

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.07.2018

+ **W.P.(C) 6808/2018 and CM No. 25887/2018**

BALAJI VIJAY SHANKAR AND ANR. Petitioners

versus

**MINISTRY OF YOUTH AFFAIRS AND SPORTS
AND ORS.** Respondents

Advocates who appeared in this case:

For the Petitioners: Mr Gurinder Pal Singh, Mr Nitin Mangla,
Mr Sidharth Borah and Ms Ragini Anand.

For the Respondents: Mr S.N. Parashar, Advocate for R-1.
Mr Hemant Phalpher, Mr Parth Goswami
and Mr V. Manchanda, Advocates for R-2.
Mr Gaurav Pachnanda, Senior Advocate
with Mr Santosh Paul, Mr Sreenath S. and
Mr Ishna Kumar, Advocates for R-3.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners are accomplished in the field of equestrian sports. They have filed the present petition, *inter alia*, impugning the decision dated 27.06.2018 of the Selection Committee in rejecting them for representing India in the events of 'Show Jumping' in the Asian Games, 2018, which are scheduled to be held in Jakarta, Indonesia.

2. The petitioners claim that they had successfully qualified the trials held at Luxembourg and their scores are better than some of the sport persons selected by the Selection Committee of the Equestrian Federation of India (hereafter 'EFI').

3. EFI is the National Sports Federation for equestrian sports in India. EFI had published the selection criteria for selecting sport persons for various disciplines of equestrian events to be held at the 18th Asian Games (hereafter referred to as 'the Selection Policy'). The petitioners claim that they applied to be selected in terms of the criteria as set out in the Selection Policy and made it clear to EFI that they would be undertaking the trials for their selection in the Show Jumping Team, at Luxembourg. The petitioners also informed EFI that the Luxembourgish Equestrian Federation (hereafter 'the Luxembourg Federation') would be organizing the said trials. The petitioners further claim that they communicated the dates of their trials to EFI and at the material time, EFI did not object to such trials at Luxembourg.

4. The petitioners claim that petitioner no.1 undertook the trials at Luxembourg on 18.05.2018, 23.05.2018, 26.05.2018 and 28.05.2018 and petitioner no.2 also undertook trials at Luxembourg on 03.05.2018, 06.05.2018, 09.05.2018 and 15.05.2018. In addition to the petitioners, one Mr Sehaj Singh Virk also undertook trials at Luxembourg on 03.05.2018, 06.05.2018 and 15.05.2018. In their petition, the petitioners have averred that the trials were conducted under the supervision of EFI and its representative, Ms Anisha Bhandari.

5. The Selection Committee constituted by EFI met on 02.06.2018; however, they declined to consider the petitioners for being included in the Show Jumping Team. The petitioners further claim that two of the sport persons, namely, Mr Zahan Setalvad and Mr Chetan Reddy, selected by the Selection Committee, do not meet the selection criteria as set out in the Selection Policy. They also claim that the results achieved by those sport persons were much inferior to those achieved by the petitioners in their trials.

6. The petitioners claim that the same resulted in severe criticism of the Selection Committee and, therefore, the president of EFI issued a notice dated 05.06.2018 cancelling the entire selection.

7. On 15.06.2018, the petitioners made a representation to the respondents; however, EFI did not accede to their request.

8. Thereafter, the petitioners filed a writ petition before this Court being **W.P. (C) 6682/2018** captioned **Balaji Vijay Shankar & Anr. v. Ministry of Youth Affairs & Sports and Ors.** The said petition was moved on 25.06.2018. At the said hearing, the learned Senior Counsel appearing for EFI informed the Court that the Selection Committee would be meeting again on 27.06.2018 to consider and select the candidates for the 18th Asian Games. It was agreed between the parties that the Selection Committee would also consider the names of the petitioners afresh on 27.06.2018 and the said writ petition was disposed of on that date.

9. Thereafter, the Selection Committee of EFI met on 27.06.2018 and considered the case of the petitioners. The Selection Committee was of the view that the trials undertaken by the petitioners at Luxembourg could not be considered as valid. Accordingly, the petitioners were not included as a part of the Show Jumping Team selected to represent India at the 18th Asian Games.

10. Mr Gurinder Pal Singh, the learned counsel appearing for the petitioners has assailed the decision of the Selection Committee on several grounds. First, he submitted that the decision of the Selection Committee to not accept the trials at Luxembourg is *ex facie* arbitrary and unreasonable. He earnestly submitted that the petitioners had duly informed EFI about the trials being conducted at Luxembourg and EFI had also appointed an observer, Ms Anisha Bhandari, who had observed the trials on 18.05.2018. He submitted that the Luxembourg Federation had duly certified that the petitioners as well as Mr Sehaj Singh Virk had participated in the trials held at Luxembourg. The Luxembourg Federation also certified that the trials were conducted in accordance with FEI rules and further confirmed that the three riders (the two petitioners and one Sehaj Singh Virk) were ready to take part for India as a team at the Asian Games, 2018. The Luxembourg Federation also forwarded the results of the trials, which clearly indicated that the petitioners had qualified the criteria, as set down by EFI. Second, he submitted that EFI had relaxed the criteria which required that only the performance at Federation Equestre Internationale (FEI) official competition/National Championship

would be considered. He submitted that this was clear as the petitioners had informed EFI that they were proceeding with the trials at Luxembourg and EFI had not raised any objections to the same. On the contrary, EFI had sent an e-mail requiring the petitioners to provide the particulars of the Show Jumping Trials at Luxembourg. Further, EFI had also appointed an observer to observe the said trials. He argued that none of this was necessary, if EFI was of the opinion that the trials were not in conformity with the criteria as set out in the Selection Policy. He also submitted that the said criteria had not been followed in the case of Mr Chetan Reddy, who has also undertaken the trials in Netherlands. Lastly, he submitted that the composition of the Selection Committee was not in conformity with the revised guidelines as issued by the Ministry of Youth Affairs and Sports. He submitted that the Selection Committee was required to include an eminent sport person (preferably Arjuna Awardees) as well as coach nominated by Sports Authority of India (SAI).

11. Mr Gaurav Pachnanda, the learned Senior Counsel appearing for EFI (respondent no.3) countered the submissions made on behalf of the petitioners. He submitted that the official trials were conducted in Meerut and Delhi for riders based in North India and at Bangalore for riders based in South India. He stated that petitioner no.2 had participated in the official trials held in Bangalore on 22.10.2017, 13.12.2017 and 18.02.2018, but was unsuccessful. He further submitted that the Selection Committee did not accept the results of the Luxembourg trials as they were not in accordance with the

Selection Policy. Further, the report furnished by the observer, Ms Anisha Bhandari also raised serious doubts regarding such trials. He contended that the said trials were exclusive trials held for the petitioners and were not part of any competition. He further submitted that EFI had called upon the Luxembourg Federation to clarify whether the trials were in conformity with the selection criteria as set out by EFI, including the status of the above competition in Luxembourg and the list of competitors that had participated in the trials, but had not received any response from the Luxembourg Federation. He also referred to the report submitted by the observer, which indicated that the trials were conducted under the Supervision of Mr Paul Engel, the General Secretary of the Luxembourg Federation and he was also one of the two member jury that adjudged the trials. She also confirmed that the trials were neither a part of any FEI official competition nor any National Championship.

Discussions and Conclusion

12. At the outset, it is relevant to refer to the Selection Policy published by EFI. Paragraph 17 of the Selection Policy sets out the conditions for selection of riders/horses based abroad.

13. Paragraph 17 to 20 of the Selection Policy relate to the concerned selection of riders/horses based abroad. Paragraph 17 and 19 of the Selection Policy are relevant for consideration of the present petition and the relevant extract of the said paragraphs are set out below:-

“Selection of riders/horses based abroad”

17. On basis of the foregoing experiences, following is the criteria for considering selection of riders/horses based abroad:-

(a) Technical standards and specification for all trials in all disciplines for riders/horses abroad will be same as standards for riders/horses in India. For Dressage only CDI/National Championship/Eventing CCI/National Championship and for Jumping only CSI/National Championship will be considered.

(b) Cut off date for selection of riders/horses abroad will be same as for riders/horses in India (31 May 2018).

(c) Performance of the rider and horse desired to be entered will be considered as a combination in FEI official competitions/National Championships.

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19. The under mentioned reasons/points given by the riders based abroad or desiring to be selected on horses leased/being imported from abroad are unacceptable to the National Federation towards the selection for the 18th Asian Games for team/individual competitions of all disciplines.

(a) Rider requesting for additional/exclusive trial.

(b) Results of riders will also be matched from the results on FEI Website for the FEI Competitions....”

14. There can be no dispute that the trials conducted at Luxembourg, which are relied upon by the petitioners to claim that they have qualified the specified criteria, was not in terms of the Selection Policy. As is apparent, sub-paragraph (c) of paragraph 17 of

the Selection Policy expressly provided that *“the performance of rider and horse desired to be entered will be considered as a combination in FEI official competitions/National Championships”*. Concededly, the trials conducted at Luxembourg were not the part of an FEI official competition or any National Championship. Admittedly, the trials were conducted exclusively for the petitioners and Mr Virk. It is also seen that all the petitioners did not undertake trials on the same date. Whereas, petitioner no.2 is stated to have undertaken his trials on 03.05.2018, 06.05.2018, 09.05.2018 and 15.05.2018, petitioner no. 1 did not undertake trials on any of those days. Petitioner no.1 claims to have participated in the trials held on 18.05.2018, 23.05.2018, 26.05.2018 and 28.05.2018. Admittedly, no other competitor participated in the said trials.

15. The observer appointed by EFI was present at the trials held on 18.05.2018, and on that date, neither petitioner no.2 nor Mr Sehaj Singh Virk showed up, only petitioner no.1 participated in the trials. The results of the trials observed by her indicate that petitioner no.1 suffered four penalties in first round and retired after twelve penalties in the second round. Thus, admittedly, petitioner no.1 did not qualify the trials as observed by Ms Anisha Bhandari.

16. In terms of paragraph 19(a) of the Selection Policy, a rider requesting for an additional or an exclusive trial cannot be accepted. There is no doubt that the trials conducted in Luxembourg were not open competitions, but exclusive trials held for the petitioners and one Sh Virk.

17. The Selection Committee had considered the candidature of the petitioners at meetings held on 2nd and 3rd June, 2018 and had concluded that the results of the competition (trials) conducted at Luxembourg could not be considered. The relevant extract of the minutes of the said meeting are as under:-

“5.2 Show Jumping: The events conducted by the Luxembourg Federation for Mr Sehaj Singh Virk, Mr Yashaan Khambatta and Mr. Balaji Vijay shankar were neither CS International competitions which was one of the main requirement of Selection Criteria for riders based abroad. The events were competitions exclusively organized for these riders which is not acceptable to the selection committee, as per para 19 (a) of selection criteria. Mrs Anisha Bhandari, member selection committee who was detailed as an observer to witness one of these trials also confirmed the same. Therefore the results of the above competition were not considered towards the selection of these riders. In Show Jumping discipline also, only one rider has achieved 03 qualifying results. However, in the best interest of the sport, riders with two qualifying results were considered for selection in the Indian team.”

18. The aforesaid conclusion can neither be considered as arbitrary or unreasonable and, therefore, warrants no interference by this Court in these proceedings. There are sufficient grounds for the Selection Committee not to have considered the trials conducted at Luxembourg to be valid for the purposes of selecting the Indian team.

19. Admittedly, the other candidates also did not meet the benchmark as set out in paragraph twelve of the Selection Policy, which is set out below:

“The height for all the team/Indl selection trials will be 1.45m/1.50m. Minimum 66% of the jumping course will be of full height and spread. A total 05 qualifiers/trials will be conducted 03 best performances (as a horse rider combination) will be considered towards calculation of team/indl merit. The indl will only be considered for selection if his/her score does not exceed 04 penalties in each trial (including time penalties) in total 03 trials. In case the team of ¾ riders are not selected for Asian Games and if any rider wants to qualify for Asian Games for individual category then he or she has to participate in minimum three trials of 2 rounds competition at the height 1.5 mtr and score of best 2 trials will be taken into account. The competitor should not incur more than 04 penalties in one trial.”

20. Since the requisite number of sport persons did not meet the above benchmark, the President of EFI decided to cancel the selection of the team. However, certain representations were received and the Selection Committee met once again on 27.06.2018 to reconsider the selection of sport persons. In terms of the order passed by this Court on 25.06.2018 in W.P. (C) 6682/2018, the case of the petitioners was once again considered by the Selection Committee. The relevant extract of the minutes of the said meeting are as under:-

“Decision by Selection Committee. After going through the ibid letters / emails in detail as per Selection Criteria Para 19 (a), the Committee is of the opinion that the representation by various stake holders regarding invalidity of trials attempted by riders at Luxembourg, is genuine and they recommended the trials to be null and void as these competitions were neither CSI* nor National Competitions (ref Para 17 (a) of Selection Committee) and also they do not form a part of National

Calendar of Luxembourg Federation. Moreover, the results of these competitions are also not available on the Federation website. Hence, they cannot be considered towards selection for Asian Games. Mrs Anisha Bhandari, Member Selection Committee who was detailed as an observer to witness Show Jumping & Dressage in Luxembourg / Austria also briefed the Selection Committee that on the day, she was there (18 May 2018), out of 03 riders, only 01 rider had participated and other two riders abstained from participation. The rider who participated, Mr Balaji Vijayshankar had 01 drop (04 penalties) in the 1st round and after-incurring 04-05 drops (16-20 penalties) in the 2nd round, he retired from the competition. However, to her surprise same rider qualified in the subsequent trials, which raised doubt about conduct of the trials. At this point of time the Secretary General informed the Selection Committee that Mr Balaji Vijay Shankar & Mr Yashaan Khambatta had filed a writ petition in Hon'ble High Court of Delhi to consider their trials as legitimate. However, the court has disposed off the writ petition on 25th June, 2018.”

21. As noticed above, no interference with the aforesaid decision is warranted, as the said decision cannot be stated to be arbitrary or unreasonable. There are sufficient grounds for the Selection Committee to reject the results of the trials conducted in Luxembourg.

22. The contention that EFI had accepted that exclusive trials at Luxembourg could be considered for the selection process is unmerited. Merely because the petitioners had informed EFI that they were undertaking trials at Luxembourg and had received no opposition to the same does not mean that EFI had agreed to ignore the requirement of the trials to be a part of the FEI official

competition/National championship. It certainly does not follow that FEI had agreed to accept the results of exclusive trials held overseas for the purpose of selecting the team. There was no indication at the material time that the trials scheduled in Luxembourg were not a part of the competition being conducted in that country.

23. The contention that the petitioners have been discriminated against inasmuch as Mr Chetan Reddy, who had also undertaken his trials overseas, has been selected is unmerited. The copy of the results annexed with the additional affidavit filed by the petitioners clearly indicates that Mr Chetan Reddy had participated in a National Competition held in Netherlands and, therefore, there was no reason to consider his performance in that competition.

24. Furthermore, there are no averments in the petition to the effect that the trials conducted in the case of Mr Chetan Reddy were similar to the trials conducted in the case of the petitioners.

25. The next question to be considered is with regard to the composition of the Selection Committee. There is no dispute that the constitution of the Selection Committee does not conform to the revised guidelines issued by the Ministry of Youth Affairs and Sports on 08.01.2018. EFI has explained that the Selection Committee had been constituted prior to 08.01.2018 and this was communicated to the Ministry of Youth Affairs and Sports by a letter dated 18.01.2018. More importantly, the petitioners did not objected to the constitution of the Selection Committee at the material time. It is also important to

note that the petitioners had filed a writ petition W.P. (C) 6682/2018, which was disposed on 25.06.2018 with the parties agreeing that the Selection Committee would re-consider their case at a meeting scheduled on 27.06.2018. The petitioners having agreed that their case for selection be considered by the Selection Committee are now clearly estopped from challenging the constitution of the said Committee.

26. The petitioners have also raised a grievance that some of the candidates selected by the Selection Committee do not qualify the criteria as specified in paragraph 12 of the Selection Policy. Admittedly, Mr Zahan Setalvad and Mr Chetan Reddy had met the requisite standards in only two trials (and not there as required under the Selection Policy). It has been explained that there were not enough candidates for the Show Jumping events who had qualified the specified criteria. Therefore, the Selection Committee had decided to lower the benchmark. This is evident from the minutes of the meeting of the Selection Committee held on 27.06.2018. The relevant extract of which is set out below:-

“At the beginning, President EFI welcomed all the Selection Committee members and IOA observer Ms Irene Koshy and said that the last meeting of Selection Committee was held on 02-03 Jun 2018 which selected 04 member Evening and 03 member Show Jumping Team. After the minutes of Selection Committee meeting were uploaded on the EFI website, a lot of complaints/emails/representations were received. On the basis of these complaints, I cancelled the proceedings of Selection Committee meeting of 02-03 Jun through a notice on 05 Jun 2018 because none of

the riders were meeting the qualifying requirements as set in the Selection Criteria. Before taking such decision, I felt that if certain inputs were made available to Selection Committee at that point of time, we might have reached at the correct decision. After cancelling the Selection Committee meeting minutes, I interacted with large no of riders/ officials & some of the parents. Further, during the ACTC 2018-19 meeting on 13 Jun 2018, I interacted with certain officials of MYAS & IOA who enquired about my decision of not sending the team to Asian Games 2018 to which I replied that as no one was meeting the requirement of stringent selection criteria set by the federation, we are unable to select the team

Thereafter, I received from many quarters to send the riders to Asian Games as this is a very expensive sport for which riders have, spent lot of money & effort and by not sending the team, they w/ill get discourage. They also submitted that for Indian riders, participation in Olympic Games is beyond their reach and they look forward to participate in Asian Games which is held every four years. Also, the benchmark set in the Selection Criteria were very high thereby making the riders unable to achieve the required qualifications. Taking all the above factors under consideration, I decided to reconvene the Selection Committee meeting under the provision of Para 3.4 of Article 15 of EFl Statutes in the best interest of the sport & the medal winning prospects of the country. In the mean time, we received certain fresh inputs from INASGOC on 15 Jun 2018 regarding the new entry system vide Equestrian, Sports Technical Hand Book Ver 2.2. Further, we received the clarification about the entry system from FEI & AEF on 22 Jun 2018. As per the fresh guidelines on entry system, 04 by name entry per discipline are required to be forwarded to IOA for submission to INASGQC & simultaneously triple the

number of by name entries (12) per discipline are required to be entered in FEI entry system as FEI nominated entries before 30 Jun 2018. The guidelines permitted for definite entries to be submitted in the FEI entry system by 10 Aug 2018. All the above factors permits the federation to amend the Selection Criteria under the provision of Para 34 of Selection Committee which is as under

Note: EFI reserves the rights to amend its selection criteria as necessary, particularly where there is a change to the qualification system or circumstances affecting the nomination/entries process.”

27. This Court finds no infirmity with EFI lowering the benchmark to select the best available team.

28. Mr Singh had relied upon the decisions of the Supreme Court in ***Mohd. Sohrab Khan v. Aligarh Muslim University and Ors.***: (2009) 4 SCC 555 and ***State of Orissa and Ors. v. Mamata Mohanty***: (2011) 3 SCC 436 in support of his contention that it was not open for EFI to alter the selection criteria and lower the benchmark.

29. The aforesaid contention is unmerited. The decision in the case of ***Mohd Sohrab Khan*** (*supra*) relates to appointment to a post of Lecturer in Aligarh Muslim University. In that case, the Supreme Court held that after the advertisements had been issued, the qualifications for filling the post could not be altered. The rationale being that if the changed qualifications had been advertised many other candidates fulfilling the said qualifications would have applied. The decision in the case of ***Mamata Mohanty*** (*supra*) also relates to

recruitment of lecturers in affiliated colleges in the State of Orissa. The said rationale is wholly applicable in the facts of the present case. In this case all the sports persons have participated in the trials.

30. In view of the above, this Court finds no merit in the petition. The same is, accordingly, dismissed. The pending application is also disposed of. The parties are left to bear their own costs.

JULY 09, 2018
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VIBHU BAKHRU, J

