(2010) 08 DEL CK 0370

Delhi High Court

Case No: Writ Petition (C) 4148 of 2010 and CMs 8243 and 8276 of 2010

Karm Kumar		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Aug. 3, 2010

Acts Referred:

- Citizenship (Amendment) Act, 2003 - Section 7A
- Citizenship (Amendment) Act, 2005 - Section 7A
- Citizenship Act, 1955 - Section 7A(1), 7B, 9(2)
- Citizenship Rules, 2009 - Rule 1, 2, 3
- Constitution of India, 1950 - Article 11, 124, 14, 16, 217
- Representation of the People Act, 1950 - Section 16
- Representation of the People Act, 1951 - Section 3, 4, 5, 5A, 6

Citation: (2010) 172 DLT 521

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Roma Bhagat, for the Appellant; A.S. Chandhiok, ASG, Jatan Singh, Ashok Singh, Vibha Dhawan, Rajshekhar Rao and Karan Lahiri for R-1 to 4 and Hari Shankar K. and Vikas Singh Jangra for R-5/SRFI, for the Respondent

Final Decision: Dismissed

Judgement

S. Muralidhar, J.

The Issue

1. Can an Overseas Citizen of India (''OCI'') or a Person of Indian Origin (''PIO'') claim a right to represent India in an international sporting event? This is the question that arises for consideration in these two petitions, which also involve inter alia the interpretation of Sections 7A(i) and 7B of the Citizenship Act, 1955 (''the Act''). The Petitioners challenge the policy of the Government of India in the Ministry of Youth

Affairs and Sports (MYAS), Respondent No. 3, as evidenced by its impugned communication dated 26th December 2008 followed by the clarification dated 12th March 2009 to the effect that only Indian passport holders will be permitted to represent India in international sports events.

Facts in W.P. (C) No. 4148 of 2010 by Karm Kumar

2. Karm Kumar, the petitioner in Writ Petition (C) No. 4148 of 2010, is a citizen of the United Kingdom (U.K.) and holds a U.K. passport. He is an OCI. He is aggrieved by the decision of the Squash Rackets Federation of India (''SRFI''), Respondent No. 5, consistent with the policy announcement dated 26th December 2008 of the Government of India not to permit him to represent India in the international squash tournaments.

3. Karm Kumar was born in India. He is stated to have gone along with his parents to the United Kingdom when he was two to three years old. Both his parents and Karm Kumar are citizens of U.K. Like his parents, Karm Kumar is also a U.K. passport holder. His U.K. passport was last renewed on 1 4th February 2007.

4. It is stated that Karm Kumar represented India in the 1st Asian Junior Championship for Squash in Singapore in the under-15 Category and he secured the 9th position in Asia. His name was included as a ''Special Project Player'' by the SRFI in their 2006-10 Long-Term Development Plan (LTDP) on 24th September 2006. It is stated that he played for the Delhi Inter-state men''s team in 2007. It is stated that till then the SRFI had held out that foreign nationals who were PIOs and who had not turned 16 could not play in the national tournaments although they could play for India in regional and international events. On 31st March 2008, a letter was issued by the SRFI inviting players to attend the selection camp for the forthcoming Asian as well as Junior World championships. It was stated that only those who had valid Indian passports would be considered for the camp.

5. Karm Kumar challenged the above communication by filing Writ Petition (C) No. 3049 of 2008 in this Court. The first prayer in the said petition was for quashing the rule made by the SRFI that "foreign nationals cannot participate in the National Squash Championship even if they are Persons of Indian Origin and have a PIO or OCI status." The other prayer was for a direction to the Respondent MYAS "to have a uniform sports policy for the country whereby rules of eligibility so far as they are based on nationality are the same for everyone" and for a uniform policy on eligibility of PIO/OCI status holders to play for India in regional and international tournaments.

6. By judgment dated 1st October 2008 in W.P.(C) No. 3049 of 2008, a learned Single Judge of this Court allowed the first prayer as regards participation of OCIs in national tournaments. A direction was issued to the Government of India to frame a uniform policy in the matter of permitting OCIs to represent India in international sporting events. The relevant portion of the judgment of the Single Judge of this

Court read as under:

It is further noteworthy that learned Counsel from both sides have conceded that the absence of a uniform policy qua eligibility of foreign nationals of Indian origin to represent India in national and International sports is the fountainhead of the disputes between the parties. The question, thus, arises as to whether, individual Sports Federations, in the absence of any uniform sports policy, can be allowed to "pick and choose" potential players for competitive sports? The answer is an emphatic "no". I am afraid that this is precisely what the impugned rule does - it makes an unnecessary classification between players who are Indians and players who are foreign nationals of Indian origin by first treating them alike. Having already treated the under-16 Indian and foreign nationals at parity with each other, the SRFI cannot subsequently make a distinction between the two on the basis of nationality.

For the reasons aforestated, the present petition is allowed in terms of Clause (a) of the prayer made by the petitioner. Consequently, the impugned rule restricting foreign nationals of Indian Origin from participating in the National Squash Championship is quashed. Taking into consideration the observations made by the Union of India at paragraph 6 of its short counter-affidavit filed on record, wherein, it is stated there is no uniform policy followed by National Sport''s Federations with respect to participation of foreign nationals of Indian origin in Indian Sports, and further, that this being a policy issue, the respondents are reviewing the matter, a direction is hereby issued to the Government that such review, as contemplated by them, shall be done as expeditiously as possible and in the best interest of sports in the country.

(emphasis supplied)

7. The above judgment was challenged by the MYAS before a Division Bench of this Court by filing LPA No. 643 of 2008. In the meanwhile, consequent upon the judgment dated 1st October 2008 of the learned Single Judge, the MYAS came out with a policy announcement by way of its communication dated 26th December 2008 which reads as under:

No. F.45-5/2008 SPI.I

Government of India,

Ministry of Youth Affairs & Sports,

Department of Sports,

Shastri Bhavan, New Delhi.

Dated: 26.12.2008

To

The President/Secretary General,

Indian Olympic Association,

B-29, Qutab Institutional Area,

New Delhi.

The President/Secretary Generals of All recognized

National Sports Federations,

Sir,

In the matter of Karam Kumar v. Union of India and Ors. the Hon''ble High Court of Delhi has directed Government to review the matter of participation of foreign nationals of Indian origin in the national teams and bring out a uniform national policy in the best interest of sports in the country.

The matter has, in pursuance to the above direction of the Hon''ble High Court of Delhi, been carefully considered after seeking comments of Indian Olympic Association, recognized National Sports Federations and others concerned.

Based on this consultation, an overwhelming view has emerged that the best interest of Indian Sports would be served by ensuring that players who are Indian citizens only represent the country in the National teams. This would ensure that the limited resources available are invested optimally in building world- class athletes. This would also provide the opportunity of giving international exposure and training to deserving local talent, which would further improve them to world class performance levels. Finally, it would serve the long term interests of the country to emerge as a front runner in the field of sports.

In view of the above, it has been decided that, henceforth only players who are citizens of India would be entitled to receive government support for representing the country in the national teams. Further, the above policy decision would also be applicable in the consideration of proposals for the participation of the national teams in international sports events.

Yours faithfully,

Sd/-

Shankar Lal

Under Secretary to Govt. of India.

(underlining in original)

8. A press release was also issued on 26th December 2008 by the MYAS which stated that after consulting all the national sports federations and after seeking the comments of the Indian Olympic Association (''IOA'') it had been decided that just as

financial assistance from government is restricted to Indian nationals only, the inclusion of players in the national teams would also be restricted only to Indian nationals.

9. While admitting LPA No. 643 of 2008 filed by the MYAS on 7th January 2009, a Division Bench of this Court noted that a uniform policy had now been adopted by the Government of India on 26th December 2008. It was, however, observed that:

There seems to be to some ambiguity in that behalf in as much as the apparent reading of the policy does seem to indicate as if the government does not want to spend on the training of the persons of Indian origin (PIO) and Overseas Citizens of India (OCI) but there is no debarment. This aspect would of course have to be examined while hearing the appeal.

10. A special selection was directed to be held for the Petitioner to determine whether he was entitled to represent India in the Asian Junior Championship commencing on 16th January 2009, based on his performance alone.

11. On 12th March 2009 the MYAS issued the following further clarification:

No.F.45-5/2008-SP-I

Government of India

Ministry of Youth Affairs and Sports

Department of Sports

Dated: New Delhi, the 12th March, 2009

To,

The President/Secretary General,

Indian Olympic Association,

B-29, Qutab Institutional Area,

New Delhi

The President/Secretary Generals of

All Recognized National Sports Federations.

Sub: Government Policy on participation of foreign nationals of Indian origin in national teams.

Sir,

Government vide letter of even number dated 26th December, 2008 has laid down the national policy on the above mentioned project.

2. A question has arisen in respect of persons who are not Indian citizens as to whether the policy only restricts government support to them for participating in national teams or altogether makes them ineligible to participate in national teams.

3. As already stated in para 3 of the letter referred to above and for the reasons mentioned in the said letter, it is clarified that just as financial support from government is restricted to Indian Nationals only, the inclusion of players in the national teams is also restricted to Indian nationals only. In other words, only Indian nationals are eligible to be part of the national team and walk under the Indian flag.

Yours faithfully,

Sd/-

(Shankar Lal)

Under Secretary to the Government of India

(emphasis supplied)

12. On 18th March 2009, in view of the fact that a clarificatory circular had been issued by the MYAS on 12th March 2009, the LPA No. 643 of 2008 was dismissed as withdrawn.

13. Aggrieved by the above circulars, Karm Kumar filed Writ Petition (C) No. 10477 of 2009 in this Court in which notice was issued on 28th July 2009. Subsequently on 6th November 2009 the writ petition stood dismissed in default. Thereafter the present petition was filed by Karm Kumar on 4th June 2010. An urgent interim order was sought by him in view of the impending South Asian Tournament in Sri Lanka. This Court was not inclined to grant any interim relief. This Court was informed that the selection for the said tournament in Sri Lanka had already taken place on 12th June 2010 and therefore it was not possible for Karm Kumar to be accommodated. In the circumstances when on 5th July 2010 counsel for Karm Kumar insisted on an interim relief being granted to permit him to participate in the Asian tournament which was beginning in Sri Lanka in August 2010, this Court with the consent of the parties took up the writ petition itself for final hearing.

Writ Petition (C) No. 4263 of 2010 by Robert Blanchette

14. This writ petition by Robert Blanchette contains a sketchy and incomplete narration of the facts. For instance, there is nowhere an indication that the petition concerns participation in equestrian events. Strangely, the list of dates in both, this petition as well as that of Karm Kumar, is identical. The following narrative is based on the few facts that could be discerned from the petition and what counsel stated during the hearing.

15. Robert Blanchette is a citizen of the United States of America (U.S.A) and holds that country''s passport. He is a permanent resident of California. Robert Blanchette is stated to be qualified to be a PIO. It is claimed that Robert Blanchette "possesses a PIO status as his paternal grandparents are Indian citizens." His father who surrendered his Indian citizenship is also said to have a PIO status. He is aggrieved by the policy of MYAS in terms of which a PIO cannot represent India in international equestrian events.

16. It is stated by the counsel for Robert Blanchette that he is qualified to participate in international equestrian championships, and if the policy of the MYAS as announced on 26th December 2008 is set aside he will qualify to represent India as a third member of the Indian equestrian team.

17. Both Petitioners seek to place reliance upon the judgment dated 18th March 2010 passed by the Punjab and Haryana High Court in Civil Writ Petition No. 18093 of 2009 (titled ''Sorab Singh Gill v. Union of India''). While allowing the said writ petition, the Punjab and Haryana High Court directed that Sorab Singh Gill, an OCI and a holder of a U.S.A. passport would be accorded the same status as an NRI insofar as participating on behalf of India in the international or regional shooting events was concerned. The two petitioners seek parity of treatment with Sorab Singh Gill.

Reply by the MYAS

18. In the counter affidavit filed by the MYAS in Karm Kumar''s writ petition, it is pointed out that against the judgment of the High Court of Punjab and Haryana in Sorab Singh Gill v. Union of India, the Union of India filed a SLP (C) No. 10880 of 2010 in the Supreme Court in which notice was directed to be issued on 19th April 2010. Since by that date the entire team which had been sent for participation in the international shooting event at Singapore had been recalled, the Supreme Court was informed that the application for stay had been rendered infructuous. Accordingly, no order was passed on the application for stay.

19. This Court has heard the submissions of Ms. Roma Bhagat, the learned Counsel appearing for the Petitioners, Mr. A.S. Chandhiok, learned Additional Solicitor General of India, Mr. Jatan Singh, the learned Counsel appearing for Union of India and Mr. K. Hari Shankar, the learned Counsel, appearing for the SRFI.

Interpretation of the relevant provisions

20. In order to appreciate the context in which the issue arises, it is necessary first to notice some of the relevant provisions of the Constitution of India concerning citizenship. Article 5 talks of the position at the time of the commencement of the Constitution, Article 9 states that the deeming fiction of citizenship in Articles 5 - 8 will not apply if a person "has voluntarily acquired the citizenship of any foreign state." These words have been judicially interpreted to imply that obtaining a

passport of a foreign country is an instance of voluntarily acquiring citizenship of that country. In Izhar Ahmad Khan Vs. Union of India (UOI), the Supreme Court was examining the validity of Rule 3 of the Rules of evidence set out in Schedule III to the Citizenship Rules in terms of which the enquiry u/s 9(2) of the Act had to be conducted. The Court observed:

16. That takes us to Schedule III which prescribed the rules of evidence under which the enquiry u/s 9(2) would be held. Under Rule 1, it is provided that if it appears to the Central Government that a citizen of India has voluntarily acquired the citizenship of any other country, it may require proof within the specified time that he has not so acquired the citizenship of that country; and the burden of proving this shall be upon him. Under Rule 2, the Central Government is empowered to make a reference in respect of any question, which it has to decide in the enquiry, to its Embassy in the country concerned or to the Government of the said country and it authorises the Central Government to act on any report or information received in pursuance of such reference. Then follows Rule 3 the validity of which is challenged before us. This rule reads thus:

The fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of the country before that date.

To the rest of the rules it is unnecessary to refer. The scope and effect of Rule 3 are absolutely clear. If it is shown that a citizen of India has obtained a passport from a foreign Government on any date, then under Rule 3 an inference has to be drawn that by obtaining the said passport he has voluntarily acquired the citizenship of that country before the date of the passport. In other words, the proof of the fact that a passport from a foreign country has been obtained on a certain date conclusively determines the other fact that before that date, he has voluntarily acquired the citizenship of that country.

(emphasis supplied)

21. The above legal position was set out at a time when there was no policy of ''dual citizenship''. On March 31, 1999, the Government of India launched the Persons of Indian Origin (''PIO'') Card Scheme for foreign passport holders of Indian origin. The broad policy was to give them parity with Non-Resident Indians (''NRIs''). The PIO Card Scheme was revised on 19th July 2002 by the Government of India. By the Citizenship (Amendment) Act, 2003 (Act No. 6 of 2004) with effect from 3rd December 2004 provisions concerning overseas citizenship were introduced in the Act. In particular Section 7A regarding registration of OCIs and Section 7B concerning ''Conferment of rights on OCIs'' were inserted. Initially, on the basis of reciprocity, OCI status was proposed to be granted to PIOs in sixteen countries other than Pakistan and Bangladesh. A policy decision was taken by the Government of India to grant OCI status "to all overseas Indians who migrated from India after

26th January 1950 as long as their home countries allow dual citizenship." This was given effect to by a further amendment to Section 7A of the Act with retrospective effect from 28th June 2005.

22. Section 7A of the Act after the 2005 amendment reads thus:

7A. Registration of overseas citizens of India.-The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India-

(a) any person of full age and capacity,-

(i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in Clause (a):

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India.

23. Section 7A of the Act created as it were a new species called the OCI which appear to be a sub-species of PIOs although Section 7A itself does not use the word PIO. It calls for a greater generational proximity of the OCI with the country of origin than the PIO status does. Thirdly, while OCI has received, through the amendment to Section 7A of the Act a statutory status, a PIO remains within the realm of a scheme without such statutory or constitutional status. In other words, while the statutory provision governing an OCI can be traced to Article 11 of the Constitution, there is no corresponding statutory status accorded to the PIO. While the above broad features distinguish an OCI from a PIO, the rights that go with either status are dependent on the policy of the Government of India. Thus the gaining of the status of an OCI or a PIO does not guarantee parity of treatment with Indian passport holders. Of course within OCIs as a class there may be a case made out for non-discrimination and equal treatment in the context of Article 14 of the Constitution but not vis-�-vis Indian passport holders. The classification of PIOs and the sub-classification of OCIs is based on intelligible differentia justifying a different treatment vis-�-vis Indian passport holders. This of course is the position as of today since it is reflective of the current policy of the Government of India concerning OCIs and PIOs. If the policy changes hereafter to extend further rights to OCIs and/or PIOs that would obviously be reflected in the notifications that are

issued or the statutory changes that are brought about. That is not a matter for the court to dictate.

24. To understand the limited nature of the rights conferred on OCIs one has to turn to Section 7B of the Act, which reads thus:

7 B. Conferment of rights on overseas citizens of India.

(1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights [other than the rights specified under Sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An overseas citizen of India shall not be entitled to the rights conferred on a citizen of India-

(a) under Article 16 of the Constitution with regard to equality of opportunity in matters of public employment;

(b) under Article 58 of the Constitution for election as President;

(c) under Article 66 of the Constitution for election of Vice- President;

(d) under Article 124 of the Constitution for appointment as a Judge of the Supreme Court;

(e) under Article 217 of the Constitution for appointment as a Judge of the High Court;

(f) u/s 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;

(g) under Sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;

(h) under Sections 5, 5-A and 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a Member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify.

(3) Every notification issued under Sub-section (1) shall be laid before each House of Parliament.

25. The very wording of Section 7B of the Act indicates that what is meant to be granted to OCIs is a limited right. Secondly, it is a statutory right and not a fundamental or constitutional right. The grant of the limited right is by the central

government by notification u/s 7B of the Act. Therefore what right is granted depends on the policy of the central government. It is not automatic on the attaining of the status of an OCI. There cannot be a presumption that a right that is not taken away by a notification is deemed to have been granted. On the other hand Section 7B makes it clear that only those rights that are specifically granted by a notification issued by the central government in exercise of its powers u/s 7B(1) of the Act are available to an OCI. The legislative intent appears to give the government flexibility in changing its policy from time to time. It might, depending on the circumstances, change its policy and decide to withdraw a right granted to an OCI by issuing a notification to that effect. Incidentally, there is no challenge to the validity of Section 7B of the Act which permits this.

26. One such notification issued on 11th April 2005 by the Ministry of Home Affairs u/s 7B(1) of the Act reads:

S.O. 542(E) -In exercise of the powers conferred by Sub-section (1) of Section 7B of the Citizenship Act, 1955 (57) of 1955), the Central Government hereby specifies the following rights to which the person registered as Overseas Citizens of India u/s 7A of the said Act shall be entitled, namely:

a) grant of multiple entry lifelong visa for visiting India for any purpose;

b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and

c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

(emphasis supplied)

27. It was urged that the words ''educational fields'' would include participation in international sports events and therefore on the strength of the above notification OCIs cannot be denied the right to represent India in international sports events. Reliance is placed on the judgment of the Punjab and Haryana High Court in the Sorab Singh Gill case. Although the challenge to the said decision by the MYAS is pending consideration by the Supreme Court, counsel for the Petitioners has insisted that since the said judgment has not been stayed by the Supreme Court, it has persuasive value on this Court. Therefore, this Court turns next to the said decision.

The judgment of the P&H High Court

28. Ms. Roma Bhagat submitted that the MYAS cannot discriminate against the Petitioner who was placed in the same situation as Sorab Singh Gill, an OCI who had been permitted by the Punjab and Haryana High Court to represent India in the international shooting event on par with NRIs. It was urged that since Sorab Singh

Gill was permitted to play for India in the international sporting event in Singapore, Karm Kumar, an OCI, had to also be extended the same facility as an NRI and be permitted to represent India in the South Asian squash Championship to take place in Colombo in August this year.

29. On behalf of the Respondents, it is pointed out that Sorab Singh Gill in fact did not represent India in the international shooting competition in Singapore since the entire Indian team was recalled. It is pointed out that the MYAS has not accepted the decision and its challenge to it is pending before the Supreme Court. In the circumstances, there was no question of any discrimination being practised against Karm Kumar.

30. The facts in Sorab Singh Gill''s case may first be noticed. Sorab Singh Gill was a person born in the USA on 19th August 1987. He returned to India when he was one year old and throughout received his education in India. He was at the relevant time studying in the third year of the five-year law course at the Punjab University. The Petitioner''s father was serving as the Director General of Police in the State of Punjab. Sorab Singh Gill was granted OCI status by the Government of India on 9th April 2007. He represented India in the Skeet Event in 4th International Tournament in Junior World Shooting Event at Suhl-Germany and in the World University Games at Bangkok-Thailand. He was also selected as a member of the Indian team for the Asian Championship. He secured two gold medals in the 11th Asian Shooting Championship held at Kuwait in 2007.

31. It was noticed in para 4 of the judgment in Sorab Singh Gill that his grievance was based on the interpretation of the policy dated 26th December 2008 and the consequent policy dated 12th March 2009 formulated by the Union of India. In interpreting the notification dated 11th April 2005 of the MHA, the Punjab and Haryana High Court relied upon a judgment of the Delhi High Court in Ajay Jadeja Vs. Union of India and Others, where it was observed in para 21 as under:

21. In the instant case, not only is a violation of fundamental right complained of but the nature of the duty being discharged by the respondent is certainly a public duty dealing with an activity which is of widest general public interest and is in the furtherance of a sporting activity which is of importance to any civilised society. In fact modern education policies regards sports as an essential component of good education.

32. Thereafter in para 17 in Sorab Singh Gill it was observed as under:

17. In the light of the above position of law, it is the contention of learned Counsel for the petitioner that the petitioner was at liberty to pursue the education on terms equivalent to that of an NRI. It was further submitted that it is not in dispute that an NRI could represent India in International Sports events, and that such sporting facility being part of education as held by Delhi High Court, as well as by the Hon''ble Supreme Court, could not be denied to the petitioner.

33. It was concluded that since an NRI was permitted to represent India in an international sports event and since by the notification dated 11th April 2005 OCIs had been granted facilities on par with NRIs, Sorab Singh Gill could not be denied the right to represent India in the international shooting event.

34. As far as this Court can appreciate, the judgment in Sorab Singh Gill turned on the interpretation of the words "educational fields" occurring in the notification dated 11th April 2005. The reasoning appears to be that the participation in sporting events by a student in school forms an integral part of education. This Court is unable to read the above notification dated 11th April 2005 issued u/s 7B of the Act as anything more than granting parity to the OCIs with NRIs in "economic, financial and educational fields". In the context of educational field what it connoted was that if an NRI was granted admission to educational institutions in India, under a quota meant for NRIs, then an OCI would equally be eligible to be considered under the said quota. The intention was not to permit OCIs to represent India in international sporting events. An OCI need not be a student studying in India at all. An OCI could well be merely a resident of a foreign country of which he or she is a passport holder. The right to represent India in an international sporting event does not, in the considered view of this Court, flow from the above notification dated 11th April 2005.

Limited scope of interference in policy decisions

35. It was then contended by Ms. Bhagat that the policy of permitting OCIs to play in national tournaments while denying them the right to represent India in international events was seriously flawed, arbitrary and irrational. She submits that the so-called policy was framed on an erroneous presumption that there was no prior policy of permitting OCIs to represent India when in fact there was such a policy. If the intention was to provide PIOs and OCIs the same facilities extended to NRIs then the policy as reflected in the communication dated 26th December 2008 was inconsistent with such intention. She submitted that neither the said communication nor the subsequent clarification dated 12th March 2009 could be said to be valid as they were not ''notifications'' in terms of Section 7B(1) of the Act.

36. In response to the above submissions, it is submitted by Mr. Chandhiok that a uniform policy decision had to be taken by the Government of India after consultation with all the national sports federations (NSFs) in India. This was the outcome of the judgment of this Court in Karm Kumar''s case in the earlier round of litigation. The uniform view expressed by NSFs was that only Indian passport holders should be permitted to represent India. This was a policy decision taken by the Government of India which could not be said to be arbitrary or unreasonable. It was inevitable that a policy decision affected one or the other person adversely. However, that by itself could not render the policy arbitrary or unreasonable.

37. The scope of the powers of this Court to interfere with what is essentially a policy decision of the government of India is well settled. In M.P. Oil Extraction and Another Vs. State of M.P. and Others, the Supreme Court explained (SCC, p. 611):

41 ...The executive authority of the State must be held to be within its competence to frame policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes in conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain term, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of three organs of the State i.e. legislature, executive and judiciary in their respective field of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciates the need for mutual respect and supremacy in their respective field.
(emphasis supplied)

38. In M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, the Supreme Court observed thus (p. 643):

18. ...It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

39. This Court is of the view that the policy decision taken by the Government of India as announced on 26th December 2008, as subsequently clarified on 12th

March 2009, restricting the right to represent India in international sporting events to Indian passport holders, cannot be said to be arbitrary, irrational or unreasonable. There is a justification in insisting that only Indian passport holders should represent India in an international sporting event. Those with foreign passports obviously owe their allegiance to the country of which they hold the passport. As long as the policy of the Government of India does not recognize dual citizenship in all aspects, this Court cannot accept the submission that even foreign passport holders should be permitted to play for India in international sporting events. Ultimately the decision whether Indians alone should be allowed to represent India in an international event is a matter of policy of the Government of India. The scope of the powers of this Court under Article 226 of the Constitution of judicial review of such policy decision is extremely limited.

40. It is perfectly possible that only Indian passport holders are allowed to represent India in international sporting events whereas national events are thrown open to both OCIs and PIOs. This Court finds nothing unreasonable or irrational in these two distinct policies: one for the national tournaments and the other for international tournaments.

41. The contention that the entire policy has been made by the Union of India only to victimize Karm Kumar needs only to be stated to be rejected. This submission at best can be termed as ''extraordinary''. It is no doubt true that the said policy came to be framed as a result of the order passed in the Writ Petition (C) No. 3049 of 2008 filed by Karm Kumar in this Court. However, it is quite a different thing to say that the policy has been framed only to ''victimise'' Karm Kumar. The said policy has a uniform application to all OCIs and does not single out Karm Kumar for a different treatment.

42. The submission that the policy decision should be announced only by way of a notification proceeds on an erroneous reading of Section 7B(1) of the Act. A notification is required only where it is proposed to confer a right on an OCI. The impugned communications do the opposite. They clarify the policy decision not to grant OCIs the right to represent India in international tournaments.

Legitimate expectation

43. It was submitted by Ms. Bhagat that the past practice of permitting both the PIOs and OCIs to represent India in international sporting events has given rise to a legitimate expectation of continuation of that practice. She submits that Karm Kumar was permitted to represent India prior to the change in the policy. He was also placed on the Long- Term Development Plan of the SRFI in 2006. All this constituted a representation held out to him that he will continue to play for India in international sporting events. According to her, this legitimate expectation cannot be frustrated by introducing a policy to his detriment. Relying on such representation, Karm Kumar had made India his place of domicile expecting to play

for it. It is submitted that although Karm Kumar is the holder of a U.K. passport, the fact that he has represented India in an international sporting event, disentitles him to represent the U.K. in an international sporting event for three years. As a result, Karm Kumar will not be in a position to play for any country in international events for quite some time to come. This, it is contended, adversely affects Karm Kumar''s participation in other professional championships as well since his international ranking will depend on the number of tournaments he is able to play for India.

44. It is pointed out in response by Mr. Chandhiok that Karm Kumar could have been under no illusion that a policy was to be announced by the Union of India as that was one of his prayers in the earlier writ petition. Also, Section 7B(1) of the Act made it clear that OCIs had limited rights. Certainly the statute gave no rise to any legitimate expectation that OCIs could represent India in sporting events.

45. Having considered the above submissions, this Court is of the view that no specific assurance was held out to Karm Kumar by the Union of India that he will be permitted to represent India for all times to come. The facts and circumstances outlined did not give rise to a legitimate expectation that the past practice of permitting OCIs and PIOs to represent India in international sporting events would continue indefinitely. As explained by the Supreme Court an important exception to the doctrine is a justifiable policy change.

46. In Union of India and others Vs. Hindustan Development Corpn. and others, the Supreme Court explained in para 28 that:

The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

47. It was further explained in para 33 in Union of India v. Hindustan Development Corporation:

The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystalised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person''s legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overrating public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its

powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits.

(emphasis supplied)

48. After emphasising that the burden was on the person who bases his claim on the doctrine of legitimate expectation to satisfy that there has been a representation or a past practice that has given rise to such expectation, it must be shown that the decision of the authority was "arbitrary, unreasonable and not taken in public interest". It was observed: "If it is a question of policy, even by way of change of old policy, the courts cannot interfere with the decision". Even if the court was satisfied that a case of legitimate expectation was made out, it can grant relief only where the failure to give an opportunity of hearing prior to such decision has resulted in failure of justice.

49. In Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, it was held (SCC, p.190-191):

32. ...a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

50. The above principles were reiterated recently in Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, .

51. Consequently, this Court finds no merit in the submission that either of the Petitioners can claim that they have a legitimate expectation about representing India in the international sporting events.

Citizens and Nationals

52. It was submitted by Ms. Bhagat that as long as the Petitioners were Indian ''nationals'', their right to represent India an international sporting event could not be denied. It was submitted that a person domiciled in India by birth would always be an Indian national whether or not he has an Indian passport. Reference was made to the International Olympic Charter and regulations in support of this submission. On the other hand, the learned ASG also referred to the charters of international sports bodies which require the ''nationals'' to be recognised by the

law of those countries of which they claim to be nationals.

53. As far as the legal position in India is concerned, wherever a reference is made to an Indian ''national'', in law it means an Indian ''citizen''. But the vice versa is not true. In The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, the Supreme Court explained:

But the question still remains whether "nationality" and "citizenship" are interchangeable terms. "Nationality" has reference to the jural relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law, whereas citizenship is intimately connected with civic rights under municipal law. Hence, all citizens are nationals of a particular State, but all nationals may not be citizens of the State. In other words, citizens are those persons who have full political rights as distinguished from nationals, who may not enjoy full political rights and are still domiciled in that country (vide P. Weis-Nationality and Statelessness in International Law pp. 4-6; and Oppenheim''s International Law, Vol. 1. pp. 642, 644).

(emphasis supplied)

54. The Act and the policy refer to the notion of ''citizenship'' and not ''nationality''. Theoretically it may be possible to argue that nationality and citizenship are not necessarily one and the same thing. But where the requirement in terms of Article 9 of the Constitution of India read with Section 7B of the Act is to demonstrate that the person is an Indian citizen within the meaning of that statute, it is not enough to show that the person is an Indian ''national''. Absent an explicit recognition of such status in law, a ''national'' may not per se be entitled to the same treatment as a ''citizen''.

55. On behalf of Mr. Robert Blanchette it is submitted that PIOs have always been treated on par with NRIs. PIOs have also been considered for grant of Arjuna Awards. Prior to the policy, there were PIOs who were representing India in international sporting events. It is submitted that by denying Robert Blanchette the right to represent India in the equestrian event, India might well lose the chance of participating in equestrian events for all times to come.

56. This Court is unable to accept the above submission. A uniform policy had to be adopted on the question of permitting PIOs and OCIs to represent India in international sporting events. To reiterate, it is possible that this departure from the past practice might prove to be detrimental to some of the PIOs and OCIs who were expecting to represent India in international sporting events for all times to come. However, the mere fact that it would adversely affect some persons does not make a uniform policy that is based on rational criteria, arbitrary or unreasonable. The entire life of a sportsperson does not hinge only on representing a country in an

international sporting event. In each field of sports, there are several competitive tournaments held throughout the year all over the world where participation does not hinge on nationality.

Conclusion

57. The question posed at the beginning was this: Can an OCI or a PIO claim a right to represent India in an international sporting event? The answer to that question is in the negative given the present policy of the Union of India which this Court does not find to be arbitrary or unreasonable.

58. For all of the aforementioned reasons, there is no merit in either of the writ petitions and they are dismissed, but in the circumstances, with no order as to costs. All the pending applications stand disposed of.