Anti-Doping Appeal Panel

J.L.N Stadium, Gate No. 10 Hall No.103
1st Floor, Lodhi Road, New Delhi 110 003
Telefax: 011-24368274

Date: 17.09.2022

To,

Ms. M R Poovamma,
C/o MR Poovamma,
Mkt- Mangalore, Dakshina,
Kannada- Karnataka 575006

Subj: Decision of the Anti-Doping Appeal Panel Case No.-24/ADAP/2022

Ms. M R Poovamma Vs. NADA

The order containing the decision of the Anti-Doping Appeal Panel dated 16.09.2022 in respect of final hearing of the above case held on 29.08.2022 is enclosed.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti Doping Rules 2021 may be downloaded from NADA website at the following link:-www.nadaindia.org/en/anti-doping-rule-of-nada

The receipt of this communication may be acknowledged.

Encl: 04 sheets.

(Yasir Arafat)

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary Panel for information and action deemed necessary:

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. Secretary General, Athletics Federation of India, A-90, Naraina Industrial Area, Phase-1, Near PVR cinema, New Delhi- 110028.
3. International Association of Athletics Federations, 17, Rue Princesse Florestine BP 359, MC 98007, Monaco.
4. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003

BEFORE THE ANTI DOPING APPEAL PANEL
J.L.N. Stadium, Gate No. 10, Hall No. 103,
Lodhi Road, New Delhi -110 003

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 24/ADAP/2022

IN THE MATTER OF:

National Anti-Doping Agency ..... APPELLANT

Vs

Ms. M.R. Poovamma ..... RESPONDENT
(Sport – Athletics)

Quorum: Mr. Abhinav Mukerji, Chairperson
Dr. Vivek Singh, Member
Ms. Prashanti Singh, Member

Present: Mr. Yasir Arafat Law Officer for NADA Appellant
Mr. Achyut Jayagopal Advocate with M. Povamma athlete in person.

Date of Hearing: 29.08.2022
Date of Order: 16.09.2022

ORDER

1. The Appellant National Anti-Doping Agency ('NADA') has filed an appeal against the order dated 16.06.2022 passed by the Anti-Doping Disciplinary Panel in Case No. 187.ADDP.01.2021 ("impugned order").

2. The facts of the case as available from the records before the Anti-Doping Disciplinary Panel are as follows:

(i) The doping control test of the Athlete was carried out on 18.02.2021 by the Doping Control Officer of NADA during Indian Grant Prix I, at Patiala. Urine Sample of the Appellant upon collection were sent to Doping Control Laboratory, Belgium, a World Anti-Doping Agency (WADA)-accredited laboratory. The Laboratory analysed the A Sample in accordance with the procedures set out in the WADA's International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding (AAF) for the following:

"4-Methylhexan-2-amine (Methylhexaneamine), Stimulant which is a specified substance under S-6 of WADA Prohibited List 2021."

(ii) Consequently, NADA issued a notice of charge dated 05.03.2021 for violation of Rule 2.1 of the Anti-Doping Rules of NADA, 2015 ("ADR"). That vide reply dated

15.03.2021 the Athlete denied the charges levied under the notice of charge. The Athlete opted for sample B analysis which was done on 22.04.2021 and corroborated the findings of sample A.

(iii) By the way of impugned order an ineligibility of 03 months under Article 10.6.1 have been imposed upon Athlete. Hence, this appeal by NADA.

3. We have heard both the parties at length. Ld. Counsel for the Appellant (NADA) submitted that the impugned judgment has been passed without considering the relevant facts of the case and is contrary to the provisions of ADR with regard to the sanction of ineligibility period as applicable in the case of specified substances. It was submitted that the Ld. ADDP has granted reduction of penalty under Article 10.6.1 without assigning any cogent reason and without adhering to any rational norm/rule/guidelines. It was submitted that Athlete was not able to establish on balance of probabilities and in totality of circumstances that she exercised utmost care and caution to prevent the prohibited substance from entering her system. It was submitted that the Athlete despite being an experienced and senior Athlete did not apply for TUE for the said substance. It was submitted that the prohibited substance "Methylhexanamine" found in the body of Athlete is a commonly abused as performance enhancer. It was asserted that under Article 2.1.1 it is an athlete's responsibility to ensure that no prohibited substance enters his body and further that under the said Article it is not necessary that intent, fault or negligence is required to be demonstrated to attract the provisions of Article 2.1. It was submitted that the Athlete did not disclose use of 'Bedtime Latte' and 'Selank Nasal Drop' in the Doping Control Form and declared use of said substances after testing positive. It was submitted that such kind of disclosures by an experienced Athlete at belated stage in the proceedings are absolutely unsustainable and unwarranted. The Athlete was under duty to disclose all the medications/supplements consumed by the Athlete over past seven days before the Dope Control Test took place. It was asserted that the Athlete intentionally concealed use of said supplements. Lastly, it was submitted that the impugned order suffers from patent errors as the criteria determined for applying "No Significant Fault and Negligence" has not been adhered to and therefore the impugned order deserves to be set aside.

4. The Athlete's primary contention is that she had consumed immunity booster sold in the name and style of 'Bedtime Latte' during the Covid-19 pandemic to boost her immunity. It was submitted that the said supplement is being sold by 'Moonbrew' claims to be 100% natural and is FSSAI approved. After receiving notice of charge dated 05.03.2021, the Athlete sent a sample of 'Bedtime Latte' for testing to Shree Ram Testing Laboratories Limited, Noida. The test results from laboratory reveal the presence of 'Beta-Myrcene' in 'Bedtime Latte, which is a metabolite associated with the Geranium plant, often cited as the source of MHA. Thus, the Athlete believes that 'Bedtime Latte' is the source of prohibited substance. The Athlete submitted that second product which could be source of MHA is 'Selank Nasal Drops' prescribed by Dr. Andrei Filiminov, who was at that time recovery expert associated with Indian track and field athletics team. The Athlete submits that she made an application before the Ld. ADDP on 25.04.2022 for testing of the supplements but the application came to be rejected on 06.06.2022. It was stated by the Appellant that in 10 years of her career she has undergone 100's of doping tests but her sample never came positive as she took necessary care and caution

while consuming supplements/medicine. Lastly, the Athlete submitted that the Ld. ADDP has rightly given benefit under Article 10.6.1.1 as the Athlete was able to establish source of prohibited substance and her system and also that ingestion was unintentional.

5. In the present case, the perusal of Doping Control Form brings out the Appellant declared use of certain supplements at the time of testing but supplements namely, 'Bedtime Latte' and 'Selank Nasal Drops' are missing from the list of disclosed supplements. The stand taken by the Athlete that she was consuming said supplements as immunity boosters and for treatment of anxiety thus she did not find it necessary to disclose use of the same is highly vague, baseless and irrational. We are of the view that immunity boosters and anti-anxiety drops are certainly supplements which should have been disclosed by the Athlete in her doping control form and taken under the care of a registered medical practitioner. This is the minimum standard of care expected of an athlete. The Athlete was subjected to dope control test on 18.02.2021 thereafter the Athlete received first notice of charge on 05.03.2021 and after a gap of almost 1 month and 20 days from receiving notice of charge the Athlete sought testing of the supplement which was rejected by Ld. ADDP on the ground that the Athlete has not disclosed use of said supplements in the Doping Control Form. We affirm the stand taken by Ld. ADDP in rejecting the application for testing filed by the Athlete. It was the duty of the Athlete to be cautious and disclose the supplements being consumed by her at the relevant point of time. Although Article 6.1.2 permits testing outside of WADA-accredited laboratories to establish facts but in the present case the defence taken by the Athlete is clearly an afterthought as the Athlete initially did not raise any such plea, the plea regarding testing of supplements is the one which has to be raised at an early stage since it requires depositing of supplements and collection of evidence. The test results obtained from Shree Ram Testing Laboratories Limited, Noida cannot be relied upon for the simple reason that it fails to record batch number, manufacturing details etc, of the supplement so tested. The container was open and suspicious. The Athlete has also failed to make any enquiry from the manufacturer regarding probable contamination and presence of prohibited substances in the said product. We are of the view that the Athlete has not been able to prove on balance of probabilities and in totality of circumstances that 'Bedtime Latte' was source of prohibited substance. We are of the view that the Appellant being a senior and experienced Athlete should have taken immunity boosters only on the advice of doctors as it is the duty of the athlete to take due precautions and not consume any over-the-counter products until it is recommended by coaches or team doctors. It cannot be said that the Appellant exercised utmost caution before consuming the said products. Considering the overall facts and circumstances, the plea of unintentional ingestion taken by the Appellant is hereby rejected.

6. The CAS decision in Demir Demirev v. International Weightlifting Federation CAS 2015/A/4129 relied upon by the Athlete is not of any assistance to Athlete as in the said case the CAS Panel held that:

> *"Similarly, it is not sufficient for them to say that all but one of them declared in general terms that they were taking supplements of the class on which Trybest is one. They had chosen to enter on a regime which involved the taking a great number of supplements (up to 20 according to the evidence) and if they wished to*

be clear and frank with the doping control officials they should have identified those supplements rather than setting out in the most general and anodyne of terms types of supplement they claimed to be taking. It was suggested that some at least of the Athletes had limited literary skills but in the case of at least half of them they were accompanied by Mr Ivanov at the testing and there was no reason why he should not have assisted in correctly identifying the precise supplements which they were taking. It behoves those who choose to enter on complicated regimes of supplements in an endeavour to maximise their performance to take the greatest care not only in what they take, but in how they declare it."

7. In the case of Maria Sharapova v. ITF CAS 2016/A/4643 relied upon by the Athlete the facts were entirely different, as the prohibited substance 'Mildronate' under a different name 'Meldonium' was added to the prohibited list in 2016. The Athlete pleaded lack of duty on part of ITF and WTA to notify athletes that Mildronate has become prohibited. In those circumstances the Panel sanctioned the Athlete to 15 months. In the present case the facts as set out aforesaid are completely different.

8. We are of the considered opinion that the Appellant has committed an ADRV under Article 2.1 of the ADR. Once the presence of the prohibited substance is established in the body of the athlete and no exculpatory or mitigating circumstances exist, the natural consequences under the ADR follows. Therefore, we set aside the impugned order dated 16.06.2022 as passed by Anti-Doping Disciplinary Panel and allow the appeal of NADA and consequently impose a sanction of 02 years under Article 10.2.2 ineligibility upon the Athlete. We also direct that under Article 10.10 all other competitive results obtained by the athlete from the date of sample collection i.e., 18.02.2021 shall be disqualified and all resulting consequences including forfeiture of medals, points and prizes shall follow. A copy of the order be uploaded on the website of the NADA and a copy be sent by registered post to the postal address of the athlete and also emailed to her registered email address and sent to her counsel.

Prashanti Singh Member	Dr. Vivek Singh Member	Abhinav Mukerji Chairman