the next issue, which falls for consideration is whether the process followed by the respondent No. 4 (WFI) in selecting the team is justified. A perusal of para 10.5 (page 108 of W.P.C. 3743/2014), 10.6 (page 108 of W.P.C. 3943/2014) and para 3 of the letter/guidelines dated September 18, 2008, issued by the Ministry of Youth Affairs and Sports would reveal the following position:

(i) The Asian Games/Commonwealth Games/Olympic Games are major multi-discipline international sports events.

(ii) A proposal at cost to the Government should be sent three months prior to the event along with the Selection Committee's Minutes.

(iii) Selection of sports persons for participation in major international events shall be responsibility of NSF.

(iv) The selection criteria/norms shall be clearly communicated by NSF to all concerned, players, coaches etc. and shall be put up on the website and forwarded to the Ministry.

(v) The minimum qualifying norms may be fixed and announced along with the notice for selection trials which shall be announced at least one month in advance.

(vi) The selection shall be done by the Selection Committee consisting of President of NFS as the Chairman, the national coach etc.

(vii) The national coach will evaluate the progress and performance of each player on regular basis.

(viii) The proceeding of the selection should spell out in detail the selection criteria, the past performance of the players and their performance within trials.

42. The aforesaid is the well laid down procedure. It is not the case of the respondent No. 4 (WFI) that the aforesaid procedure was followed while making a list sent to the CGC on June 11, 2014. The schedule of the Commonwealth Games must have been announced well in advance. The wrestlers are in camp since November, 2013. The trials held on February 18, 2014 and April 02, 2014 were specifically for selecting the team for participation in 2014 World Cup held at Los Angeles, and Sr. Asian Championship at Khazakstan in April, 2014. No reference to the Commonwealth Games has been made. The respondent No. 4 could have made the said trials as a trial for selection of the team for Commonwealth Games. Interestingly, I find the name of one of the petitioners namely Amit Dhankhar is in the list prepared pursuant to the aforesaid two trials. Unfortunately, his name is not found in the list now said to have been sent to CGC on June 11, 2014, which definitely shows the reliance on the aforesaid trials is only a ploy to justify the selection list. Further, I find the selection trials held in the past on which the reliance was placed by the respondent No. 4 (WFI) was not for selection of the team for Asian Games/Commonwealth Games/Olympic Games. I agree with the submission of Mr. Rahul Mehra that the three games being major international events, selection of athletes need to be made through the procedure laid down in the guidelines issued vide letter dated September 18, 2008. The submission of Mr. Rahul Mehra that every selection in the past for CWG has been made through trials, has not been controverted. The endeavour of Mr. Dewan to justify the selection on merit, would be of no relevance on the failure on the part of the respondent No. 4 (WFI) to follow the procedure

contemplated in the said letter. The past performance of the wrestlers, performance during the camp and the trials are necessary input for the ultimate decision on selection. In fact, the guidelines issued vide letter dated September 18, 2008 stipulates so and I note for convenience two clauses; (1) the National Coach shall evaluate the progress and performance of each player on regular basis and submit the report to the selection trials; (2) the proceedings of the selection should spell out in detail the selection criteria, the past performance of the players and their performance in the selection trials. Suffice to note a submission of the counsel for the petitioners that Mary Kom, a Medallist in the Olympic Games in Boxing could not be selected for the Commonwealth Games during trials."

8. Mr. Sibal stated that if selection of respondent No. 5 had been made in July 2015 then why was the petitioner sent for training at State expense to Georgia in October-November, 2015 as well as in March-April, 2016 and to the National Coaching Camp for Olympics 2016 at Sonapat from January to March, 2016 under Target Olympic Podium Scheme. He also relied upon the performance/evaluation report dated 17th November, 2015 issued by the Foreign Freestyle Wrestling expert to contend that the petitioner had trained well in Georgia. The performance/evaluation report dated 17th November, 2015 is reproduced herein below:-

"PERFORMANCE/EVALUTION REPORT

To whom it may concern

Date: 17/11/2015

This is to certify that Sushil Kumar (international wrestling Player from India along with his two sparing partner and other support staff) has joined the wrestling camp in Georgia with Georgian national team from 29th Oct. 2015 to 17th Nov. 2015, under my supervision.

Sushil along with his team really went away a common training together with Georgian national combined free style senior wrestling team as per Georgian camp schedule. A copy of the training programme is attached for your reference.

During the Camp team stayed in a very good hotel. Out of 7 people 6 people stayed in double bed room and one person stayed in single bed room (so there are 3 double bedrooms and one single bedrooms). Food (India and continental) and transport was arranged by hotel itself.

The Expectation out of training was to improve wrestling movement and technique and overall fitness and performance of Sushil Kumar, so that he prepare well for coming Rio Olympic.

We here in Georgian camp has provided him with competent similar weight category player and I personally supervised his mat as well as other training. He underwent total of 22 control bouts along with technique correction and ground

session happening every day. According to me, at the end of the training his overall wrestling technique are more refined and precise and he has improved speed and endurance during this period. He need further training like this to maintain and improve his overall all match fitness to get gold medal in coming Rio Olympic.

I wish him successful year ahead.

Vladimer mestvirishvili

Foreign Freestyle wrestling expert

SAI India camp"

9. Mr. Sibal emphasised that the petitioner through the present writ petition is only seeking a fair chance to compete in a transparent selection procedure.

Arguments on behalf of Union of India

10. On the other hand, Ms. Monika Arora, learned counsel for Union of India stated that the responsibility for selecting the sports-persons for participation in international sports competitions including Olympic Games is of the concerned National Sports Federation. According to her, the Code, 2011 gives full autonomy to the National Sports Federations in their internal functioning. She emphasised that the Union of India has no role in the matter of selection of sports-persons for participation in international sports events including Olympic Games.

11. Ms. Arora stated that the Code, 2011 does not make it mandatory for National Sports Federations, like respondent No. 4-WFI, to hold selection trials for participation in Olympic Games after certain sports-persons have earned a quota berth for the country. She stated that it is solely for the National Sports Federation to hold trials or not for nominating sports-persons for participation in Olympic Games. She also relied upon the Ministry of Youth Affairs and Sports" letter dated 18th September, 2008 which also forms a part of Code, 2011 and which was referred to by Mr. Amit Sibal. The relevant portion of the said letter is reproduced herein below:-

" xxxx xxxx xxxx xxxx

(vi) The selection shall be done by a Selection Committee, consisting of the President of the NSF as the chairman, the National coach and eminent ex-sports-persons, preferably Arjuna awardees. There shall be no Government Observer/SAL nominee, as member, in the Selection Committee."

Arguments on behalf of Respondent No. 4-WFI

12. Mr. Pradeep Dewan, learned senior counsel for respondent No. 4-WFI contended that all the National Sports Federations have a policy that whoever earns the berth/quota for the Olympic Games has the first right to use it and the quota winner is replaced only if he/she is injured or unfit or out of form. He stated that there had been not even a single instance in India, where a wrestler

or athlete other than the one who had secured the quota, had represented India. A chart showing the quota secured by a wrestler and the representation in the Games filed by respondent No. 4-WFI along with its counter-affidavit is reproduced herein below:-

2004 Athens Olympic Games

Weight Category

Quota Secured by

Representation in Olympics

55 Kg. Free Style

Yogeshwar Dutt: After winning Gold Medal in 2nd Olympic Qualifying Tournament

Yogeshwar Dutt

60 Kg. Free Style

Sushil Kumar: After obtaining 4th place in 2003 Senior World Wrestling Championship

Sushil Kumar

66 Kg. Free Style

Ramesh Kumar: After winning Bronze Medal in 2nd Olympic Qualifying Tournament

Ramesh Kumar

74 Kg. Free Style

Sujeet Maan: After obtaining 8th place in 2003 Senior World Wrestling Championship

Sujeet Maan

84 Kg. Free Style

Anuj Chaudhary: After winning Bronze Medal in 2nd Olympic Qualifying Tournament

Anuj Chaudhary

120 Kg. Free Style

Palwinder Singh Cheema: After winning Bronze Medal in 2nd Olympic Qualifying Tournament

Palwinder Singh Cheema

55 Kg. Free Style

Mukesh Khatri: After obtaining 4th place in 2nd Olympic Qualifying Tournament

Mukesh Khatri

2008 Beijing Olympic Games

Weight Category

Quota secured by

Representation in Olympics

60 kg. Free Style

Yogeshwar Dutt: After winning Gold Medal in 2008 Senior Asian Wrestling Championship

Yogeshwar Dutt

66 Kg. Free Style

Sushil Kumar: After obtaining 7th place in 2007 Senior World Wrestling Championship

Sushil Kumar

120 Kg. Free Style

Rajeev Tomar: After winning Silver Medal in 1st Olympic Qualifying Tournament

Rajeev Tomar

2012 London Olympic Games

Weight Category

Quota secured by

Representation in Olympics

57 kg. Free Style

Amit Kumar: After winning Silver Medal in Asian Qualifier Wrestling Tournament

Amit Kumar

60 Kg. Free Style

Yogeshwar Dutt: After winning Gold Medal in Asian Qualifier Wrestling Tournament

Yogeshwar Dutt

66 Kg. Free Style

Sushil Kumar: After winning Gold Medal in 1st Olympic Games Qualifier Tournament

Sushil Kumar

74 Kg. Free Style

Narsingh Pancham Yadav: After winning Gold Medal in 2nd Olympic Qualifier Tournament

Narsingh Pancham Yadav

55 Kg. Female Wrestling

Geeta: After winning Silver Medal in Asian Qualifying Tournament

Geeta

13. Mr. Dewan contended that the argument that in the other events, trials were held in 2016 is misleading inasmuch as in the said events none of the athletes had succeeded in qualifying and/or winning a quota for the country.

14. Mr. Dewan also stated that the petitioner during the last two years had been consistently avoiding facing the respondent No. 5 in 74 kg weight selection trials. He pointed out that till January, 2014, the petitioner had been playing in 66 kg weight category and only when the said category was abolished, the petitioner started playing in the 74 kg weight category.

15. Mr. Dewan emphasised that respondent No. 5 had been playing in 74 kg weight category all throughout and had been dominating this category since 2006. He stated that when the petitioner was asked as to why he did not participate in the selection trials in July 2015, he stated that he was nursing an injury. Mr. Dewan stated that no medical certificates to that effect had been submitted by the petitioner till date. He stated that respondent No. 5 had participated in all the trials held during the last two years. The detail of the selection trials held by respondent No. 4-WFI during the year 2014-15 are as under:-

18.02.2014

Trial held for participation in the World Cup - Neither Sushil Kumar nor Narsingh Yadav took part in the trial

Mr. Parveen Rana participated in this tournament in 74 Kg./FS

13.08.2014

Trial held for 2014 Asian Games and 2014 World Senior Championship - Mr. Narsingh Yadav won trial and selected for Asian Games. While the wrestler who secured 2nd place in the trial was selected for the World Championship. Mr. Sushil Kumar did not take part in the trial.

Mr. Narsingh Yadav participated in the Asian Games and won Bronze Medal while Mr. Balraj participated in this World Championship in 74 Kg./FS.

17.04.2015

Trial held for 2015 Senior Asian Championship-Mr. Narsingh Yadav won trial and selected for Asian Championship. Mr. Sushil Kumar did not take part in the trial.

Mr. Narsingh Yadav participated in the Championship and won Bronze Medal.

07/07/2015

Trial held for 2015 World Senior Championship - Mr. Narsingh Yadav won trial and selected for World Championship. Mr. Sushil Kumar did not take part in the trial.

Mr. Narsingh Yadav participated in the Championship and won Bronze Medal. He qualified for 2016 Rio Olympics also.

16. Mr. Dewan stated that neither the respondent No. 4 nor any of its officials are offended due to petitioner's non-participation in Pro-Wrestling League 2015. He emphasised that during meetings between the petitioner and respondent No. 4-WFI's officials, the petitioner was asked a query with regard to his non-participation in Pro-Wrestling League 2015 only because there was bound to be a clash in that tournament between the petitioner and respondent No. 5 and the officials of respondent No. 4-WFI were of the view that the petitioner had deliberately opted out of the tournament so as to avoid a contest with respondent No. 5.

17. Mr. Dewan stated that in the opinion of respondent No. 4-WFI, respondent No. 5 had a better prospect than the petitioner to win a medal for India in the 74 kg Freestyle category at the Rio Olympic Games 2016. He contended that the decision to send respondent No. 5 to Rio was taken with the assistance of the Chief Coach and trainers in the training camps after evaluating the performance of wrestlers in this category on the basis of their achievements and current performance. A comparative chart referred to by Mr. Dewan showing the achievements of the petitioner and respondent No. 5 in 74 kg weight category is reproduced herein below:-

Achievements of Mr. Narsingh Yadav in 74 Kg. weight category so far

Achievement of Mr. Sushil Kumar in 74 Kg. weight category so far

Bronze Medal in 2015 World Senior Free Style, Greco Roman Silver Medal in 19th International Tournament City Style and Female Wrestling Championship held at Las Vegas [USA] from 7th and 12th September 2015 and Qualified for Rio Olympics, 2016.

Silver Medal in 19th International Tournament City of Sassari Senior [FS & FW] Memorial Peelicone held at Sassari [Italy] from 30th to 31st May, 2014.

Pro-Wrestling League - Defeated Mongolian Wrestler Purevjav Unurbat, Silver Medallist of 2015 World Senior Championship.

Gold Medal in XX Commonwealth Games held at Glasgow [Scotland] from 23rd

July to 3rd August, 2014.

Pro-Wrestling League

- Defeated Cuban Wrestler Livan Lopez Azcuy qualified for 2016 Rio Olympics.

Participation Nil.

- Defeated Indian Wrestlers Parveen Rana, Pardeep & Dinesh Kumar.

4th place in Vth Senior International Wrestling Tournament "Cup of the President of the Republic of Kazakhstan" (GR/FS/FW) held at Astana, Kazakhstan from 23rd to 26th July, 2015.

Gold Medal in 2015 Sassari City Pellicone Memorial International Wrestling Tournament held at Sassari [Italy] from 29th to 30th May 2015.

Bronze Medal in 2015 Senior Asian Wrestling Championship held at Doha [Qatar] from 5th to 10th May 2015.

Participated in the Dave Schultz International Wrestling Tournament held at Colorado Springs [USA] from 29th January to 1st February, 2015

Bronze Medal in XVII Asian Games held at Incheon [Korea] from 19th September to 4th October, 2014

5th Place in 2013 World Senior Free Style, Greco Roman Style and Female Wrestling Championship held at Budapest [Hungary] from 16th to 22nd September, 2013.

Participated in XXX Olympic Games held at London [UK] from 27th July to 12th August 2012.

5th Place in the Asian Olympic Qualifying Tournament held at Astana [Kazakhstan] from 30th March to 1st April, 2012.

8th Place in the World Olympic Qualifying Tournament held at Taiyuan [China] from 27th to 29th April, 2012.

Silver Medal in the 1st Hari Om Indian Wrestling Grand Prix International Tournament in Free Style and Female Wrestling held at New Delhi [India] from 25th to 27th May, 2012.

Gold Medal in the World Olympic Qualifying Tournament held at Helsinki [Finland] from 4th to 6th May 2012 and qualified for Olympic Games 2012.

8th Place in the Dave Schultz Memorial International Wrestling Tournament in Free Style, Greco Roman Style and Female Wrestling held at Colorado Springs [USA] from 5th to 8th February 2010.

Silver Medal in the XL International Grand Prix Tournament in FS & FW for Alexandre Medved's Prizes held at Minsk [Belarus] from 12th to 13th March, 2010.

7th place in the 1st Shaheed Bhagat Singh International Wrestling Tournament in FS & FW held at Jalandhar [India] from 30th October to 1st November, 2009.

Bronze Medal in the 2009 Clansman - Hargobind International Wrestling Tournament in FS & FW held at Surrey [Canada] from 6th to 7th November, 2009.

18. Mr. Dewan emphasised that the petitioner in his own wisdom had been training separately and had not sparred with any other 74 kg weight category wrestler in the training camps. He stated that even when the petitioner went to Georgia in October, 2015 and March, 2016 the petitioner trained separately, sparred with some wrestlers of his own choice "far away from Indian wrestlers" just to avoid sparring against strong wrestlers in 74 kg category, particularly, respondent No. 5. He stated that the country's Chief Coach in his report to respondent No. 4-WFI had remarked that he was unable to comment on the prospect of petitioner to win a medal as he did not train under him or with the team and did not spar with other wrestlers in 74 kg category.

19. Mr. Dewan contended that the petitioner's conduct was not above board. He stated that the petitioner had relied on a false affidavit of Mr. Raj Singh, Vice President, WFI wherein it had been stated that trials had been held and conducted by him as head coach in 1996 to select a candidate to represent India in the 48 Kgs Greco-Roman Class of wrestling for the Olympic games held in Atlanta. Mr. Raj Singh in his affidavit stated that the candidate who had secured a berth for India in the Olympic Games 1996 had competed in a trial against his challenger and only the winner of the trial was sent to the Olympics as India's representative. Mr. Dewan pointed out that neither Mr. Raj Singh was the Head Coach of the Indian team in 1996 nor any trials were held by him for selecting a candidate to represent India in the 1996 Atlanta Olympics. He emphasised that in the history of WFI, no wrestler who had won a quota in Olympic Games had ever faced a trial. Since Mr. Dewan repeatedly prayed that action should be taken against Mr. Raj Singh for filing a false affidavit, the affidavit of Mr. Raj Singh as enclosed by the petitioner as well as the relevant portion of the counter affidavit of respondent No. 4-WFI and the rejoinder filed by the petitioner are reproduced herein below:-

A. Affidavit of Mr. Raj Singh, Vice President, WFI.

"Affidavit of Mr. Raj Singh, S/o Shri Bhim Sen Sharma, Aged About 68 Years, Designated as Vice President of Wrestling Federation of India, Having Residence at WZ-25, Asalatpur, Janakpuri, New Delhi-110058

I, the above named deponent, do hereby solemnly affirm and declare as under:-

1. That I am the Vice President of Wrestling Federation of India (WFI), a registered Society that is responsible, inter alia, for selection of players to represent India at the Olympic games.

2. That I was the Head Coach of the Indian Team and the Chairman of Officiation and Technical Committee of the WFI in the year 1996.

3. That in my above capacity as Head Coach of the Indian Team and Chairman of the Officiation and Technical Committee, in 1996 trials were held under me and conducted by me for selecting the candidate to represent India in the 48 Kgs Greco-Roman class of wrestling at the wrestling event at the 1996, Atlanta Olympics.

4. That the wrestler Pappu Yadav had obtained a berth for India in the 1996 Atlanta Olympics by participating in the Olympic qualifiers for the same event, despite this Pappu Yadav participated in the above-mentioned trial under me and competed against Kaka Powar for selection to represent India at the said wrestling event in the 48 Kgs Greco-Roman class at the 1996 Atlanta Olympics. In the said trial Pappu Yadav was able to defeat Kaka Powar.

5. That I believe that a selection trial should also be conducted by the Wrestling Federation of India to select a candidate to represent India in the 74 kg freestyle wrestling event to be held at 2016 Rio Olympics.

6. That I am well conversant with the facts and circumstances as stated in this affidavit and I am competent to swear this affidavit.

Sd/-

Deponent

Verification

Verified at New Delhi on this 14th Day of May 2016. That the contents of the above Affidavit are true and correct to my knowledge and belief and nothing has been concealed therefrom.

Sd/-

Deponent"

B. Counter affidavit of Respondent No. 4

"21. I say that the petitioner is on account of this wrong conduct and false representation not entitled to the relief as claimed. The affidavit of Shri Raj Singh filed with the petition is factually incorrect. Shri Raj Singh was never the Head Coach of the Indian team and Chairman of Officiation and Technical Committee of the WFI in the year 1996. The chief coach of the India team in 1996 was Shri P.R. Sondhi and the Senior Coach Incharge of Greco Roman Style Team was Shri Randhir Singh Ponghal. It has also been wrongly stated in the affidavit of Shri Raj Singh that as the Head Coach of the Indian team in 1996, trials were held by him for selecting the candidates to represent India in the 48 kg. Greco Roman Style of Wrestling at the wrestling event at 1996 Atlanta Olympics. Shri Raj Singh had absolutely no concern with that trial which was conducted by the Selection Committee of WFI comprising of the following members:-

a) Shri G.S. Mander, President, WFI Chairman

- b) Shri V.M. Dutta Secretary General, WFI
- c) Sh. Ashwani Kumar SAI Representative
- d) Shri P.R. Sondhi Chief Coach
- e) Shri Kartar Singh Government Nominee

Also, the allegations that Shri Pappu Yadav had obtained berth for India in 1996 Atlanta Olympic by participating in Olympic qualifier and that despite this Pappu Yadav participated in the trial are also false as the same have already been explained in the foregoing paragraphs. In the history of WFI, no wrestler who won a quota in Olympic Games has ever faced the trial. The affidavit of Shri Raj Singh as well as its reliance by the petitioner on the said false affidavit are an act of perjury on the part of the petitioner as well as on the part of Shri Raj Singh."

C. Rejoinder filed by the petitioner

"23. With reference to the contents of paragraph 38 of the petition, the Petitioner respectfully submits that the conduct of the Petitioner has been bona fide throughout. The Petitioner was about 12 years old in 1996 and therefore could not have had any personal knowledge of the events that transpired in 1996. The Petitioner has relied upon the said affidavit in good faith. It is wrong and denied that Petitioner has committed any act of perjury. It is respectfully submitted that the Petitioner is a law abiding citizen and the conduct of the Petitioner has been bona fide throughout."

20. Mr. Dewan stated that if a trial is directed to be held at this stage, it would upset the "entire apple cart" and would cause immense mental stress and trauma to respondent No. 5 who had been concentrating on his training. He stated that wrestlers like respondent No. 5 adopt a scientific and forensic strategy for a prestigious event like Olympic Games under the guidance of their coach and doctors. He stated that invariably a wrestler in order to gain strength increases his weight before the event and reduces it just before the event to be eligible for the slot in his weight category. He stated that a trial at this stage would "kill the strategy" and severely reduce the chance of winning any medal in the Olympic as respondent No. 5 would have to lose weight midway during his training and much prior to the Olympic Games.

21. Mr. Dewan stated that wrestling is a combative power game and there is a great chance of a wrestler suffering serious injury in a trial. He referred to newspaper reports to contend that there exists an element of rancour between the petitioner and respondent No. 5.

22. Mr. Dewan lastly stated that the present writ petition was infructuous as respondent No. 4-WFI had already officially informed United World Wrestling on 03rd May, 2016 that India's nominee in the 74 Kg. Freestyle would be respondent No. 5.

Arguments on behalf of Respondent No. 5-Narsingh Yadav

23. Mr. Nidhesh Gupta, learned senior counsel for respondent No. 5 stated that the qualification system prescribed for Rio Olympic Games 2016 stipulates that each category can have one athlete in each event. He stated that the qualification pathway of United World Wrestling lists in hierarchical order the four phases which are termed "Qualification Events". He stated that if a quota is secured in the first phase, i.e., in the World Championship 2015, then no further participation in the subsequent phases is permissible or required.

24. Mr. Gupta emphasised that it was for the first time in the history of the country that a quota/berth had been secured by a wrestler in a world championship by winning a medal. According to him, since the quota had been secured in the first phase itself, there was no question of any subsequent trial or participation in the subsequent phase of the qualification event in 74 kg category. He emphasised that respondent No. 5 has defeated 6 out of 18 athletes who have qualified in the 74 kg category for Rio Olympics Games 2016 and has lost only to gold medallist in the World Championship.

25. Mr. Gupta stated that petitioner had not produced any medical certificate or documents in support of his alibi that he could not participate in selection trials in July 2015 due to an injury.

26. Mr. Gupta stated that while respondent No. 5 was vigorously training under the Indian Coach, petitioner was engaged in preparation of commercials like Mountain Dew and Patanjali ghee.

27. Mr. Gupta pointed out that respondent No. 5 is now heading for training abroad with the Indian Olympic contingent and trial at this belated stage should not be ordered. He stated that according to the Qualification Timeline of United World Wrestling, the deadline for NOCs to confirm use of quota places obtained at the 1st International Qualification Tournament was 09th May, 2016-which deadline had expired even prior to the filing of the writ petition.

28. Mr. Gupta submitted that the judgment of Amit Kumar Dhankar (supra) was not good law in view of the Division Bench's observation in LPA No. 548/2014 that it should not be treated as a precedent. In any event, Mr. Gupta pointed out that even the learned Single Judge in Amit Kumar Dhankar (supra) had not granted any relief due to uncertainty that would prevail keeping in view the short time gap between the event and the filing of the writ petition.

Arguments on behalf of Sports Authority of India

29. Mr. Anil Grover, learned counsel for the Sports Authority of India stated that the National Sports Federations, based upon the nature of sports, devise and follow a selection criteria which is most suitable for their respective sports. He pointed out that for example, National Rifle Association of India has an elaborate weighted average system, whereas Archery Association of India follows exclusive selection trials for this purpose.

30. Mr. Grover stated that the Sports Authority of India was of the opinion that

the selection process followed by respondent No. 4-WFI in the present instance was reasonable and had been applied by it "across the board".

Rejoinder arguments on behalf of Petitioner

31. In rejoinder Mr. Amit Sibal stated that there is no written policy of respondent No. 4-WFI that the athlete who secures the berth for the Olympics shall represent India at the Olympics. According to him, in fact, there is no written policy of the respondent No. 4-WFI for either selection of athletes to represent India at Olympics or with regard to the procedure to be followed in case of injury. He pointed out that other National Sports Federations of India like National Rifle Association of India and Archery Association of India have published rules regarding the selection for Olympics 2016 to ensure fairness and transparency in the selection procedure as per the Code, 2011 and there was no legitimate reason for respondent No. 4-WFI to be an exception. He contended that the selection to determine the best athlete to fill the berth at the Olympics should be done by the National Sports Federations pursuant to a written transparent policy of trials, as is the practise followed internationally; e.g. USA, Canada, Russia, Australia and Iran. According to him, in all these countries there are written selection guidelines and separate trials to determine who shall participate in the Olympics, irrespective of who has secured the berth. The athlete securing the berth gets no right to represent the country at the Olympics unless he secures the right to do so at the domestic trials. For instance, he stated that the USA Olympic Team Trials were held from 08th to 10th April, 2016 where Jordan Holm who had secured the berth lost to Ben Provisor and Anthony Ramos who had secured the berth lost to Daniel Dennis. Consequently, according to him, the stand taken by respondent No. 4-WFI that world over all national federations have a policy that whoever earns the quota has the first right to use it and he is replaced only if he/she is injured/unfit or if he/she is out of form, is erroneous.

32. Mr. Sibal further stated that as 2015 was the first time when an athlete had secured a berth in the World Championship, how can respondent No. 4-WFI claim that in selecting respondent No. 5, it was following a settled practise.

33. Mr. Sibal stated that the Chief Coach had admittedly been unable to comment on the progress and performance of the petitioner and had not indicated that the petitioner is in such form that renders him unfit to be considered for participation in the Rio Olympics Games 2016 and, therefore, the Chief Coach's report cannot be a ground not to hold a trial.

34. Mr. Sibal pointed out that the petitioner had won the Silver medal at the International tournament at Sassari, Italy in May, 2014 and the Gold at the Commonwealth Games in August, 2014. Thus according to him, petitioner is in good form.

35. Mr. Sibal contended that there is still enough time to conduct trials for the Olympics 2016 as the wrestling event is on 18th August, 2016 and the last date

for sending names for the same is 18th July, 2016.

Court's Reasoning

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 Settled Principles or Practices. After all power and responsibility go hand in hand

36. Having heard the learned counsel for parties, this Court is of the view that the decision who should represent India in a sporting event is best left to the experts i.e. the concerned National Sports Federation.

37. Power and responsibility go hand in hand. The National Sports Federation cannot be held responsible for the performance of its athletes, if it does not have power to select them according to a flexible procedure as long as the same is fair, transparent, reasonable and consistent.

38. A Coordinate Bench of this Court in *Shumel v. Union of India & Ors.*, W.P.(C) 5034/2010 has held as under:-

" 4. Having heard learned counsel for the parties, this Court is of the view that in 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.....

xxx xxx xxx

13. Considering that the best possible candidate has to be selected to represent India in the CWG 2010 in the 72 kg category, the methodology adopted by the Respondents by holding a coaching camp, followed by a national championship and conducting selection trials for the top women wrestlers in such championship, to ultimately choose one, cannot be held to be arbitrary or unreasonable. Consistent with the high standards of the CWG 2010, it is but essential that the candidate who qualifies by consistent performance through a rigorous procedure of selection, is picked up to represent India in the various sports events. 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."

(emphasis supplied)

39. The judgment of Amit Kumar Dhankar (*supra*) relied upon by learned senior counsel for petitioner offers no assistance to the petitioner as it has been clarified by the Division Bench in the matter being carried forward in appeal in LPA 551/2014 that "the impugned judgment shall also not constitute a precedent in the similar issues, if arising in future, in any matter". The observation in Amit Kumar Dhankar (*supra*) that *Neha Rathi v. Union of India*, W.P.(C) 7170/2010 decided on 10th November, 2010 is per incuriam is vitiated by a mistake as on the date of the judgment in *Neha Rathi (supra)* the Code, 2011 had not come

into effect. In any event, the case of Amit Kumar Dhankar (supra) dealt with a selection of wrestlers for Commonwealth Games, 2014 for which there is no "Qualification Event" to secure a berth. The Union of India in its counter-affidavit has correctly highlighted the distinction between selection for Commonwealth Games and Olympic Games in the following words, "it is also submitted that the procedure for participation in Olympic Games is different from participation in other international sports events. For participation in Olympic Games, sports-persons to represent a particular country are required to participate in Olympic qualifying events to earn Olympic berths for their country."

40. Even the stand of the Ministry of Youth Affairs and Sports and Sports Authority of India is that they do not interfere with the selection process as the National Sports Federations are autonomous organisations.

41. Keeping in view the aforesaid, this Court is of the view that a writ Court will not interfere in the exercise of discretion of the National Sports Federation and substitute its own judgment except where the discretion is shown to have been exercised in an arbitrary or capricious or perverse manner or contrary to settled principles or practices.

No Allegation of Bias in Writ Petition. The Allegation in Rejoinder is Unsupported by any Contemporaneous Document

42. No allegation of bias or prejudice has been made in the writ petition against respondent No. 4-WFI. Though, the petitioner in his rejoinder has alleged that respondent No. 4-WFI has targeted him for not participating in Pro Wrestling League organised by respondent No. 4-WFI in December, 2015/January, 2016, yet the said allegation in the absence of any contemporaneous document inspires no confidence.

The Code, 2011 Gives Full Flexibility and Autonomy to Respondent No. 4-Wfi to decide the process of selection and when to hold a trial.

43. This Court is also of the view that the Code, 2011 does not restrict or impinge upon the autonomy or discretion of the National Sports Federations to select athletes/wrestlers to represent India in international sporting events. The Code, 2011 does not make it mandatory for respondent No. 4-WFI to hold trials for selection of wrestlers for Olympics just two to three months prior to the event. The Code, 2011 only obligates the National Sports Federations to judiciously select players to represent India on merit for major international events with the objective of enhancing national prestige and bringing glory to the country. The Code, 2011 gives full flexibility and autonomy to respondent No. 4-WFI to decide the process of selection and when to hold a trial. It only stipulates that if selection trials are required, they should be held two months in advance.

Respondent No.4-WFI conducted a fair and transparent selection trial prior to the qualification event.

44. This Court finds that it is not disputed that the respondent No. 4-WFI

conducted a fair and transparent selection trial prior to the qualification event i.e. World Championship September 2015 in a bid to ensure that the best Athlete represents the country in the qualification event and the country has the best chance to secure a berth in the Olympics.

45. The contention of respondent No. 4-WFI that the World Wrestling Championship is a tougher competition than even the Olympics is significant. In the World Wrestling Championship 117 countries participate with 40-50 wrestlers in the 74 kg. category, whereas in the Olympics only 30-35 countries participate and there are 19 wrestlers in the 74 kg. category.

46. The system suggested by the petitioner of having trials after the qualification event cannot be accepted as the sole method for selection as it implies that the country would not send its best athlete to secure a place for itself in Olympics. Consequently, in the opinion of this Court, respondent No. 4-WFI in the present case has adopted a reasonable, transparent and fair procedure in selecting respondent No. 5 as India's representative to Rio Olympics in the 74 kg category.

Without a berth there would have been no Indian representation in olympics in this category

47. The fact that India would not have had a berth in the 74 kg Free Style Wrestling, had the respondent No. 5 not won a Bronze in the World Championship September 2015 is crucial.

48. In the present instance, the respondent No. 5 after winning a Bronze medal in the World Championship September 2015 is being given meticulous training by the concerned authority so that he is best prepared to represent the country in the Olympics.

Practise that a wrestler who has earned the Berth for the country will represent It, is neither perverse nor contrary to code, 2011.

49. The selection procedure followed by the respondent No. 4-WFI i.e. the wrestler who has earned the berth for the country will represent the country, does not show any element of perversity or anomaly in the instant case as the said practise has been followed by respondent No. 4-WFI uniformly and consistently.

50. The said practise cannot also said to be contrary or in violation of Code, 2011. Even the Union of India in its counter-affidavit has recommended this interpretation of the Code, 2011. The relevant portion of the affidavit of Union of India is reproduced herein below:-

"5.After Olympics berths have been earned, it is for the concerned NSF to decide whether it deems fit to hold a selection trial or to nominate the individual sportsperson who has earned quota place in Olympics for the country."

51. The fact that some countries in the world follow the practise of holding trials four to three months prior to the Olympics does not mean that the same policy

must be followed by all the National Sports Federations. There is always more than one good method of selection. Since the process of selection adopted by respondent No. 4-WFI is not arbitrary or perverse, this Court cannot substitute its own judgment for that of the experts.

Petitioner himself by winning a quota had participated in previous olympics without undergoing any further trial.

52. In fact, this Court on perusal of the record finds that without exception, only the quota winner has represented India in wrestling in Olympics without undergoing any trial. From the list of Indian wrestlers who represented India in 2004, 2008 and 2012 Olympics, it is apparent that the petitioner by virtue of winning a quota had participated in the said Olympics without undergoing any further trial.

Argument that a trial held thirteen months ago may not result in the best athlete participating in olympics, is incorrect.

53. The petitioner's argument that a trial held thirteen months ago may not result in the best Athlete participating in Olympics, is incorrect. This Court is of the view that whether trials should be held thirteen months in advance or thirteen days in advance is a decision which the experts should take and not the Courts.

54. In fact, a similar argument on similar facts was rejected by this Court in the case of Kirpa Shankar Patel v. UOI & Anr., W.P.(C) 10343/2004. The relevant portion of the said judgment is reproduced herein below:-

"The petitioner has filed the present writ petition aggrieved by the non-selection to represent India in the Athens Olympics under the category of 55 kg. free-style wrestling.....

Learned counsel for respondent No.4 submits that the basis for selection for Athens Olympics Games has been the result of this Pre-Qualifying Wrestling Tournaments and since Mr. Yogeshwar Dutt had won the bout from the petitioner qualified for participation and thereafter participated in the said Tournament and won the first position, he has been selected to go to the Athens Olympics Games.

Learned counsel for the petitioner, however, submits that there is a long lapse of time between the said Tournament and as on date and, thus, a bout should be held between the petitioner and Mr. Yogeshwar Dutt to decide who should be sent to the Athens Olympics Games. This submission is further supported by the fact that the petitioner was called to the Camp.....

The basis followed of selecting Mr. Yogeshwar Dutt on his performance in the Pre-Qualifying Wrestling Tournaments for the Olympics Games cannot be said to be a selection process, which is so arbitrary or illegal as would call for interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. In fact, the placement of Mr. Yogeshwar Dutt at position No.1 in the

international event itself is a fact which would weigh heavily in his favour. However, this is no reflection on the capability of the petitioner..... Dismissed."

(emphasis supplied)

55. Moreover, a candidate after selection has to undergo meticulous training under the guidance and supervision of a coach and a doctor. One cannot lose sight of the criticism in the past by the experts that athletes for international events are neither selected nor trained well in advance.

The argument that for the other wrestling events, the trials were held in 2016 is misleading. In Fact, trials were held prior to the Subsequent Qualifying Events.

56. The argument that for the other wrestling events, the trials were held in 2016 is misleading inasmuch as in the said events the concerned athletes did not succeed in the September 2015 qualifying event. Consequently, for the subsequent qualifying events that took place in 2016, the trials had to be held prior to the said qualifying events.

Just because petitioner sent to Georgia and Sonapat for training in 2016, does not mean that it is Mandatory to hold a trial.

57. The fact that the petitioner had been sent to Georgia and Sonapat for training in 2016, does not mean that it is mandatory to hold a trial today. Even after, selection of respondent No. 5 one cannot be sure that he will be able to participate in the said tournament. In the event of happening of an unforeseen event, the respondents did not want to be caught unawares and consequently, the petitioner-keeping in view his background and credentials which made him a likely replacement/back-up - was wisely sent for training.

Though the petitioner is a legendary wrestler who has won a number of international events including olympics in the past in 66 Kg weight category, yet the opinion of the WFI that on current consistent form, Respondent No. 5 is better In 74 Kg weight category cannot be termed as unreasonable or perverse.

58. The petitioner is a legendary wrestler who has won a number of laurels for this country in the 66 kg weight category. It is unfortunate that the said category was abolished in January 2014 and the petitioner has been forced to play in 74 kg weight category.

59. On consistent current form, the opinion of respondent No. 4-WFI that respondent No. 5 is better is not unreasonable or perverse. It is pertinent to mention that the petitioner has not won any major national or international tournament between September, 2014 and today, whereas the respondent No. 5 as recently as in December, 2015, in the Pro Wrestling League defeated even the silver medallist in the World Championship September 2015 Purevjav Unurbat of Mongolia.

Also due to short-time gap between the event and the filing of the writ as well as high probability of an injury in a trial, petitioner's prayer cannot be allowed.

60. In any event, it is not understood as to why the petitioner has challenged the respondent No. 5 to a "duel" only in the month of May, 2016 i.e. with only two and a half months left for the Olympics. The petitioner being a professional wrestler himself would know that any direction to hold a trial at this stage would seriously jeopardise the chance of India winning a medal in the Olympics inasmuch as respondent No. 5 would have to halt his training midway and would have to lose his weight earlier than scheduled. The high probability of an injury in a trial cannot be "lost sight of".

61. This Court is also of the view that the petitioner having failed to take part in selection trials in the years 2014 and 2015 as well as in the National Championship in 31st December, 2015 and 1st January, 2016 and the Asian Championship held in February 2016 cannot now seek a trial at this belated stage.

62. The Indian Coach's opinion (as mentioned in the counter-affidavit), the track record of respondent No. 5 in the last few years and the chance of an injury if a trial is directed to be held with less than two months to go to the Olympics, leaves this Court in no doubt that no relief can be granted to the petitioner in the present proceedings.

As all the counsel are in agreement that a false affidavit has been filed by Mr. Raj Singh, Vice President of Respondent No.4-WFI, issue notice to him as to why perjury proceedings be not initiated against him.

63. Since all the counsel were in agreement that a false affidavit has been filed in the present proceedings by Mr. Raj Singh, S/o Shri Bhim Sen Sharma, Vice President of Wrestling Federation of India, R/o. WZ-25, Asalatpur, Janakpuri, New Delhi-110058, this Court is of the opinion that action is called for.

64. The Supreme Court in *Dhananjaya Sharma v. State of Haryana*, (1995) 3 SCC 757 has held as under:-

"38.The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts... The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court..?"

65. Consequently, the Registry of this Court is directed to issue notice without process fee to Mr. Raj Singh, S/o Shri Bhim Sen Sharma, Vice President of Wrestling Federation of India, R/o. WZ-25, Asalatpur, Janakpuri, New Delhi-110058 under Section 340 Cr.P.C. read with Section 195 IPC directing him to file a response within six weeks. Along with the notice, a copy of the judgment shall be enclosed.

66. List the case for consideration of initiation of perjury proceedings on 29th

July, 2016.

67. This Court only hopes that the present litigation is not an offshoot of internal politics of respondent No. 4-WFI in which a wrestler has been "led down the garden path" by an office bearer and/or has been used "as a pawn" to settle his own score either way.

Many thanks to all the counsel

68. Before parting with the judgment, this Court would like to place on record its appreciation for the assistance rendered by all the counsel who not only completed voluminous pleadings but also filed precise written submissions and advanced arguments on a number of issues in a concise manner. Without their assistance it would not have been possible to conclude this matter by way of a detailed judgment within three weeks of filing of the writ petition.

Epilogue

69. In international arena of sports, medals are won not only by "brawn" but also by "brain". The last minute challenge to selection can disturb the mental preparation of the selected. Consequently, a sportsperson innocently asking for "just a trial" may be jeopardising the chances of the selected candidate to win, having disastrous consequences for national interest. In the duel asked for, the country will be the loser.

70. Keeping in view the conclusions reached above, the petitioner's prayer for a trial is untenable in law as well as contrary to facts. Accordingly, present writ petition and applications are dismissed.