

(2018) 07 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition(C) 6823 Of 2018 And Cm Nos. 25943 Of 2018 & 25945 Of 2018

Varsha Gautham

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Citation : (2018) 07 DEL CK 0042

Hon'ble Judges : VIBHU BAKHRU, J

Bench : Single Bench

Final Decision : Diposed Of

Judgement

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, inter alia, praying as under:-

â??A. Issue a writ of mandamus or any other writ or appropriate orders/directions of like nature, directing the Respondent No. 2 and 3 to give

approval for the participation of the Petitioner in the Asian games, 2018 in time to participate at the said games.

B. Issue a writ of mandamus or any other writ or appropriate orders/directions of like nature, directing the Respondent No. 2 and 3 to allow the

petitioner to participate in 49er FX, Double Handed women's Skiff in the Asian Games-2018.â??

2. The petitioner claims to be one of the India?s most prominent sailors. It is stated that she had won the Bronze Medal in 2014 Asian Games in

Women?s 29er event, alongwith Aishwarya Nedunchezhiyan. It is also stated that at the age of 16 years, she was the youngest Indian to win an Asian

Games medal.

3. The petitioner is, essentially, aggrieved on account of not being selected to represent India at the ensuing Asian Games, 2018 in the event of 49er

FX, Double Handed Women's Skiff. It is the petitioner's case that the Selection for the aforesaid event has not been carried out as per the

Selection and Nomination Policy Asian Games 2018 (hereafter referred to as the Selection Policy) as published by respondent no.2

(hereafter YAI), which is the National Sports Federation for the Sport of Sailing. A

4. The relevant paragraphs of the Selection Policy are set out below:-

3. Selection Panel

3.1 In accordance with the YAI policy document "Guidelines for Selection and Nomination", the YAI has a selection panel which comprises of

internal selectors. In addition, external selectors comprising of representatives of MYAS/SAI/IOA shall be appointed.

3.2 The selection panel will consider athletes to be nominated to MYAS/S/J/IOA for inclusion in Indian Sailing Team for the AG 2018 in accordance

with the terms of this selection policy.

4. Role of IOA

4.1 The IOA, as the National Olympic Committee of India, has the sole and final decision in selecting or not selecting athletes to represent India at the

AG 2018. The IOA may seek guidance/concurrence of MYAS/SAI prior making the final decision.

5. Disputes

5.1 Where there is a conflict or dispute in respect of these Guidelines for the nomination of athletes to represent India at the AG, YAI reserves the

sole right to interpret this document and to use its discretion in the resolution of the matter in conflict or dispute.

8. Selection Event

8.1 In order to arrive at selection of best athletes to represent India at the Asian Games 2018, a Selection Regatta is being conducted off Chennai,

India during 16-22 April 2018.

9. Nomination Event

9.1 The best two performing athletes/team at the Selection Regatta in each of the competing classes shall be selected to participate at the Asian

Sailing Championship 2018 being conducted during 18 - 25 Jun 2018 at Jakarta, Indonesia.

9.2 The results of Indian athletes/teams at the Asian Sailing Championship 2018 will be provided to the internal and external selectors so as to select

the best athletes/teams to represent India at the Asian Games 2018...â??

5. It is not disputed that the petitioner had participated in the Selection Event â?" Regatta conducted at Chennai during the period 16th to 22nd April

2018 â?" and was placed on the second position (had secured Silver Medal). Admittedly, in that event, Ms Ekta Yadav (along with Ms Shaila Charles)

was placed in the first position (and had received the Gold Medal). The said team (Ekta Yadav and Shaila Charles) has now been selected to

represent India in the 49er FX, Double Handed Women's Skiff in the Asian Games 2018, which will be held in Jakarta, Indonesia from 18th August to

2nd September.

6. Admittedly, the Selection was conducted by ignoring the results of the Nomination Event â?" the Asian Sailing Championship, 2018 conducted

during 18th to 25th June also in Jakarta, Indonesia. In that event (that is, the Nomination Event), the petitioner had secured second position, Silver

Medal, which was ahead of the position secured by Ms Ekta Yadav and Ms Shaila Charles. The team of Ms Ekta Yadav and Ms Shaila Charles was

placed on the third position (had secured a Bronze Medal) in the said event. However, prior to the conclusion of the Nomination Event, the Selection

Committee of YAI (hereafter â?"the Selection Committee?) had also forwarded the names of Ms Ekta Yadav and Ms Shaila Charles to the Indian

Olympic Association (IOA) as the sportsperson selected to represent India at the ensuing Asian Games 2018. It is apparent from the record â?" and it

is also not disputed â?" that the Selection Committee had considered only the Selection Event (Regatta conducted in Chennai) for selecting the sports

person to represent India in the ensuing Asian Games 2018. It is also ex facie apparent that the said criteria was not in conformity with the Selection

Policy, as the Selection Committee was also required to take into account the Nomination Event (that is, Asian Sailing Championship - 2018 conducted

at Jakarta, Indonesia).

7. Apparently, YAI realised the aforesaid error and the Selection Committee met once again on the 30.06.2018 to consider the results of the Asian

Sailing Championship, 2018. A copy of the minutes of the said meeting has been handed over by the learned counsel appearing for YAI and the same

indicates that the Selection Committee had deliberated on the merits of the petitioner as well as Ms Ekta Yadav. The Selection Committee was of the

view that the performance of Ms Ekta Yadav and Ms Shaila Charles were more consistent. It is also pointed out that in the Selection Event (Regatta

held at Chennai), the difference between the scores of the petitioner and Ms Ekta Yadav was as wide as five points and the difference between their

scores at the Nomination Event (the Asian Sailing Championship 2018) was just one point. This was considered by the Selection Committee as to

represent a more consistent performance by Ms Ekta Yadav. Â

8. The learned counsel appearing for YAI also states that the said minutes of the meeting of the Selection Committee held on 30.06.2018 were

forwarded to the Indian Olympic Association (IOA). Â

9. The petitioner has also assailed the Selection on the ground that the constitution of the Selection Committee is not in accordance with the Selection

Policy. It is submitted that as per the Selection Policy, the Selection Panel was also required to include representative of Ministry of Youth and Sports

Affairs/Sports Authority of India/IOA, as External Selectors. Admittedly, the Selection Committee did not include any External Selectors as

contemplated under paragraph 3.1 of the Selection Policy.

10. The learned counsel appearing for YAI states that YAI had, in fact, sent a communication dated 27.03.2018 to the concerned authorities, namely,

Ministry of Youth and Sports, IOA and Sports Authority of India for submitting name of suitable representatives who may be included as External

Selectors but had received no response to the same. Â

11. The first and foremost issue to be addressed is whether the selection of the sportspersons is vitiated on the ground of constitution of the Selection

Committee. This Court is of the view that although External Selectors were to be included in the Selection Committee, the failure to include them does

not vitiate the selection process or afford the petitioner any ground for relief. YAI had sent a letter requesting IOA, Sports Authority of India and

Ministry of Youth and Sports to forward names of their representatives but had not received any response from them. Since, the names of

representatives of those organisations were not forthcoming, YAI cannot be

faulted for constitution of a Selection Committee without including any representative of MYAS/SAI/IOA. The Selection Policy cannot be read as a statute: it is a policy and is inherently flexible. A policy must be implemented in a reasonable manner to best serve the object for which it is framed. Plainly, the inclusion of External Selectors was contemplated to strengthen the selection process but that does not mean that the entire selection process itself was required to be abandoned, if they were not available. Â

12. The next question to be examined is whether any interference by this Court is warranted in the selection of the sportspersons.

13. It is apparent from the above that both the sports persons, namely, the petitioner and Ms Ekta Yadav are very close in their level of skill. Although, the Selection Committee had initially ignored the results of the Nomination Event, for selecting the sports person to represent India, the Committee had post facto considered the results of the Nomination Event at their meeting held on 30.06.2018 and have provided their reasons for preferring Ms Ekta Yadav over the petitioner. This Court is certainly not equipped to evaluate the merits of their decision and the same is beyond the scope of judicial review in these proceedings. Â

14. In view of the above, this Court is not persuaded to accept that any interference with the decision of the Selection Committee is warranted.

15. Having stated the above, it is necessary to note that the learned counsel for the parties also agree that the final decision in selecting or not selecting the athletes to represent India rests with IOA. This is also expressly stated by YAI in paragraph 4 of the Selection Policy.

16. In view of the above, the IOA must consider the results of the Nomination Event and the minutes of the meeting held on 30.03.2018, if not considered earlier. It will be open for the petitioner to move IOA for the said purpose.

17. The petition and all the pending applications are disposed of.

Order dasti under signature of Court Master.