



\$~104

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th SEPTEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 12765/2023 & CM APPL. 50287/2023**

SHRI ASHAN KUMAR

..... Petitioner

Through: Dr. Ramesh Gautam, Sr. Advocate
with Dr. Malika Gautam and Dr.
Kshitij Gautam, Advocates.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Anil Soni, CGSC with Mr.
Devvrat Yadav and Mr. Archil Misra,
Advocates for UOI.
Ms. Nandita Rao, Advocate for R-3
with Mr. Kunal Parkash, Mr. Amit
Peswani and Mr. Jasraj Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

1. The Petitioner has approached this Court challenging the Order dated 22.09.2023 passed by the Respondent/Ministry of Youth Affairs and Sports, Government of India, and the Order dated 23.09.2023 passed by Respondent/Sports Authority of India relieving the Petitioner from the position of Chief Coach from the ongoing National Coaching Camp for Indian Kabaddi Team (Boys) for Asiad Games, 2023 to be held at China.



2. The facts, in brief, are that the Petitioner is an Arjuna Awardee and was selected to coach the Indian Kabaddi Team (Boys) for Asiad Games, 2023 to be held at China.
3. Material on record reveals that an FIR bearing No.0086/2023 dated 04.09.2023 was registered against the Petitioner by a girl for the offence under Sections 354-A, 354-D and 506 of IPC and under Section 12 of The POCSO Act, 2012 at Police Station Bhiwani. In the FIR the complainant has alleged that the Petitioner has harassed her. It is stated that the Petitioner used to ask the complainant to meet him and has also threatened the complainant that if she does not meet him, then he would ensure that the complainant would not be selected in the team.
4. Material on record discloses that pursuant to the FIR, an affidavit has been filed by the complainant stating that the complaint against the Petitioner was lodged due to some misunderstanding. It is stated that the father of the complainant has also filed an affidavit stating that the complaint against the Petitioner was lodged due to some misunderstanding.
5. Material on record further discloses that that a closure report has been filed by the Police and the complaint has been referred to the Internal Complaints Committee (ICC) of the Amateur Kabaddi Federation of India (AKFI) on 17.09.2023 and the report from the Internal Complaints Committee (ICC) is yet to be received.
6. Since the case was pending before the Internal Complaints Committee (ICC) of the Amateur Kabaddi Federation of India (AKFI), the Respondent/Sports Authority of India has taken a decision *vide* Order dated 23.09.2023 to relieve the Petitioner from the position of chief coach from the ongoing National Coaching Camp which is being undertaken for sending



the Indian Kabaddi Team for Asiad Games.

7. It is stated by the learned Counsel for the Petitioner that the Petitioner is a chief coach of the men's Kabadi team and has nothing to do with the women's Kabadi Team. He states that the complainant was not even a probable. He states that the complainant and her father have given affidavits stating that the complaint against the Petitioner was filed due to some misunderstanding and the Police have also filed a closure report in the case. He, therefore, states that the decision of the Amateur Kabaddi Federation of India (AKFI) to refer the case to the Internal Complaints Committee (ICC) should be struck down and the Order dated 23.09.2023 passed by the Respondent/Sports Authority of India relieving the Petitioner from the post of chief coach of men's Kabadi team deserves to be set aside.

8. It is further stated by the learned Counsel for the Petitioner that the team has to leave for China on 28.09.2023 and relieving of the Petitioner from the post of chief coach at this juncture would have a serious impact on the performance of the team.

9. Heard learned Counsel for the Parties and perused the material on record.

10. There is a complaint against the Petitioner for the offence under Sections 354-A, 354-D and 506 of IPC and under Section 12 of The POCSO Act, 2012. The matter has been referred to the Internal Complaints Committee (ICC) of the Amateur Kabaddi Federation of India (AKFI) which is being administered by a Retired Judge of this Court. Since the matter has been referred to Internal Complaints Committee (ICC), the Respondent/Sports Authority of India has taken a decision to relieve the Petitioner from the position of chief coach from the ongoing National



Coaching Camp.

11. In view of the fact that there is a complaint against the coach and that allegations are serious in nature, including the one under the POCSO Act, the decision of the Sports Authority of India relieving the Petitioner from the post of chief coach cannot be said to be arbitrary. The fact that the complaint and her father have given affidavits stating that that the complaint against the Petitioner was lodged due to some misunderstanding and the Police have filed a closure report does not vitiate the Order dated 22.09.2023 passed by the Respondent/Ministry of Youth Affairs and Sports to dis-associate the Petitioner with training and preparations of the National Team for Kabaddi until the report of the Internal Complaints Committee (ICC) is received.

12. The scope of interference by the Courts under Article 226 of the Constitution of India in administrative decisions is narrow. The Courts only have to see as to whether the decision which has been arrived at is just and reasonable and is not perverse. The Courts do not substitute its own decision to the one arrived at by the authorities. The Apex Court in Municipal Council, Neemuch v. Mahadeo Real Estate, (2019) 10 SCC 738, has held as under:

"13. In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage. However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] lays down the basic



principles which still hold the field. Para 77 of the said judgment reads thus : (SCC pp. 677-78)

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secy. of State for Home Department, ex p Brind [R. v. Secy. of State for Home Department, ex p Brind, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL)] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of



proportionality. In all these cases, the test to be adopted is that the court should, ‘consider whether something has gone wrong of a nature and degree which requires its intervention’.”

14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of “Wednesbury unreasonableness” or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

15. This Court recently in W.B. Central School Service Commission v. Abdul Halim [W.B. Central School Service Commission v. Abdul Halim, (2019) 18 SCC 39 : 2019 SCC OnLine SC 902] had again an occasion to consider the scope of interference under Article 226 in an administrative action:

“31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it



cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.

16. *It could thus be seen that an interference by the*



High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."

13. The Order disassociating the Petitioner from the position of the Chief Coach during the enquiry by the Internal Complaints Committee cannot be said to be illegal, irrational and it also does not suffer from procedural irregularities. There are serious allegations against the Petitioner for the offence under Sections 354-A, 354-D and 506 of IPC and under Section 12 of The POCSO Act, 2012. This Court is not inclined to interfere with the decision arrived at by the Respondents.

14. Accordingly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 26, 2023

S. Zakir