

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.4710 OF 2024 (GM - RES)



**BETWEEN:**

SRI SHASHANK J. RAI  
AGED ABOUT 30 YEARS  
S/O JAYASHANKAR RAI  
NO.801, PLAMA RESIDENCY  
NEAR KOTTARA CROSS  
BEJAI, MANGALURU  
KARNATAKA - 575 004.

... PETITIONER

(BY SRI M.S.BHAGWAT, SR.ADVOCATE FOR  
SRI SATISH K., ADVOCATE)

**AND:**

- 1 . NATIONAL ANTI-DOPING AGENCY, INDIA  
HALL NO.103 AND 104,  
JAWAHARLAL NEHRU STADIUM  
LODHI ROAD, BLOCK A, PRAGATI VIHAR  
NEW DELHI - 110 003.
- 2 . ANTI-DOPING DISCIPLINARY PANEL  
HALL NO.103 AND 104,  
JAWAHARLAL NEHRU STADIUM  
LODHI ROAD, BLOCK A, PRAGATI VIHAR  
NEW DELHI - 110 003.

- 3 . ANTI-DOPING APPEAL PANEL  
HALL NO.103 AND 104,  
JAWAHARLAL NEHRU STADIUM  
LODHI ROAD, BLOCK A, PRAGATI VIHAR  
NEW DELHI – 110 003.
  
- 4 . UNION OF INDIA  
REPRESENTED BY  
ITS SECRETARY (SPORTS)  
DEPARTMENT OF SPORTS  
MINISTRY OF YOUTH AFFAIRS AND SPORTS  
C-WING, SHASTRI BHAWAN  
NEW DELHI – 110 001.
  
- 5 . KARNATAKA STATE BASKETBALL ASSOCIATION  
REPRESENTED BY ITS SECRETARY  
ROOM NO.1, SRI KANTEERVA INDOOR  
STADIUM COMPLEX  
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI FOR R1 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS FROM THE RESPONDENTS PERTAINING TO THE IMPUGNED ORDER OF PROVISIONAL SUSPENSION DTD 26.04.2022, IMPUGNED NOTICE OF CHARGE DTD 13.07.2022 AS WELL AS THE IMPUGNED ORDER OF THE R-2 DTD 11.10.2022 (ANNEXURE-A, B AND C RESPECTIVELY); QUASH IMPUGNED ORDER OF PROVISIONAL SUSPENSION DTD 26.04.2022 BEARING NO. K-11/9/2022-SPO PASSED BY THE R-1 (ANNEXURE-A) IMPUGNED NOTICE OF CHARGE DTD 13.07.2022 BEARING NO. K-11/9/2022-SPO ISSUED BY R-1 (ANNEXURE-B) AS WELL AS THE IMPUGNED ORDER DTD 11.10.2022 BEARING NO. NIL PASSED BY THE R-2 (ANNEXURE-C).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner, a distinguished athlete of national acclaim, is before this Court calling in question the validity of 3 interlinked administrative determinations: a provisional suspension order dated 26-04-2022, a formal notice of charge dated 13-07-2022 and the consequential decision of the Appellate Authority rendered on 16-04-2024.

2. Shorn of unnecessary details, facts germane, are as follows:-

The petitioner, a Senior National Basketball Player, is not an unknown face in the world of Indian Basket Ball, as he has donned the colors of the State, no fewer than 8 times and has graced international stage representing the nation at various prestigious tournaments - South Asian Basketball championship recently held in Dhaka, Bangladesh and is said to have won gold medal in the year

2021. Therefore, he claims to be the most decorated basketball player in the country. The 1<sup>st</sup> respondent is the Anti-Doping Agency; 2<sup>nd</sup> respondent is the Anti-Doping Disciplinary Panel; 3<sup>rd</sup> respondent is the Anti-Doping Appeal Panel and 4<sup>th</sup> respondent is the Ministry of Youth Affairs and Sports, Union of India. The 5<sup>th</sup> respondent is the Karnataka State Basketball Association. These are the protagonists in the *lis*. The petitioner, apart from his athletic prowess, serves the State's Forest Department as a Deputy Range Forest Officer. The issue at hand does not pertain to the realm of his service, but to the sporting event i.e., Basketball.

3. On the 05-02-2022 while participating in a preparatory camp in Bangalore, intended to India's Elite Basketball contingent, the petitioner's urine sample was collected by the 1<sup>st</sup> respondent and the sample was opened and resealed in Delhi. The charges from the petitioner for conducting Sample-B test was also collected by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent then sends the sample of urine of the petitioner to a laboratory in Rome along with a letter. The communication would establish that the 1<sup>st</sup> respondent conducted some initial procedural tests and then sends the sample

to conclude the origin 19-NA substance, for the purpose of finding out whether the substance present in the urine is **endogenous or exogenous through GC-C-IRMS (Gas Chromatography Combustion isotope ratio mass spectrometry) testing**. The test report for any such test conducted at the National Dope Testing Laboratory was not informed or furnished to the petitioner. The test of both 'A' and 'B' samples of urine that is conducted by the laboratory at Rome was furnished to the petitioner by the 1<sup>st</sup> respondent, through a notice. The notice was not a notice simpliciter, but a notice placing the petitioner under suspension. The lab tests did not indicate the estimate of concentration of 19-NA as per the World Anti-Doping Agency Regulations. The petitioner then was issued with the notice of charge on 13-07-2022, wherein the petitioner was charged for violation of Rule 2.1/2.2 of the National Anti-Doping Rules, 2021.

4. The petitioner, on the notice of adverse analytical finding dated 26-04-2022 and the notice of charge dated 13-07-2022, approached the Anti-Doping Disciplinary Panel, the 2<sup>nd</sup> respondent, taking a specific contention that he had requested testing of 'B'

sample on 29-04-2022, on the ground that 'A' sample test which was conducted in Italy, had divergence. The petitioner further defended the action on the score that he was a native of Mangalore in Karnataka and regularly consumes pork and had consumed pork the previous night and further contends that the pig meat leads the presence of 19-NA substance in his body. The petitioner avers that Anti-Doping Disciplinary Panel, without adequate opportunity to the petitioner, passes an order on 10-10-2022 communicated to the petitioner on 13-10-2022, affirming the suspension of the petitioner from sporting events. The petitioner presented an Arbitration claim on the aforesaid order before the Arbitral Tribunal in Switzerland questioning the aforesaid orders. The Arbitral Tribunal opined that the Court of Arbitration for Sports had no jurisdiction to decide the appeal presented before it.

5. The petitioner then files an appeal before the 3<sup>rd</sup> respondent in terms of Article 13 of the National Anti-Doping Rules seeking to set aside the order dated 26-04-2022 and 10-10-2022. The 3<sup>rd</sup> respondent initially passes an interim order directing the 1<sup>st</sup> respondent to conduct **Pharmacokinetics** of **19-NA excretion**.

The 1<sup>st</sup> respondent was also directed to obtain clarification from World Anti-Doping Agency ('WADA') on whether WADA technical document dated 20-05-2021, deals only with cases of consumption of wild boar, or domesticated pigs. It is averred that no such test was even conducted despite plethora of reminders. The petitioner also files an affidavit before the Appellate Authority of expert doctors, who had opined that exogenous 19-NA found in the urine sample was the result of consumption of pork and was not due to any type of performance enhancing substance. No order was passed. Therefore, the petitioner had preferred the subject petition during the subsistence of the appeal pending before the Appellate Authority.

6. During the pendency of the subject petition, the 4<sup>th</sup> respondent/Union of India undertook that the Appellate Authority would pass orders considering the claim of the petitioner. The order is passed on 16-04-2024. Therefore, the petitioner sought and allowed to amend the petition by raising a challenge to the order in appeal. It is the aforesaid action up to the order of the Appellate Authority that is called in question in the case at hand.

7. Heard Sri M.S.Bhagwat, learned senior counsel appearing for the petitioner and Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents 1 to 4.

8. The learned senior counsel Sri M.S. Bhagwat appearing for the petitioner would vehemently contend that the penalty or suspension imposed upon the petitioner declaring him to be ineligible for sporting events for a period of 4 years from 11-10-2022 is grossly arbitrary and is in blatant violation of the principles of natural justice, as also in complete violation of the mandate of the provisions of National Anti-Doping Agency, National Anti-Doping Rules 2021, the World Anti-Doping Code, 2021 and the procedures stipulated therein for the purpose of testing. The learned senior counsel would elaborate his submission contending that various procedural lapses resulted in the petitioner's sporting career into complete jeopardy and has caused a dent to his reputation. It is his submission that precise quantity of the prohibited substance detected in urine sample of the petitioner is not disclosed both in the notice of charge, and in the order of

debarment of the petitioner. Nothing is deducible from the laboratory document package report.

9. It is his further submission that factors like specific gravity and uncertainty associated with the sample and any variations that might arise is not considered, as the sample travelled everywhere. He would contend that the 1<sup>st</sup> respondent has committed several errors in the process, as the notice names one Sashi Yadav, while the name of the petitioner is Shashank J. Rai. He would contend that the Appellate Authority does not consider any of the factors that are pleaded in the appeal. The learned senior counsel would emphasize on a fundamental rule that the basic test of concentration of 19-NA is to be conducted by National Anti-Doping Agency at the outset. The initial test detected the presence of 19-NA which was less than 15 ng/ml. The petitioner had consumed edible parts of non-castrated male pig from which there can be no substance of performance enhancement, taken by the petitioner. He would, therefore, seek quashment of proceeding in its entirety.

10. The learned Deputy Solicitor General of India Sri H.Shanthi Bhushan representing respondents 1 to 4 would vehemently contend that the country is a signatory to the Copenhagen Declaration on Anti-Doping. India has undertaken to adopt appropriate measures at the national and international levels consistent with the principle of World Anti-Doping Agency. The writ petition is entertained notwithstanding the Appellate Authority rejecting the appeal, which would set a wrong precedent and would proliferate litigation. He would seek to place reliance on the judgment of the High Court of Delhi in the case of **SUMATI DEVI v. NADA** – W.P.(C) No.7448 of 2016 to buttress his submission.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

12. At the heart of this adjudication lies a **pivotal query**. ***"Has the process that culminated in a 4 years debarment of the petitioner, suffered from procedural infirmities or***

***breaches of natural justice, so as to render the penalty so imposed unsustainable in law?***

13. Before embarking upon the resolution of the pivotal question, it becomes necessary to traverse the statutory terrain within which the controversy is anchored.

**STATUTORY LANDSCAPE:**

14. To the athletes worldwide, sport is not merely a contest of physical prowess, but a sacred pursuit, governed by codes, morals, procedural and regulatory. One such Code is the Anti-Doping Code known as World Anti-Doping Code – a beacon of global consensus adopted to safeguard the right of the athlete to compete in sporting events, **unsullied by artificial enhancements**. The Code is the fundamental and universal document, upon which the world Anti-Doping programme in sport is based. The purpose of the Code is to advance the anti-doping effort, through universal harmonization of core anti-doping elements. India is a signatory to the Copenhagen Declaration, which cemented the request of the World Anti-Doping

Agency and in furtherance of the obligation of the covenants of the said agency, the Country brings in the **National Anti-Doping Act, 2022** (hereinafter referred to as 'the Act' for short). The Act was to provide for constitution of the **National Anti-Doping Agency** and for regulating anti-doping activities, which was to give effect to the United Nations Educational, Scientific and Cultural Organisation International Convention against doping in sport, *inter alia*. India has ratified the said convention as well on 07-11-2007.

14.1. Certain provisions of the National Doping Act assume significance and are therefore, quoted herein. Section 2 which defines different terms read as follows:

**"2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) "Agency" means the National Anti-Doping Agency incorporated and constituted under sub-section (1) of Section 14;
- (b) **"Anti-Doping Rule Violation" means the circumstance, act or conduct specified in Section 4;**
- (c) "Appeal panel" means the National Anti-Doping Appeal panel constituted under Section 12;

- (d) "athlete" means any person who competes in any sport at the national level or international level or participates in any competition or event to which this Act applies;
- (e) "athlete support personnel" means any coach, trainer, manager, agent, team staff, official, medical or paramedical personnel or such other person working with or treating or assisting an athlete who is participating in, or preparing for, a competition or event at the national level or international level or to which this Act applies;
- (f) "Board" means the National Board for Anti-Doping in Sports established under sub-section (1) of Section 7;
- (g) "Chairperson" means the Chairperson of the Board appointed under sub-section (2) of Section 7;
- (h) "Code" means the World Anti-Doping Code adopted and amended from time to time by the World Anti-Doping Agency;**
- (i) "competition" means a single race, match, game or singular contest;
- (j) "Convention" means the United Nations Educational, Scientific and Cultural Organisation International Convention against doping in sport;
- (k) "Director General" means the Director General appointed under sub-section (3) of Section 14;
- (l) "Disciplinary Panel" means the National Anti-Doping Disciplinary Panel constituted under sub-section (1) of Section 11;
- (m) "dope testing laboratory" means a laboratory established or recognised under Section 26;
- (n) "doping Control" includes all steps and processes from test distribution planning up to the disposal of any appeal and enforcement of consequences, including all steps and processes in between, including but not limited to, testing, investigation,**

**whereabouts, Therapeutic Use Exemptions, sample collection and handling, laboratory analysis, Results Management, hearings and appeals, and investigations or proceedings relating to an Anti-Doping Rule Violation;**

- (o) "doping in sport" means the occurrence of any Anti-Doping Rule Violations specified in Section 4;**
- (p) "event" means a series of individual competitions conducted together under anyone ruling body, such as Olympic Games, World Championships of an International Federation and such other event;
- (q) "In-competition Testing" means collection of sample for testing from an athlete who is participating in a competition where such collection is made at any time during the period commencing at 11:59 p.m. on the day before the competition in which such athlete is scheduled to participate till the end of such competition and the sample collection process related to such competition;**
- (r) "international event" means an event or competition where the International Olympic Committee, the International Paralympic Committee, an International Federation, a major event organisation or another international sport organisation is the governing body for such event or appoints the technical officials for the event;**
- (s) "International Federation" means the international governing body for a particular sport;**
- (t) "Member" means a Member of the Board appointed under sub-section (2) of Section 7 and includes the Chairperson thereof;
- (u) "national event" means a sport event or competition involving international level or national level athletes which is not an international event;

- (v) "National Sports Federation" means any recognised body governing a particular sport to which the Code is applicable;
- (w) "Other Anti-Doping Organisations" means organisations which are responsible for adopting anti-doping rules for initiating, implementing or enforcing any part of the doping control process and include the World Anti-Doping Agency, the International Olympic Committee, the International Paralympic Committee, other major event organisations that conduct testing at their events and International Federations, but does not include the Agency;**
- (x) "Out-of-competition Testing" means sample collection during any period other than the period specified for in-competition testing;
- (y) "person" means a natural person or an organisation or other entity;
- (z) "prescribed" means prescribed by rules made under this Act;
- (za) "Prohibited List" means the list of prohibited substances and prohibited methods specified by the Agency by regulations;
- (zb) "prohibited method" means any method listed in the Prohibited List;
- (zc) "prohibited substance" means any substance listed in the Prohibited List;
- (zd) "regulations" means regulations made by the Board or the Agency, as the case may be;
- (ze) "sample" means any biological material collected from an athlete for the purpose of doping control under this Act;
- (zf) "Society" means the National Anti-Doping Agency or the National Dope Testing Laboratory, as the**

**case may be, registered as a society under the Societies Registration Act, 1860 (21 of 1860) and functioning as such immediately before the commencement of this Act;**

- (zg) "testing" means the parts of the doping control process involving test distribution planning, sample collection, sample handling, sample transport to the laboratory and testing of samples;
- (zh) "use" means the utilisation, application, ingestion, injection or consumption by any means whatsoever of any prohibited substance or prohibited method;
- (zi) "World Anti-Doping Agency" means an international agency established on 10<sup>th</sup> November, 1999 in Switzerland which adopts and amends the Code for giving effect to anti-doping policies and international standards."

(Emphasis supplied)

14.2. Chapter II deals with prohibition of doping in sport and anti-doping rule violations. Sections 3, 4 and 6 are germane to be noticed and they read as follows:

**"3. Prohibition of doping in sport.—**(1) No athlete, athlete support personnel or other persons shall indulge in doping in sport.

**(2) Every athlete, athlete support personnel or other persons shall ensure that there is no occurrence of any Anti-Doping Rule Violation as specified in Section 4.**

**(3) Every athlete shall participate in a sport competition at all levels with highest standards of integrity and ethics and in accordance with the provisions of this Act and the rules and regulations made thereunder.**

**(4) Every athlete, athlete support personnel and other persons participating or involved in sport shall accept the anti-doping rules as a condition of such participation or involvement and be bound by the provisions of this Act and the rules and regulations made thereunder.**

(5) Every athlete, athlete support personnel and other persons shall be responsible for knowing what constitutes Anti-Doping Rule Violations and the restrictions on the use of prohibited substances and the prohibited methods which are included in the Prohibited List.

(6) The provisions of this Act shall apply to such persons who are specified by the Central Government to be protected persons, to such extent and in such manner, as may be prescribed.

**4. Anti-Doping Rule Violations.**—Anyone or more of the following circumstances or acts or conduct by an athlete or athlete support personnel or other persons shall constitute Anti-Doping Rule Violation for the purposes of this Act, namely—

- (a) the presence of a prohibited substance or its metabolites or markers in an athlete's sample;**
- (b) use or attempted use of any prohibited substance or a prohibited method, unless such use is exempted by the Agency under Section 5;**
- (c) refusing or failing without compelling justification, to submit sample collection after notification as authorised in applicable anti-doping rules or otherwise evading sample collection;**
- (d) whereabouts failure;**

*Explanation.*—For the purposes of this clause, the term “whereabouts failure” means—

- (i) filing failure, that is to say, the athlete has failed to submit his whereabouts information before the required deadline or to update the same after change in circumstances or if submitted on time, has submitted incomplete, inaccurate or insufficient information to locate him for testing; or
  - (ii) missed test, that is to say, though the athlete has filed his whereabouts information, he is not available at the location for testing; or
  - (iii) such other omissions or failures as may be specified by the Agency by regulations;
- (e) tampering, or attempting to tamper, with any part of doping control;**
- (f) possession of prohibited substances or prohibited methods;**
- (g) trafficking or attempted trafficking in any prohibited substance or prohibited method;**
- (h) administration or attempted administration of a prohibited substance or prohibited method to any athlete;**
- (i) assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of complicity involving an Anti-Doping Rule Violation or any attempted Anti-Doping Rule Violation or violation of the prohibition against participation during ineligibility or provisional suspension;**
- (j) prohibited association with such athlete, athlete support personnel or other persons as may be specified by the Agency by regulations;**
- (k) discouraging or retaliating against reporting to authorities;**
- (l) such other circumstances, or engaging in such other acts or conduct, which amounts to Anti-**

**Doping Rule Violation, as may be specified by the Agency by regulations.**

... ..

**6. Consequences of Anti-Doping Rule Violations.—**

(1) The consequences of Anti-Doping Rule Violations by an individual athlete or athlete support personnel may result in one or more of the following, namely—

- (a) disqualification of results with all consequences including forfeiture of medals, points and prizes, in such manner as may be specified by the Agency by regulations;
- (b) ineligibility to participate in any competition or event or other activity or funding, for such period and in such manner, as may be specified by the Agency by regulations;
- (c) provisional suspension from participating in any competition or activity prior to the decision in appeal under Section 23 in such manner as may be specified by the Agency by regulations;
- (d) imposition of financial sanction including proportionate recovery of costs, in such manner as may be specified by the Agency by regulations;
- (e) public disclosure and such other consequences as may be specified by the Agency by regulations.

(2) The consequences of Anti-Doping Rule Violations for team sports and protected persons shall be such as may be specified by regulations.”

(Emphasis supplied)

14.3. Chapter-V deals with doping control process. Sections 19, 20, 21, 22, 23 are germane to be noticed and they read as follows:

**“19. Power of entry, search and seizure.—(1) Where the Agency has reasons to believe that an athlete or athlete support personnel or any other person to whom this Act applies has committed an Anti-Doping Rule Violation, any person authorised by the Agency may, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),—**

- (a) enter any place, at all reasonable times, with such assistance as is considered necessary, for the purpose of inspecting, examining and determining if any Anti-Doping Rule Violation has been committed or is being committed;**
- (b) search any premises in which the officer has reason to believe that any Anti-Doping Rule Violation has been, or is being, or is about to be, committed;**
- (c) seize any equipment, device, substance, record, register, document or other material object, if such officer believes that it may furnish evidence of such Anti-Doping Rule Violation or that seizure is necessary to prevent or mitigate any Anti-Doping Rule Violation.**

**(2) Save as otherwise provided in this Act, the procedure for investigation or taking any other action under this section shall be such as may be specified by regulations.**

**20. Power of collecting samples and testing.— Where the Agency has reasons to believe that an athlete has committed an Anti-Doping Rule Violation, it shall require such athlete to submit samples for testing, in accordance with such procedure and in such manner, as may be specified by regulations.**

**21. Result management process.—(1) After receiving an adverse report from a dope testing laboratory showing presence of any prohibited substance in the sample of an athlete, the Agency shall carry out initial examination of the report in such manner as may be specified by regulations, and**

verify if Therapeutic Use Exemption has been granted to such athlete in respect of such substance.

(2) Where, after examination and verification under subsection (1), the Agency is satisfied that no Therapeutic Use Exemption has been granted to the athlete, it shall take such actions and in such manner as may be specified by regulations.

**22. Hearing by Disciplinary Panel and determination of consequences thereof.—(1) After the issuance of a notice by the Agency to the athlete or other person asserting the commission of Anti-Doping Rule Violation under this Act, if such athlete or the other person does not waive his right of hearing in the manner specified by regulations, the Agency shall refer such matter to the Disciplinary Panel for hearing and determination of consequences of such Anti-Doping Rule Violation.**

(2) The Disciplinary Panel shall hear and determine all issues arising from any matter which is referred to it, and determine the consequences of Anti-Doping Rule Violations.

(3) Every party shall have a right to be represented, and to have an interpreter, at their own cost.

(4) The Disciplinary Panel shall have power, at its own discretion, to appoint an expert to assist or advise it on such matters as it may require.

(5) Subject to such regulations as may be made by the Board, the Disciplinary Panel shall have power to regulate its own procedure.

(6) Each party to the proceedings shall have right to present the evidence, including the right to call and question witnesses, subject to the discretion of the Disciplinary Panel.

**(7) The parties to the proceedings may submit written submissions with all documents relied upon, in such manner and within such time, as may be specified by regulations.**

**(8) The Disciplinary Panel shall after hearing all parties and after considering all evidence placed before it, by an order in writing made unanimously or by majority, determine the consequences of Anti-Doping Rule Violations in accordance with the provisions of Section 6 and the regulations made thereunder.**

**(9) The decision of the Disciplinary Panel shall be communicated in such manner, as may be specified by regulations.**

**23. Hearing of appeal by Appeal Panel.—**(1) Any person who is aggrieved by any decision under this Act, including—

- (a) a refusal to grant Therapeutic Use Exemption under Section 5;
- (b) imposition of consequences for an Anti-Doping Rule Violation under Section 6;
- (c) such other decision as may be specified by regulations,

may prefer an appeal to the Appeal Panel in such form, within such time, and in such manner, as may be specified by regulations.

(2) Subject to such regulations as may be made by the Board, the Appeal Panel shall have power to regulate its own procedures.

**(3) The Appeal Panel shall have power, at its own discretion, to appoint an expert to assist or advice it on such matters as it may require.**

(4) Every party shall have a right to be represented, and to have an interpreter, at their own cost.

**(5) Each party to the proceedings shall have right to present relevant evidence, to call and examine witnesses and to submit written and oral submissions.**

**(6) The Appeal Panel shall complete hearing as expeditiously as possible, and endeavour shall be made to dispose of such appeal within three months of the date of order of the Disciplinary Panel.**

**(7) The Appeal Panel shall, after hearing all parties and considering all evidences placed before it, by an order in writing, made unanimously or by majority, either confirm or vary or set aside the order of the Disciplinary Panel.**

**(8) The decision of the Appeal Panel shall be communicated to the parties concerned, in such manner, as may be specified by regulations.**

**(9) Any person who is aggrieved by the decision of the Appeal Panel may prefer an appeal to the Court of Arbitration for Sport, in accordance with such rules as may be provided by the Court of Arbitration for Sport.**

*Explanation.*—For the purposes of this sub-section, “Court of Arbitration for Sport” means an international body established in 1984 to settle disputes related to sport through arbitration whose headquarter is in Lausanne, Switzerland.”

(Emphasis supplied)

14.4. In terms of the power conferred under the National Anti-Doping Agency, the Government of India has made **National Anti-Doping Rules, 2021** (‘the Rules’ for short). Certain rules are necessary to be noticed. The Rules are in the form of articles. The definition of doping is dealt with under Articles 2.1 to 2.11. They read as follows:

**“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample**

**2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.**

**2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample."**

(Emphasis supplied)

14.5. Article 5 deals with testing and investigations; Article 6 deals with analysis of samples; Article 8 deals with results management; Article 10 deals with sanctions on individuals; Article

13 deals with Appeals; and Article 14 deals with confidentiality and reporting. All the aforesaid articles read as follows:

**“5.1 Purpose of Testing and Investigations**

- 5.1.1 Testing and investigations may be undertaken for any anti-doping purpose. They shall be conducted in conformity with the provisions of the International Standard for Testing and Investigations and the specific protocols of NADA supplementing that International Standard.
- 5.1.2 Testing shall be undertaken to obtain analytical evidence as to whether the Athlete has violated Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) or Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method).

**5.2 Authority to Test**

- 5.2.1 Subject to the limitations for Event Testing set out in Article 5.3, NADA shall have In-Competition and Out-of-Competition Testing authority over all Athletes specified in the Introduction to these Anti-Doping Rules (Section “Scope of these Anti-Doping Rules”).**
- 5.2.2 NADA may require any Athlete over whom it has Testing authority (including any Athlete serving a period of Ineligibility) to provide a Sample at any time and at any place.**
- 5.2.3 WADA shall have In-Competition and Out-of-Competition Testing authority as set out in Article 20.7.10 of the Code.**
- 5.2.4 If an International Federation or Major Event Organization delegates or contracts any part of Testing to NADA directly or through a National**

**Federation, NADA may collect additional Samples or direct the laboratory to perform additional types of analysis at NADA's expense. If additional Samples are collected or additional types of analysis are performed, the International Federation or Major Event Organization shall be notified.**

### **5.3 Event Testing**

- 5.3.1 Except as otherwise provided below, only a single organization shall have authority to conduct Testing at Event Venues during an Event Period. At International Events held in India, the international organization which is the ruling body for the Event shall have authority to conduct Testing. At National Events held in India, NADA shall have authority to conduct Testing. At the request of the ruling body for an Event, any Testing conducted during the Event Period outside of the Event Venues shall be coordinated with the ruling body of the Event.
- 5.3.2 If an Anti-Doping Organization, which would otherwise have Testing authority but is not responsible for initiating and directing Testing at an Event, desires to conduct Testing of Athletes at the Event Venues during the Event Period, the Anti-Doping Organization shall first confer with the ruling body of the Event to obtain permission to conduct and coordinate such Testing. If the Anti-Doping Organization is not satisfied with the response from the ruling body of the Event, the Anti-Doping Organization may, in accordance with procedures described in the International Standard for Testing and Investigations, ask WADA for permission to conduct Testing and to determine how to coordinate such Testing. WADA shall not grant approval for such Testing before consulting with and informing the ruling body for the Event. WADA's decision shall be final and not subject to appeal. Unless otherwise provided in the authorization to conduct Testing, such tests shall be considered Out-of-Competition tests. Results Management for any such test shall be the responsibility of the Anti-Doping Organization initiating the test unless provided otherwise in the rules of the ruling body of the Event.

## **5.4 Testing Requirements**

**5.4.1 NADA shall conduct test distribution planning and Testing as required by the International Standard for Testing and Investigations.**

**5.4.2 Where reasonably feasible, Testing shall be coordinated through ADAMS in order to maximize the effectiveness of the combined Testing effort and to avoid unnecessary repetitive Testing.**

## **5.5 Athlete Whereabouts Information**

5.5.1 NADA has established a Registered Testing Pool of those Athletes who are required to provide whereabouts information in the manner specified in the International Standard for Testing and Investigations and who shall be subject to Consequences for Article 2.4 violations as provided in Article 10.3.2. NADA shall coordinate with International Federations to identify such Athletes and to collect their whereabouts information.

5.5.2 NADA shall make available through ADAMS a list which identifies those Athletes included in its Registered Testing Pool by name. NADA shall regularly review and update as necessary its criteria for including Athletes in its Registered Testing Pool, and shall periodically (but not less than quarterly) review the list of Athletes in its Registered Testing Pool to ensure that each listed Athlete continues to meet the relevant criteria. Athletes shall be notified before they are included in the Registered Testing Pool and when they are removed from that pool. The notification shall contain the information set out in the International Standard for Testing and Investigations.

**5.5.3 Where an Athlete is included in an international Registered Testing Pool by their International Federation and in a national Registered Testing Pool by NADA, NADA and the International Federation shall agree between themselves which of them shall accept that Athlete's whereabouts filings; in no case shall an Athlete be required to**

**make whereabouts filings to more than one of them.**

- 5.5.4 In accordance with the International Standard for Testing and Investigations, each Athlete in the Registered Testing Pool shall do the following: (a) advise NADA of his/her whereabouts on a quarterly basis; (b) update that information as necessary so that it remains accurate and complete at all times; and (c) make himself or herself available for Testing at such whereabouts.
- 5.5.5 For purposes of Article 2.4, an Athlete's failure to comply with the requirements of the International Standard for Testing and Investigations shall be deemed a filing failure or a missed test, as defined in Annex B of the International Standard for Results Management, where the conditions set forth in Annex B are met.
- 5.5.6 An Athlete in NADA's Registered Testing Pool shall continue to be subject to the obligation to comply with the whereabouts requirements set in the International Standard for Testing and Investigations unless and until (a) the Athlete gives written notice to NADA that he or she has retired or (b) NADA has informed him or her that he or she no longer satisfies the criteria for inclusion in NADA's Registered Testing Pool.
- 5.5.7 Whereabouts information provided by an Athlete while in the Registered Testing Pool will be accessible through ADAMS to WADA and to other Anti-Doping Organizations having authority to test that Athlete as provided in Article 5.2. Whereabouts information shall be maintained in strict confidence at all times; it shall be used exclusively for purposes of planning, coordinating or conducting Doping Control, providing information relevant to the Athlete Biological Passport or other analytical results, to support an investigation into a potential anti-doping rule violation, or to support proceedings alleging an anti-doping rule violation; and shall be destroyed after it is no longer relevant for these purposes in accordance with the International Standard for the Protection of Privacy and Personal Information.

**5.5.8 NADA may, in accordance with the International Standard for Testing and Investigations, collect whereabouts information from Athletes who are not included within a Registered Testing Pool. If it chooses to do so, an Athlete's failure to provide requested whereabouts information on or before the date required by NADA or the Athlete's failure to provide accurate whereabouts information shall result in NADA elevating the Athlete to NADA's Registered Testing Pool. Additionally a reasonable financial fine may also be imposed by NADA on such Athletes for not complying this requirement.**

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## **6.1 Use of Accredited, Approved Laboratories and Other Laboratories**

**6.1.1 For purposes of directly establishing an Adverse Analytical Finding under Article 2.1, Samples shall be analyzed only in WADA-accredited laboratories or laboratories otherwise approved by WADA. The choice of the WADA-accredited or WADA-approved laboratory used for the Sample analysis shall be determined exclusively by NADA.**

6.1.2 As provided in Article 3.2, facts related to anti-doping rule violations may be established by any reliable means. This would include, for example, reliable laboratory or other forensic testing conducted outside of WADA-accredited or approved laboratories.

## **6.2 Purpose of Analysis of Samples and Data**

Samples and related analytical data or Doping Control information shall be analyzed to detect Prohibited Substances and Prohibited Methods identified on the Prohibited List and other substances as may be directed by WADA pursuant to the monitoring program described in Article 4.5 of the Code, or to assist NADA in profiling relevant parameters in an Athlete's urine, blood or other matrix, including for DNA or genomic profiling, or for any other legitimate anti-doping purpose.

### **6.3 Research on Samples and Data**

Samples, related analytical data and Doping Control information may be used for anti-doping research purposes, although no Sample may be used for research without the Athlete's written consent. Samples and related analytical data or Doping Control information used for research purposes shall first be processed in such a manner as to prevent Samples and related analytical data or Doping Control information being traced back to a particular Athlete. Any research involving Samples and related analytical data or Doping Control information shall adhere to the principles set out in Article 19 of the Code.

### **6.4 Standards for Sample Analysis and Reporting**

In accordance with Article 6.4 of the Code, NADA shall ask laboratories to analyze Samples in conformity with the International Standard for Laboratories and Article 4.7 of the International Standard for Testing and Investigations.

Laboratories at their own initiative and expense may analyze Samples for Prohibited Substances or Prohibited Methods not included on the standard Sample analysis menu, or as requested by NADA. Results from any such analysis shall be reported to NADA and have the same validity and Consequences as any other analytical result.

### **6.5 Further Analysis of a Sample Prior to or During Results Management**

There shall be no limitation on the authority of a laboratory to conduct repeat or additional analysis on a Sample prior to the time NADA notifies an Athlete that the Sample is the basis for an Article 2.1 anti-doping rule violation charge. If after such notification NADA wishes to conduct additional analysis on that Sample, it may do so with the consent of the Athlete or approval from a hearing body.

### **6.6 Further Analysis of a Sample After it has been Reported as Negative or has Otherwise not Resulted in an Anti-Doping Rule Violation Charge**

**After a laboratory has reported a Sample as negative, or the Sample has not otherwise resulted in an anti-doping rule violation charge, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any time exclusively at the direction of either the Anti-Doping Organization that initiated and directed Sample collection or WADA. Any other Anti-Doping Organization with authority to test the Athlete that wishes to conduct further analysis on a stored Sample may do so with the permission of the Anti-Doping Organization that initiated and directed Sample collection or WADA, and shall be responsible for any follow-up Results Management. Any Sample storage or further analysis initiated by WADA or another Anti-Doping Organization shall be at WADA's or that organization's expense. Further analysis of Samples shall conform with the requirements of the International Standard for Laboratories.**

#### **6.7 Split of A or B Sample**

**Where WADA, an Anti-Doping Organization with Results Management authority, and/or a WADA-accredited laboratory (with approval from WADA or the Anti-Doping Organization with Results Management authority) wishes to split an A or B Sample for the purpose of using the first part of the split Sample for an A Sample analysis and the second part of the split Sample for confirmation, then the procedures set forth in the International Standard for Laboratories shall be followed.**

#### **6.8 WADA's Right to Take Possession of Samples and Data**

**WADA may, in its sole discretion at any time, with or without prior notice, take physical possession of any Sample and related analytical data or information in the possession of a laboratory or Anti-Doping Organization. Upon request by WADA, the laboratory or Anti-Doping Organization in possession of the Sample or data shall immediately grant access to If WADA has not and enable WADA to take physical possession of the Sample or data. provided prior notice to the laboratory or Anti-Doping Organization before taking possession of a Sample or**

**data, it shall provide such notice to the laboratory and each Anti-Doping Organization whose Samples or data have been taken by WADA within a reasonable time after taking possession. After analysis and any investigation of a seized Sample or data, WADA may direct another Anti-Doping Organization with authority to test the Athlete to assume Results Management responsibility for the Sample or data if a potential anti-doping rule violation is discovered.**

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## **8.1 Fair Hearings**

### **8.1.1 Fair, Impartial and Operationally Independent Hearing Panel**

**8.1.1.1 The Chairman/Vice Chairman of the Governing body of NADA shall appoint a Convenor and a Co-Convenor who shall be independent persons having sufficient background and experience in sports administration and/or anti-doping. The Chairman/Vice Chairman of the Governing body of NADA shall also nominate a Pool of Hearing Panel Members, from which the Anti-Doping Disciplinary Panel for specific cases shall be constituted by Convenor/Co-Convenor. The Pool of Hearing Panel Members shall comprise of the following: (i) five (5) legal members each of whom shall be legal practitioners of not less than five (5) years standing, ii) five (5) medical Practitioners of not less than five (5) years standing; and iii) five (5) members, each of whom shall be, or has previously been, a sports administrator or an Athlete. Anti-Doping Disciplinary Panel has jurisdiction to hear and determine whether an Athlete or other Person, subject to these Anti-Doping**

**Rules, has committed an anti-doping rule violation and, if applicable, to impose relevant Consequences.**

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## 8.1.2 Hearing Process

- 8.1.2.1 When NADA sends a notice to an Athlete or other Person notifying them of a potential anti-doping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Article 8.3.1 or Article 8.3.2, then the case shall be referred to the Convenor/Co-Convenor who shall decide the composition of a particular Anti-Doping Disciplinary Panel (hearing panel) amongst the Pool of Members for hearing and adjudication of that case, which shall be conducted in accordance with the principles described in Articles 8 and 9 of the International Standard for Results Management.
- 8.1.2.2 The composition of particular Anti-Doping Disciplinary Panel (hearing panel) may vary depending on the nature of charge and evidences. The hearing panel shall comprise of three (3) independent persons from the pool of hearing members including one (1) Chair and two (2) Members subject to the condition that one such person shall be a legal member and a one medical member.**
- 8.1.2.3 Upon composition of particular Anti-Doping Disciplinary Panel (hearing panel) by the Convenor/Co-Convenor, each member including the Chair must also sign a declaration that there are no facts or circumstances known to him or her which might call into question their**

**impartiality in the eyes of any of the parties, other than those circumstances disclosed in the declaration.**

- 8.1.2.4 Hearings held in connection with Events in respect to Athletes and other Persons who are subject to these Anti-Doping Rules may be conducted by an expedited process where permitted by the particular Anti-Doping Disciplinary Panel (hearing panel).
- 8.1.2.5 WADA, the International Federation, and the National Federation of the Athlete or other Person may attend the hearing as observers. In any event, NADA shall keep them fully apprised as to the status of pending cases and the result of all hearings.

**8.2 Notice of Decisions**

- 8.2.1 At the end of the hearing, or promptly thereafter, the Anti-Doping Disciplinary Panel shall issue a written decision that conforms with Article 9 of the International Standard for Results Management and which includes the full reasons for the decision, the period of Ineligibility imposed, the Disqualification of results under Article 10.10 and, if applicable, a justification for why the greatest potential Consequences were not imposed.
- 8.2.2 NADA shall notify that decision to the Athlete or other Person and to other Anti-Doping Organizations with a right to appeal under Article 13.2.3, and shall promptly report it into ADAMS. The decision may be appealed as provided in Article 13.

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### **10.1 Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs**

10.1.1 An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2.

Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.

10.1.2 If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.

### **10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method**

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete

or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and NADA can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

**10.2.4 Notwithstanding any other provision in Article 10.2, where the anti-doping rule violation involves a Substance of Abuse:**

**10.2.4.1 If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport**

**performance, then the period of Ineligibility shall be three (3) months Ineligibility.**

**In addition, the period of Ineligibility calculated under this Article 10.2.4.1 may be reduced to one (1) month if the Athlete or other Person satisfactorily completes a Substance of Abuse treatment program approved by NADA. The period of Ineligibility established in this Article 10.2.4.1 is not subject to any reduction based on any provision in Article 10.6.**

**10.2.4.2 If the ingestion, Use or Possession occurred In-Competition, and the Athlete can establish that the context of the ingestion, Use or Possession was unrelated to sport performance, then the ingestion, Use or Possession shall not be considered intentional for purposes of Article 10.2.1 and shall not provide a basis for a finding of Aggravating Circumstances under Article 10.4.**

### **10.3 Ineligibility for Other Anti-Doping Rule Violations**

The period of Ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Article 10.6 or 10.7 are applicable:

10.3.1 For violations of Article 2.3 or 2.5, the period of Ineligibility shall be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility shall be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of

Ineligibility shall be in a range from two (2) years to four (4) years depending on the Athlete or other Person's degree of Fault; or (iii) in a case involving a Protected Person or Recreational Athlete, the period of Ineligibility shall be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault.

- 10.3.2 For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete's degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.
- 10.3.3 For violations of Article 2.7 or 2.8, the period of Ineligibility shall be a minimum of four (4) years up to lifetime Ineligibility, depending on the seriousness of the violation. An Article 2.7 or Article 2.8 violation involving a Protected Person shall be considered a particularly serious violation and, if committed by Athlete Support Personnel for violations other than for Specified Substances, shall result in lifetime Ineligibility for Athlete Support Personnel. In addition, significant violations of Article 2.7 or 2.8 which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities.
- 10.3.4 For violations of Article 2.9, the period of Ineligibility imposed shall be a minimum of two (2) years, up to lifetime Ineligibility, depending on the seriousness of the violation.
- 10.3.5 For violations of Article 2.10, the period of Ineligibility shall be two (2) years, subject to

reduction down to a minimum of one (1) year, depending on the Athlete or other Person's degree of Fault and other circumstances of the case.

- 10.3.6 For violations of Article 2.11, the period of Ineligibility shall be a minimum of two (2) years, up to lifetime Ineligibility, depending on the seriousness of the violation by the Athlete or other Person.

... ..

**10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

**10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.**

**All reductions under Article 10.6.1 are mutually exclusive and not cumulative.**

**10.6.1.1 Specified Substances or Specified Methods**

**Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.**

10.6.1.2 Contaminated Products

In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2)

years Ineligibility, depending on the Athlete or other Person's degree of Fault.

10.6.1.3 Protected Persons or Recreational Athletes

Where the anti-doping rule violation not involving a Substance of Abuse is committed by a Protected Person or Recreational Athlete, and the Protected Person or Recreational Athlete can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault.

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

**If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.**

... ..

**10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation.—**

**In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness**

**requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.**

... ..

### **13.1 Decisions Subject to Appeal**

**Decisions made under the Code or these Anti-Doping Rules may be appealed as set forth below in Articles 13.2 through 13.7 or as otherwise provided in these Anti-Doping Rules, the Code or the International Standards. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.**

#### 13.1.1 Scope of Review Not Limited

The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing.

#### 13.1.2 CAS Shall Not Defer to the Findings Being Appealed

In making its decision, CAS shall not give deference to the discretion exercised by the body whose decision is being appealed.

#### 13.1.3 WADA Not Required to Exhaust Internal Remedies

Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within NADA's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in NADA's process.

### **13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Authority**

A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed; a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision by WADA not to grant an exception to the six (6) months notice requirement for a retired Athlete to return to Competition under Article 5.6.1; a decision by WADA assigning Results Management under Article 7.1 of the Code; a decision by NADA not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation in accordance with the International Standard for Results Management; a decision to impose, or lift, a Provisional Suspension as a result of a Provisional Hearing; NADA's failure to comply with Article 7.4; a decision that NADA lacks authority to rule on an alleged anti-doping rule violation or its Consequences; a decision to suspend, or not suspend, Consequences or to reinstate, or not reinstate, Consequences under Article 10.7.1; failure to comply with Articles 7.1.4 and 7.1.5 of the Code; failure to comply with Article 10.8.1; a decision under Article 10.14.3; a decision by NADA not to implement another Anti-Doping Organization's decision under Article 15; and a decision under Article 27.3 of the Code may be appealed exclusively as provided in this Article 13.2.

(Emphasis supplied)

The National Doping Act provides a legal foundation for anti-doping efforts in India. It establishes National Anti-Doping Agency and lays down procedure to prevent doping in sports. Section 3 prohibits doping and imposes responsibilities on such athletes. Section 4 lists anti-doping rule violations. Sections 21 to 23 details

management process, hearing before the Disciplinary Panel, right to file an appeal before the Appeal Panel or the Court of Arbitration for sport.

The Rules quoted hereinabove provide for the procedure to be preceded prior to passing of orders, issuance of sanction and other penal consequences. The aforesaid is the statutory landscape governing the issue. Both these are based upon the World Anti-Doping Code, 2021. In the anti-doping programme, doping control is its soul and certain testing procedures are also depicted under the Code. The aforesaid is the complete statutory framework of anti-doping, both in the nation and the world.

**THE FACTS:**

15. The petitioner, as already noted, is a sportsman of considerable renown. He hails from Mangalore District, Karnataka State. He is recognized for his participation in plethora of events at the State, National and International levels. The issue in the *lis* revolves around a test that was done on him at the time when he was practising on 5-02-2022. The testing by the Anti-Doping

Agency is randomly done both at the time of competition and out of competition. The said test is done at the time of out of competition as the petitioner was in practice. The urine samples of the petitioner are collected and placed in a sealed pouch. The sample is said to have been opened and resealed in Delhi where the testing of urine sample of the petitioner is done at the National Doping Testing Laboratory. What is the test conducted is not made known to the petitioner nor its report furnished.

15.1. The National Doping Testing Laboratory on its own, after opening and resealing of urine sample sends to Federazione Medico Sportiva Italiana (for short 'FMSI') to conclude whether the origin of 19-NA detected in the petitioner's urine sample was **endogenous or exogenous. Exogenous would mean that the substance has come from outside. Endogenous would mean that the substance is from an internal cause or origin.** The illustration would be, **if the substance is externally administered and goes into the blood or urine, it is exogenous. If the substance is generated due to diet, it is endogenous.**

15.2. The petitioner was asked to give ₹98,176/- for testing of urine sample to be sent to Rome to detect the concentration of 19-NA/19-Norandrosterone substance if it exceeds 2.5ng/ml. On 26-04-2022 what the petitioner receives is an adverse analytical finding. It becomes germane to notice the said analysis. This is received from the hands of the 1<sup>st</sup> respondent/National Anti-Doping Agency. It reads as follows:

"Subject: Doping Control – Notification of Adverse Analytical Finding.

**Dear Ms. Shashi Yadav,**

I do hereby inform you that your sample A was tested at the (name of the LAB) in accordance with the procedures set out in WADA's International Standard for Laboratories and was returned with an Adverse Analytical Finding ("AAF") as detailed below given.

Sample Number	6491191
Sample Collection Date	05-Feb-2022
Type of Sample	<b>Urine</b>
Place of collection	Vidyanagar, Bangalore, Karnataka
In/Out-Competition	Out-Competition
If In-Competition, name of competition	N/A
AAF-Prohibited substance	<b>*19-norandrosterone</b>
Prohibited substance class	<b>* SI.1 Anabolic Androgenic Steroids (AAS)</b>
WADA-accredited laboratory	National Dope Testing Laboratory, Delhi

I do hereby invite you to carefully read the contents of this letter which provides important information as to the potential consequences of the AAF and resulting disciplinary process.

I. Initial Review

**Upon receipt of the AAF, the Result Management Authority of NADA, India has conducted the Initial Review of these results under Article 7.2 of the NADA Anti-Doping Rules ("NADA ADR") and Article 5.1.1 of the International Standard for Results Management ("ISRM") and found that, according to the NADA India records, (a) no applicable Therapeutic Use Exemption ("TUE") has been or is in the process of being granted to you, (b) there is no apparent departure from the International Standard for Testing and Investigation ("ISIT") or the International Standard for Laboratories ("ISL") that could undermine the validity of the AAF and (c) the AAF is not caused by the ingestion of the prohibited substance through a permitted route insofar as "19-norandrosterone" is banned irrespective of the route of ingestion.**

**According to Article 2.1 and/or Article 2.2 of the NADA ADR, the Presence of the Prohibited Substance in an athlete's Sample and/or the Use or Attempted Use of the Prohibited substance by an athlete constitutes an ADRV. Accordingly, the NADA India is hereby notifying you that this AAF is being brought forward as an apparent ADRV pursuant to Article 2.1 of the ADR."**

(Emphasis supplied)

15.3. This results in a notice of charge being issued against the petitioner on 13-07-2022. The notice of charge places the petitioner under suspension. The charge against the petitioner reads as follows:

**I. Assertion of the ADRV**

**On 26-04-2022, you were informed of (a) the Adverse Analytical Finding (AAF) for SI.1 Anabolic Androgenic Steroids (AAS)/SI.1.1-19-norandrosterone reported in A-sample No.6491191 and (b) your rights under the NADA Anti-Doping Rules including the right to accept the AAF and the right to request for the Laboratory Documentation Package ("LDP") and/or the B-sample opening and analysis.**

You did not provide any explanation. NADA is satisfied that you have committed ADRVs pursuant to Articles 2.1 and 2.2 of the NADA ADR. Consequently, you are hereby formally charged with the following ADRVs:

- Presence of a prohibited substance or its metabolites or markers in an Athlete's sample, pursuant to Article 2.1 of the NADA ADR, by virtue of the presence of Anabolic Androgenic Steroids (AAS)/19-norandrosterone in the sample you provided on 05-02-2022 numbered A 6491191; and
- Use of a Prohibited Substance, namely Anabolic Androgenic Steroids (AAS/19-norandrosterone, pursuant to Article 2.2 of the NADA ADR.

**II. Summary of the facts**

- **That Athlete namely "Shashank J. Rai" was selected for the Dope Test during Out-Competition in Bangalore, Karnataka**
- **That during which a Sample Collection process was conducted on 05-02-2022 where urine sample of the above mentioned Athlete was collected by NADA's Dope Control Officer.**
- **That same Urine sample of the Athlete was separated into 2 parts A & B with unique code "6491191".**
- **That A sample of the Athlete was tested at the Anti-Doping Laboratory, Rome, Italy in accordance with the procedures set out in WADA's International Standard for Laboratories and was returned with an Adverse Analytical Finding (AAF).**
- **That regarding the above-mentioned fact, First Notification was issued by NADA on dated 26-04-2022**

**and annexed by "Appendix A: B Sample Arrangements Form"**

- **That to which Athlete "Shashank J Rai" on dated 29-04-2022 and 14-05-2022 requested for B sample analysis & Laboratory Documentation Package (LDP) for both A & B sample**
- **Accordingly, B sample opening & analysis was conducted at Rome Lab, Italy on 5-07-2022 in the presence of Independent Observer appointed by laboratory.**
- **Rome Lab, Italy submitted the B sample report which confirm the findings of A sample. Copy of the B sample report is attested with this notice of charge.**
- **Rome Lab, Italy was also requested for LDP for both A & B sample.**

III. Potential Consequences and condition for eliminating, reducing or suspending part of the period of Ineligibility.

Our records indicate that this is your first ADRV, therefore, in the event that the asserted ADRVs are upheld, NADA will seek the following proposed consequences:

- Disqualification of results in the Event during which the ADRV occurred and in competitions subsequent to sample collection or commission of the ADRV with all resulting Consequences including forfeiture of any medals, points and prizes;
- A period of ineligibility (subject to potential elimination, reduction or suspension pursuant to Article 10 of the NADA ADR) of four (4) years.
- Automatic publication of sanction.

Please note that any Consequences shall have binding effect on NADA and any National Federation in India, as well as every signatory to the World Anti-Doping Code in all sports and countries.

Lastly, the NADA may at their discretion, also elect to recover from you the financial costs associated with the ADRV and or impose a fine as provided in the NADA ADR.

#### IV. Next steps and final opportunity to submit explanation

You have until 01-08-2022 to admit the asserted ADRVs, waive a hearing and accept the proposed Consequences by signing, dating and returning the acceptance of Consequences form, enclosed with this letter. If you admit the ADRVs and accept the asserted period of Ineligibility not later than twenty (20) days after receiving this letter, you may potentially benefit from a 1-year reduction in the period of ineligibility under Article 10.8.1 of the NADA ADR.

You may also seek to enter into a case resolution agreement with NADA and WADA by admitting the ADRV under Article 10.8.2 of the NADA ADR. If you would like to discuss entering into a case resolution agreement, you may request that such discussions be subject to a Without Prejudice Agreement.

If you accept ADRV chare and its consequences, the case will be resolved without further disciplinary proceedings, subject to the right of appeal of WADA and your National Anti-Doping Organization.

If you do not accept the proposed consequences, you have until 01-08-2022 working days from the receipt of this notice to challenge in writing the assertion of the ADRVs and/or proposed consequences, and/or make a written request for a hearing (including an expedient hearing) before the Anti-Doping Disciplinary Panel. Conversely, if you fail to reply to this communication within the set deadline, you will be deemed to have waived the right for a hearing and to have accepted the consequences of the ADRV set out in this letter.

#### V. Substantial Assistance

You have the opportunity to provide Substantial Assistance as set out in Article 10.7.1 of the NADA ADR. Any period of ineligibility imposed may be partially suspended if you provide substantial assistance to NADA or to another specified organization pursuant to Article 10.7.1 of the NADA ADR which results in:

- i. NADA discovering or bringing forward an ADRV by another person;

- ii. A criminal or disciplinary body discovering or bringing forward a criminal offence or the breach of professional rules committed by another person;
- iii. WADA initiating a proceeding against a Signatory, WADA-accredited laboratory or Athlete passport management unit for non-compliance with the Code, International Standard or Technical Document; or
- iv. With the approval by WADA, a criminal or disciplinary body bringing forward a criminal offence or the breach of professional or sport rules arising out of a sport integrity violation other than doping.

Discretion exists under Article 10.7.1 of the NADA ADR to suspend up to three-quarters of the period of ineligibility where Substantial Assistance is provided in accordance with this article.”

(Emphasis added)

15.4. Thus, comes the suspension of the petitioner. The petitioner was alleged of committing violation of Article 2.1 and 2.2 quoted *supra*. Therefore, he approaches the Anti-Doping Disciplinary Panel. The Anti-Doping Disciplinary Panel renders its judgment on 11-10-2022. The preamble therein is as follows:

**“1. The present proceedings before this Anti-Doping Disciplinary Panel (“this panel”) emanate from the Adverse Analytical Finding (“AAF”) against Mr. Shashank J. Rai (“the Athlete”). The athlete is a Basketball player and his date of birth as stated by him in the Dope Control Form (“DCF”), happens to be 19-03-1993.”**

(Emphasis added)

The facts recorded are as follows:

"2. Brief Facts of the case are as follows:

- 2.1. On 5<sup>th</sup> of February, 2022 at 12.50, the athlete was selected for the Dope Test during Out-Competition in Bangalore, Karnataka.
- 2.2. Subsequently, a sample collection process was carried out on the same date where the Urine Sample of the above mentioned athlete was collected by NADA's Dope Control Officer.
- 2.3. The Athlete was assisted by the DCO and the Sample was split into two separate bottles, Sample A (the "A sample") and Sample (the "B sample") with the unique code 6491191".
- 2.4. The samples were then transported to the World Anti-Doping Agency ("WADA")-accredited Laboratory, Anti-Doping Laboratory, Rome, Italy (the Laboratory). The said Laboratory received the sample on 07-02-2022 and Sample A was analysed as per the procedure set out in WADA's International Standard for Laboratories.
- 2.5. The result of the analysis of 'A' sample showed Adverse Analytical Finding ("AAF"), the relevant details from the report are reproduced herein:
 

"SI.1 Anabolic Androgenic Steroids (AAS)/ 19-norandrosterone. The estimated concentration of 19-NA is  $\leq 15$  ng/mL'. The result of the GC-C-IRMS analysis for 19-NA or 19-NE are:  $\delta^{13}C$  values: 19-NA = -24.1% uc=10/00; Pregnanedial (PD)=-19 9/00. uc = 0.6 0/00; Pregnanetriol = - 19.8 0/00, uc = 0.4 0/00. Result of the GC/C/IRMS analysis are consistent with the exogenous origin of 19-NA (or 19-NE. if applicable).
- 2.6. The substance which was confirmed by the Laboratory is prohibited under **SI.1 Anabolic Androgenic Steroids (AAS)/19-norandrosterone of the WADA prohibited List "anabolic agents" under the class "non-**

**Specified Substances**". It is imperative to note that no Therapeutic Use Exemption (TUE) was found on NADA's record.

- 2.7. Based on the abovementioned report, an initial review under Article 7.2 of NADA ADR, 2021 was done by NADA dated 19-04-2022 and the Notification of Adverse Analytical Finding dated 26-04-2022 was conveyed to the Athlete, the notice was annexed with 'Appendix-A' i.e., "B sample arrangements form" to which the Athlete on 29-04-2022 and 10-05-2022 requested for B sample analysis & Laboratory Documentation Package (LDP) for both A & B sample respectively. It should be noticed that in accordance with Article 2.1 of the NADA ADR the AAF was brought forward as an apparent Anti-Doping Rule Violation (ADRV) and as per Article 7.4.1 of the NADA ADR, the athlete was **provisionally suspended with immediate effect until the resolution of the present case.**
- 2.8. Accordingly, B sample opening & analysis was conducted at Rome Lab, Italy on 5-07-2022 in the presence of Independent Observer appointed by the laboratory. Rome Lab, Italy, submitted the **B sample report which confirmed the findings of A sample.**
- 2.9. Subsequently, a notice of charge dated 13-07-2022 was issued to the Athlete by NADA informing him about his charges for the violation of Article 2.1 and or/2.2 of the NADA Anti-Doping Rules, 2021. The relevant paragraphs are reproduced herein:

"You did not provide any explanation. NADA is satisfied that you have committed ADRVs pursuant to Articles 2.1 and 2.2 of the NADA ADR. Consequently, you are hereby formally charged with the following ADRVs"

You have until **01-08-2022** to admit the asserted ADRVs, waive a hearing and accept the proposed consequences by signing, dating and returning the acceptance of consequences form, enclosed with this

letter. If you admit the ADRVs and accept the asserted period of ineligibility not later than twenty (20) days after receiving this letter, you may potentially benefit from a 1-year reduction in the period of ineligibility under Article 10.8.1 of the NADA ADR. ...”

(Emphasis added)

15.5. The defence of the petitioner as recorded in the judgment is as follows:

**“12. The Athlete through his counsel, in his written submissions, submits that after a cursory review of all the supplements consumed by the athlete, he got all the supplements checked for the presence of 19-NA, the tests revealed that none of the supplement consumed by the athlete as part of his daily routine contained 19-NA, though the panel cannot verify the veracity of the said report it should be noted that Article 6.1.2 of the NADA ADR says the following:**

**“6.1.2 As provided in Article 3.2; facts related to anti-doping rule violations may be established by any reliable means. This would include for example reliable laboratory or other forensic testing conducted outside of WADA accredited or approved laboratories.”**

The supplements mentioned by the Athlete on his Doping Control Form are as follows:

- a. Whey Protein
- b. Creatine
- c. MVI
- d. Calcium
- e. Mg.
- f. Zinc

**13. The above mentioned supplements are unlikely to contain 19-NA in them and subsequent tests performed by the Athlete reveal the same. It should**

be noted that the Panel here is not concerned with substances which 'do not'/'did not' contain prohibited substances, the A & B sample analysis Reports of the athlete clear show an AAF, the panel here agrees that the above mentioned supplements do not contain "19-NA", though this rules out the possibility of "19-NA" entering through the said supplements, the panel is concerned with the substance through which "19-NA" did enter the body and the intention of the athlete. This brings us back to where we started.

14. The athlete further submits that the regular consumption of pig meat by the athlete is the only plausible explanation for the presence of "19-NA" in his body. To substantiate the point that he regularly consumed meat, the athlete submitted the following through his written submissions:

"1.7. The Athlete is a native of Mangalore, a city in Karnataka, Mangalorean cuisine is renowned for their utilization of pig meat or pork. The Athlete is also a regular consumer of pork and had even consumed pork on the day of sample collection and the preceding day too. Bills indicating his consumption of pork around the date of sample collection have been attached herein as Annexure-4. The Athlete and his family are regular consumers of pork meat and have purchased pork meat frequently over a prolonged period from a trusted source i.e. Sri Durga Pig Farm".

"Bills indicating the purchase of pork meat from Sri Durga Pig Farm close to the date of sample collection, has been attached herein as Annexure-5. Additionally, affidavits from the individuals conducting the day-to-day operations of Sri Durga Pig Farms indicating the regular purchase of pork by the Athlete's family have also been attached herein as Annexure-6 (Colly). The relevant license granted by the Government of Karnataka to operate the pig farm and related details have been attached along with the affidavits.

1.8 Therefore, under the circumstances, the Athlete believes that the only plausible explanation for the

**presence of 19-NA is the regular consumption of pig meat by the Athlete”.**

15. The Athlete further submitted some scientific studies to back his claim which are reproduced from his written submissions herein:

“2.4 It is submitted that the following scientific studies have recognised the consumption of pork as a possible source of 19-NA.

- (a) **Excretion of 19-norandrosterone after consumption of boar meat by Frank Hulsmann, German Sport University Cologne, Institute of Biochemistry** (attached herein as **Annexure-7**)

Here, it was **found** that significant amount of 19-NA can be found in the offal (internal organs) and meat of wild boars and that consumption of wild boar meat may result in an atypical or even positive test result. This paper also demonstrates how the results of GC/C/IRMS tests which are relied on for determination of “endogenous” or “exogenous” mode of consumption of 19-NA can be misleading depending on the diet of the boars.”

- (b) **Consequence of boar edible tissue consumption of urinary profiles of nandrolone metabolites by Bruno Le Bizec** (attached herein as Annexure-8)

In this particular study, it was found that eating tissues of non-castrated male pig can induce false accusations of the abuse of nandrolone in anti-doping.

The above mentioned studies make it abundantly clear that an AAF can result from the consumption of pork and that even a GC/C /IRMS analysis may be lacking in conclusiveness while determining the endogenous or exogenous nature of 19-NA presence in a collected sample”

16. Based on the above submissions the athlete contended that the only plausible explanation for the presence of 19-NA in the Athlete’s sample arises from the Athlete’s

consumption of pork and that there was no intention on part of the Athlete to consume a prohibited substance.

17. The athlete in his written submissions has referred to Scientific Studies, the panel has perused those reports and the panel observes the following:

Study 1: (Excretion of 19-norandrosterone after consumption of boar meat by Frank Hulsemann)

A relevant paragraph from the abstract of the study is reproduced herein: "Moreover it appears unlikely that after the consumption of boar meat urinary concentrations of Nor A rise above 15 ng.ml, which is the upper cut-off level for a GC/C/IRMS target analysis of suspicious samples. **The highest urinary concentration of NorA after consumption of boar meat in our study was 2.9 ng./ml (410 g of prepared meat).**"

18. The study explicitly mentions that the Urinary Concentration of "19-NA" did not exceed **2.9 ng/ml. As per WADA Technical Document – TD2021NA, "GC/C/IRMA analysis is mandatory on samples in which the concentration of 19-NA is estimated between ( $\geq$ )2.5 and ( $\leq$ )15 ng.mL."** The concentration in Athlete's sample was found to be ( $\leq$ ) 15 ng/mL, subsequent GC/C/IRMS in the Athlete's report confirmed the presence of exogenous origin of "19-NA".
19. Furthermore, the athlete submits that the study also demonstrates how the result of GD/C/IRMS tests which are relied on for determination of "endogenous" or "exogenous" mode of consumption of 19-NA can be misleading depending on the diet of the boars, it should be noted that, **firstly, no concrete evidence or document pertaining to the diet of the consumed pigs have been produced for consideration, secondly, the panel is not here to question the "said test" itself, the panel can adjudicate based on the findings of the report and the rules set by WADA and NADA ADR.**"

(Emphasis added)

15.6. The reasons to render the judgment is found from paragraphs 33 to 50. They read as follows:

**“33. The panel would now like to refer to Article 102 of the NADA ADR, 2021, the relevant part is reproduced herein:**

**“10.2 Ineligibility for presence, Use or Attempted Use or Possession of a prohibited Substance or Prohibited Method**

**The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7”**

**10.2.1 The period of ineligibility, subject to Article 10.2.4. shall be four (4) years where:**

**10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other person can establish that the anti-doping rule violation was not intentional.**

**10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and NADA can establish that the anti-doping rule violation was intentional. 10.2.2. If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of ineligibility shall be two (2) years.”**

Here it is also pertinent to mention Article 10.2.3 of the NADA ADR, 2021.

**“10.2.3. as used in Article 10.2, the term “intentional” is meant to identify those Athletes or other persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited in-competition shall be rebuttably presumed to be not “intentional” if**

**the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was used out-of-competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited in-competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the prohibited substance was used Out-of-Competition in a context unrelated to sport performance."**

34. Determination of 'degree of fault' has been comprehensively discussed in **CAS 2015/A/4233 World Anti-Doping Agency (WADA) v. Martin Johnsrud Sundby & Federation Internationale de Ski (FIS)**, wherein the learned panel observed the following:

**"The panel notes that an impressive body of jurisprudence has defined the circumstances relevant to the measurement of an athlete's fault, and translated them into the determination of a proper sanction, chiefly in the context of disputes relating to the use of "contaminated products" (such as food supplements), but also in cases where medicines were taken in a therapeutic context (broadly defined) without a TUE. Also, in this arbitration, the Parties have drawn the Panel's attention to specific decisions. The Panel agrees that precedents in terms of the approach in principle provide helpful guidance. However, the Panel underlines that each case must be decided on its own facts and that "although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport" (CAS 2011/A/2518 § 10.23 of the award."**

35. In **CAS 2019/A/6319 Maria Guadalupe Gonzalez Romero v. International Association of Athletics Federations (IAAF)**, the panel noted CAS award (CAS 2019/A/6313) and discussed conditions required for establishing non-intentional consumption of **"Prohibited Substance"** through meat:

"The Panel notes that in the CAS award (CAS 2019/A/6313) brought to the Panel's attention by the Appellant, another CAS panel decided that an athlete who tested positive for Trenbolone was able to meet his burden of proving that the AAF was caused by the consumption of contaminated meat. However, in the Panel's view there are important and numerous differences between the present matter and athlete in the case CAS 2019/A/6313 the case CAS 2019/A/6313 clearly explained, First, the from the beginning of the disciplinary proceedings against him, **the type of meat he had eaten, in what quantity, the name of the restaurant and the exact time of the lunch when the meat was consumed, and he exhibited evidence in support his claims, such as a restaurant receipt, bank account records confirming the purchase of lunch in that restaurant, and text messages setting up the lunch meeting at that restaurant. By contrast, in the present case, as set out above, the Appellant provided no such evidence** but rather provided evidence that was later conceded to be fabricated. Second, **the athlete in the case CAS 2019/A/6313 precisely identified the part of the animal that he had eaten, such part being where steroids could have been accidentally injected. There is no such evidence nor was this point even argued by the Appellant in the present matter. Third, the athlete in the case CAS 2019/A/6313 provided concrete evidence in support of his explanation as to the source of the AAF, inter alia: results of a (negative) hair analysis conducted by Dr. Pascal Kintz, expert evidence contradicting the expert opinion adduced by the Respondent; pictures of the packaged meat received by the restaurant; and an affidavit from the restaurant co-owner as to the origin and type of the meat consumed by the athlete. By contrast, in the present matter, as explained above, the Appellant did not produce any evidence whatsoever as to the origin of the prohibited substance nor contradict the expert opinion provided in the first instance proceedings by Professor Christiane Ayotte for the respondent."**

36. Here the panel would again like to refer to **World Athletics v. Shelby Houlihan (CAS 2021/0/7977)** wherein the Ld. Panel noted the following:

"135. First, the Panel finds it possible but unlikely that the Athlete's burrito contained boar offal"

"136. Second, the Panel finds it possible but unlikely that the ingestion of boar offal would have resulted in the urinary concentration of 19-NA found in the athlete's A & B Samples"

"137. Third, the Panel finds it possible but not probable that the ingestion of boar offal would have resulted in the Athlete's reported urinary concentration of 19-NA or her carbon isotope ratio of -23%."

**37. The Athlete has clearly failed to establish "his consumption of pork" prior to the sample collection by NADA, the panel believes that no departure took place from the rules prescribed by WADA and NADA, including the technical document while testing and reporting the above athlete.**

**38. The panel has verified its findings by consulting various Medical Experts and based on the opinion given by them, experts believe that the quantity of the "Prohibited Substance" in the athlete's sample cannot be due to consumption of Pork, it is again clarified that the Athlete has not been able to prove the consumption of pork in the first place.**

**39. Based on the expert medical opinion, sample report and the failure of athlete to establish consumption of pork, the panel in the present case undoubtedly believes that results are consistent with the exogenous origin of 19-NA.**

**40. Based on all the given discussion above the Panel concludes that the Athlete has not satisfied his burden of proof on the balance of probabilities that the ADRV was unintentional, and the ADRV must be deemed to be intentional.**

**41. The Panel would like to reiterate here that "as per WADA Prohibited List, S1, Anabolic Agents are "prohibited at all times", regardless of the fact that whether sample collection was performed in-competition or out-competition."**

42. The panel finds it appropriate to mention here that as per Article 10.2, the period of ineligibility for a violation of Article 2.1 of NADA ADR is four (4) years subject to the following reductions:

- a. Article 10.5 (No fault or Negligence)
- b. Article 10.6 (No significant fault or negligence)

43. The athlete seeks the applicability of Article 10.5 the same are reproduced herein:

"10.5. Elimination of the Period of Ineligibility where there is No Fault or Negligence. If an Athlete or other person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated."

44. The panel would like to mention Article 10.6.1.2 of the NADA ADR, 2021 which talks about Reduction of the Period of Ineligibility based on "No Significant Fault or Negligence" in relation to Contaminated Products, the article is reproduced herein:

"In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years ineligibility, depending on the Athlete or other Person's degree of Fault".

45. "Fault" and "No Significant Fault or Negligence" are defined under Appendix I of the NADA ADR, the same read as follows:

"Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been

perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of ineligibility under Article 10.6.1 or 10.6.2."

"No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system"

46. It is clear that benefit of **Article 10.5 cannot be granted to the athlete as the ADRV was intentional and the violation being Out-competition in an irrelevant fact,** given the "Prohibited Substance" found in the Athlete's sample.

**47. In view of the facts, Circumstances, Precedents, Technical Documents, Expert Opinions and Rules mentioned above, it is held that the Athlete has violated Article 2.1 and 2.2 of the NADA ADR, 2021, furthermore, the Panel is of the view that the anti-doping violation was intentional and the provisions of Article 10.2.1 are attracted. We accordingly hold that the Athlete is liable for a period of ineligibility of 4 years.**

**48. We also direct that under Article 10.10 all other competitive results obtained by the athlete from the date of sample collection i.e., 05-02-2022 shall be disqualified all resulting consequences including forfeiture of medals, points and prizes.**

**49. The athlete is entitled for the credit period of provisional suspension already undergone under Article 10.13.2. The Panel hereby directs that the Athlete be given credit period of his provisional suspension, which he had already undergone for calculating his total period of ineligibility of four (04) years.**

50. The matter is disposed of, accordingly."

(Emphasis added)

**15.7. The penalty imposed is in ignorance of the assertion of the petitioner that the presence of 19-NA in his sample was not a result of wilful ingestion of a performance enhancing substance, but rather an inadvertent consequence of consuming pork – a staple in the cuisine of his native, coastal Karnataka.** The petitioner is held ineligible for sporting activity for a period 4 years. Against the said penalty, the petitioner prefers an appeal before the Anti-Doping Appeal Panel. The memorandum of appeal counters every finding of the Disciplinary Panel. Notwithstanding the same, ignoring all the defence of the petitioner, the appeal comes to be rejected on 16-04-2024 by the following order:

"... .."

15. As rightly observed in the impugned order, even if the supplements which are consumed by the Athlete did not

result in the prohibited substance entering the Athlete's body, the question is how did the prohibited substance enter the body of the Athlete and what was the intention of the Athlete behind consuming the prohibited substance?

16. As per WADA's Technical Document TD2021NA, GC/C/IRMS analysis is mandatory where the concentration of 19-NA on the sample is estimated between ( $\geq$ ) 2.5 and ( $\leq$ ) 15 ng/ml. The concentration in the Athlete's sample was found to be ( $\leq$ ) 15 ng/ml and the subsequent GC/C/IRMS analysis confirmed the presence of exogenous origin of 19-NA. As per the studies relied upon by the Athlete, the urinary concentration of 19-NA did not exceed 2.9 ng/ml after consumption of boar meat.
17. **While the Athlete has relied on multiple studies, we do not see any reason to interfere with the impugned order. None of the studies relied on by the Athlete conclusively prove that consumption of pork lead to presence of NA-19 in the Appellant's body. The same had to be established by concrete scientific evidence that the Appellant's body produced NA-19 on consumption of pork.**
18. **Various bills annexed on record by the Athlete do not conclusively prove that the Athlete consumed meat on the date of sample collection and/or a day prior. Even assuming that the bills as produced by the Athlete are genuine, the pork might be consumed by someone else in the family or was ordered for relatives.**
19. The fact that Mangalore cuisine might be renowned for their utilization of pork or meat does again not establish if the Athlete consumed pork on the date of sample collection and/or a day prior.
20. Further, it is demonstrably clear that in the instant case, the procedure was in accordance with the WADA's Technical Department, i.e., Flowchart for 19-NA Findings. As per the said chart, where the sample of a male athlete

returns with the finding between ( $\geq$ ) 2.5 and ( $\leq$ ) 15 ng/ml, an analysis as per the GC/C/IRMS is to be done. Upon GC/C/IRMS, it was confirmed that in the case of the Athlete. there was an exogenous intake of the relevant substance.

- 21. While the Athlete had the option of getting the Pharmacokinetics test done on himself to conclusively determine the source of the relevant substance found in the his samples, as also recorded in the order of this Panel dated 20.02.2024, the failure of the Athlete to get this test done further proves the case of NADA against the Athlete. During the course of hearing the Respondent had attempted to get the said test conducted but laboratories contacted by the Respondent had expressed inability to carry out the same. On 15.3.2024 when this was pointed out to the counsel for the Appellant and a question was put to him for the Athlete to himself identify an appropriate laboratory to conduct the said test, the said suggestion was declined by the Appellant.**
22. While the Ld. Counsel for the Athlete has relied on various awards / orders passed by CAS, as rightly observed in the impugned order, the same are completely distinguishable on facts. Additionally, in none of the case, the Athlete in question refused to get a test done on himself which could have determined the source of the relevant substance found in the his samples.
23. The impugned order, in light of the given facts and circumstances, has rightly rendered the Athlete ineligible for a period of four years under Article 10.2.1.1 of the Rules.
- 24. Therefore, we do not find any merit in the instant Appeal against the order dated 11.10.2022 passed by the Anti-Doping Disciplinary Panel in Case No. 216.ADDP.2022 and the same is dismissed. The sanction of 04 years imposed vide impugned order dated 11.10.2022 passed by the Anti-Doping Disciplinary Panel is upheld. As observed by Anti-**

**Doping Disciplinary Panel, this period shall commence from 26.04.2022. We also direct that under Article 10.10 of the Rules, all other competitive results obtained by the Athlete from the date of the sample collection, i.e., 05.02.2022, shall be disqualified with the resulting consequences including forfeiture of medals, points and prizes. A copy of the order be uploaded on the website of NADA and a copy be sent by registered post to the postal address of the Athlete and also emailed to his registered email address and sent to his counsel. We direct that the Athlete be given a credit period of provisional suspension already undergone under Article 10.13.2 of the Rules."**

(Emphasis added)

The aforesaid finding is rendered based upon a test report which is now appended to the statement of objections. The report reads as follows:

**"Test Report  
Confidential**

SEA:	IND-NADO Director General Hall No.103-104, Near Sports Library JLN Stadium Complex, Lodi Road, New Delhi, India-110 003	TA:	IND-NADO Director General, Hall No.103-104, Near Sports Library JLN Stadium Complex, Lodi Road, New Delhi, India-110 003	RMA:	IND-NADO Director General, Hall No.103-104 Near Sports Library, JLN Stadium Complex, Lodi Road, New Delhi India - 110003
Test result	AAF-Adverse Analytical Finding				
Sample Code	6491191				
Sample A/B	A				
Sample specific gravity (ITP)	1.025				
Sample Specific Gravity	1.025				
pH	6.2				
Lab Reference	220099				
Test Mission Code	7480				
Type of Test	Out competition				
Sport Discipline	Basketball – Basketball				
Collection date	5 <sup>th</sup> Feb. 2022				
Collection Site	N/A				
Date of Receipt	7 <sup>th</sup> Feb., 2022				



The aforesaid order of the Appellate Authority is entirely based on the afore-noted test. The petitioner attributes presence of 19-NA to regular pork consumption, specifically non-castrated male pig meat, supported by bills and expert opinions. It further asserts that pork would naturally cause 19-NA to appear in urine. It is his assertion that Article 10.6 permits discretion to the Authorities to consider no significant fault or negligence. This discretionary mandate of terming the act of the petitioner to be that of negligence is not even considered by the Disciplinary Panel or by the Appellate Authority. Before the Disciplinary Panel and before the Appellate Authority, as noted hereinabove, the petitioner had produced evidence with scientific support. The said evidence does not bear any consideration. This is in violation of sub-section (8) of Section 22 of the Act, which mandates fair hearing and reasoning requirements.

16. The Disciplinary Panel or the Appellate Authority does not consider the way the sample is handled. The sample has travelled all over. Section 21 would require accurate, verifiable and documented procedure of sample handling. The case at hand is a classic illustration of breach of sample integrity, as is found in

Article 6.4 of the WADA code and Section 21 of the Act. Before the Appellate Authority Section 22 renders a right to the appellant to present evidence and call for witnesses. This would be in the realm of fairness. The Appellate Authority does not engage itself in any of the mandate of the statute. Therefore, there is complete violation of the procedure stipulated to hold someone guilty of doping. The violation of procedure noted hereinabove, would undoubtedly render the resultant action unsustainable.

17. In the light of the preceding analysis, several lacunae in conduct of proceedings emerge. The petitioner, before the Appellate Authority, had filed expert affidavits from medical professionals who had opined that exogenous traces of 19-NA detected in petitioner's urine were consistent with the ingestion of meat from un-castrated male pigs and not attributable to anabolic steroid abuse, they are only referred to in paragraphs 17 and 18 of the order. **Despite the cogency and credibility of such evidence, the Appellate Authority in its order, renders no meaningful engagement with the submissions nor it provided any discernible rationale for discarding the**

**evidence so produced by the petitioner. This Court is mindful that anti-doping adjudication operates under a regime of strict liability. However, strictness in liability does not mandate callousness in process. The foundational requirements of principles of natural justice cannot be sacrificed projecting administrative expediency.**

**18. In summation, this Court finds the impugned orders, which culminated in the order of the Appellate Authority dated 16-04-2024 vitiated by non-consideration of vital material, absence of reasoned adjudication and a palpable breach of principle of fairness. The petitioner's plea was neither frivolous nor speculative. It was supported by material routed in plausible biochemical explanation. The Appellate Authority has neither called for further investigation nor explained its rejection of the material produced by the petitioner. The order therefore, cannot be permitted to stand in the eyes of law.**

19. **The petitioner is a national sportsman, a civil servant in uniform, has now suffered the ignominy of public censure and has seen his professional aspirations wither under the cloud of suspicion. The ignominy suffered by any sports person accused of doping is a unique and deeply personal form of disgrace that extends beyond mere professional consequences. It touches on their honour, legacy and identity often leaving indelible scars.** It results in the athlete being frequently condemned on presumption of guilt which sometimes overrides due process. Once a sports person is found accused of doping, his past achievements becomes a suspect, as if victory was not earned but engineered. **It is therefore, necessary for the Authorities who deal with cases of suspected doping to observe punctilious exactitude in the observance of procedure and consideration of all material produced by the sports person suspected of doping in an enquiry or an appeal.** The impugned action falls foul of such consideration.

20. In the normal circumstance, for want of application of mind of the Appellate Authority, the matter could be remitted back for consideration afresh. The debarment of the petitioner sprang in the year 2022. As on date, 3 years have passed by. 3/4<sup>th</sup> of the period of penalty is already over. In the light of the unimpeachable explanation rendered by the petitioner with documents of sterling quality and the order of the Appellate Authority bearing no consideration/application of mind in the eyes of law, to give a quietus and permit the petitioner to continue his sporting career, I deem it appropriate to obliterate the orders.

21. For the aforesaid reasons, the following:

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The order dated 11-10-2022 passed by the 2<sup>nd</sup> respondent/Anti-Doping Disciplinary Panel, declaring the petitioner to be ineligible for sporting events for a period of 4 years, is quashed.

(iii) The order dated 16-04-2024 passed by the 3<sup>rd</sup> respondent/Anti-Doping Appeal Panel in Appeal No.28/ADAP/2023 also stands quashed.

Pending applications, if any, stand disposed, as a consequence.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

Bkp  
CT:MJ