

BEFORE THE ANTI DOPING APPEAL PANEL
Conference Room, Pragati Vihar Hostel
Lodhi Road, New Delhi -110 003

Appeal No. ADAP/01/2011

IN THE MATTER OF

WADA

APPELLANT

.....
Vs

Kavita Chaudhry And Anr

.....
RESPONDENT

CORAM:

JUSTICE C. K. MAHAJAN, CHAIRMAN
DR. K. D. TRIPATHI, MEMBER
MR. KHAJAN SINGH, MEMBER

Present:

Dr. Pradeep H. Gupta, Sr. Project Officer, NADA

February 10th, 2011

ORDER

The present appeal is preferred by WADA assailing the order of the Anti Doping Disciplinary Panel dated August 31, 2010 holding that the athlete, in the exceptional circumstances of the case, had established no fault or negligence and was thus given the benefit under Article 10.5.1.

It is urged in the appeal that the athlete failed to establish that she exercised utmost caution and bore no fault or negligence and the fact she is a minor could not exonerate her entirely of any fault or negligence. It is further contended that it is for the athlete to establish that she bore no significant fault or negligence and in such a case the period of ineligibility could be reduced provided evidence is placed on record that the age and inexperience were relevant factors to entitle her to benefit of Article 10.5.2.

We have heard at length the submissions made by the Appellant as well as the Respondents.

We have given thoughtful consideration to the submissions and counter submissions made by the parties and have also gone through the pleadings and documents on record.

The appellant appears to have proceeded on the premise that the respondent is a national level wrestler. This is an incorrect finding of fact. It is a presumption and assumption on the part of WADA. The appellant has never participated in any National or International level. Her participation is only at the school level/Inter school level in the State.

Lu P *K. D. Tripathi* *Chaudhry*

The respondent joined the Sports training Centre, Hissar for training in the discipline of wrestling. The main aim of the scheme is to train meritorious sportspersons in the age group of 14 to 21 years. The training centres are set up in joint collaboration with State Governments. At the time of her joining the centre under the Sports Authority of India (SAI) scheme in 2009 the respondent had participated in wrestling at the school level tournaments. She was then a student of the 8th class. The respondent athlete developed a problem with the right shoulder while undergoing training at the centre. She was not given any medical help at the centre. She left the centre and proceeded to her village Assandh. She approached the Government dispensary. After examining her the doctor prescribed treatment for the shoulder problem as would be evident from the prescription and the bill. Three injections of Decadurabolin were administered to the respondent.

The respondent was 14 years and three months at the time of taking the urine samples in January 2010. The banned drug was thus found in the urine sample. The presence of the banned substance is confirmed. The banned drug entered in her system as a result of the treatment given to her in the form of three injection of Decadurabolin. This is an admitted fact. There has been an Anti Doping Rule violation and the respondent has not filed any Therapeutic Use Exemption (TUE) in order to be authorized to use the product.

Yet we cannot ignore the fact that the respondent was found positive when a test was conducted. The respondent admitted having taken three Decadurabolin injections as a part of her treatment taken for the shoulder. The respondent states that she was unable to manage her own affairs coming from a poor rustic humble background and that she was not aware of the Anti Doping Rules and nor was she at any time apprised of their existence and caution to be exercised while taking treatment. Youth/adolescence and lack of experience are factors that should be taken into account in determining the fault and negligence, whether of the athlete or the other person under the relevant articles.

Negligence is specific tort and in any given circumstances is failure to exercise that care which circumstances demand. What amounts to negligence depends on the facts of each particular case. Fault connotes an act to which blame, neglect of duty/care attaches.

We have seen the record placed before us and after having heard the respondent in person. We are more than satisfied that the respondent was totally ignorant of the anti doping rules and being a minor aged about 14 years of age and in class 8 she lacked the experience and was not capable of understanding and managing her own affairs and was not guided by her guardian/coach/parent who are capable of such understanding and management. She underwent treatment for her shoulder and was not aware of the consequences thereof or the consequences of the injection she was given. After having spoken to her during the hearing we observed that she is totally ignorant of the rules and is partly literate. She does not know what was expected of her or her coach/guardian, if any. She does not understand or speak English and can only converse in vernacular. It is not the case of the appellant that she is fully conversant with the rules or that she was guided of her coach or guardian. AND ~~THENCE~~ THENCE. The parents and guardian are illiterate. She definitely makes out a case of no fault or negligence/no significant fault or negligence in terms of Articles 10.2.1 and 10.2.2.

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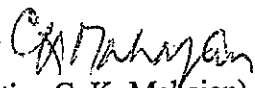
To fault the respondent in these given circumstances is not fair. Mere participation in sports and its nuances relating to dope free sport have yet to reach the sports persons at the school level, in rural areas, given the fact that the rules came into being in India in 2009.

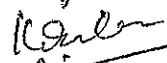
We are prima facie of the view that this is a case of no fault and negligence/no significant fault or negligence in terms of article 10.5.1 and 10.5.2 of the rules for the reasons aforesaid, but keeping in mind the scope and objects of the Anti Doping Rules a sports person must be deemed to be responsible for his/her acts or those of the coach, parent or guardian as that is the only way to ensure fairness, equality and sporting spirit and meaningful competition and to ensure the well being of the younger athletes and to shut the doors for dope abuse. She had neither a coach or a guardian/parent to guide her.

The respondent was a mere trainee picked upon account of her merit in the concerned discipline and the Centre had afforded no guidance or help other than imparting training in the said discipline. It is reiterated that she is not a national or international level athlete, but participated at the school level competition. The cases relied upon by the Appellant are of no help in the peculiar facts and circumstances of the case. We were inclined to uphold the order of the Disciplinary Authority, but to do that would be to encourage the sports persons to resort to their ignorance and lack of education and guidance and other factors as an excuse to seek benefit of the Rules for an Anti Doping violation.

Keeping in view the facts and circumstances of the case, tender age, lack of experience which is demonstrated by the records before us and the affidavit and the oral statement made before us which has not been refuted and coupled with the fact that the respondent is neither an athlete of national nor an international level and has not participated in any meets other than those in school/interschool and is no longer being trained at the Centre, which she did not rejoin, we are of the view that the interest of justice would be served if the sanction is limited to one year only. It is ordered accordingly. *lis*

The appeal is thus, partly allowed and the sanction shall commence from the date of this decision.


(Justice C. K. Mahajan) Chairman


(Dr. K. D. Tripathi), Member

Dated: February 10th, 2011


(Khajan Singh), Member