CAS 2020/A/7250 Gomathi Marimuthu v. World Athletics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Professor Jan Paulsson, Professor in Manama, Bahrain

in the arbitration between

Ms Gomathi Marimuthu, India
Represented by Mr Salai Varun, Attorney-at-Law, Chennai, India

Appellant

and

World Athletics, Monaco
Represented by Mr Tony Jackson, Manager, Athletics Integrity Unit and Mr Ross Wenzel, Attorney-at-Law with Kellerhals Carrard, Lausanne, Switzerland

Respondent

I. THE PARTIES

1. Ms Gomathi Marimuthu (the "Athlete" or "Appellant") is an Indian middle-distance runner of Indian nationality.

2. World Athletics (formerly the International Association of Athletics Federations) (the "Respondent") is the international federation governing the sport of athletics. It has delegated authority for the implementation of its Anti-Doping Rules ("ADR") to the Athletics Integrity Unit ("AIU").

3. The Athlete and World Athletics are collectively referred to as "the Parties".

II. FACTUAL BACKGROUND

4. This Award contains a concise summary of the relevant facts and allegations based on the parties' written submissions, correspondence and the evidence adduced. Additional facts and allegations found in the Parties' written submissions, correspondence and evidence may be set out, where relevant, in connection with the legal discussion that follows. The Sole Arbitrator has considered all the facts, allegations, legal arguments, correspondence and evidence submitted by the parties and treated as admissible in the present procedure, but refers in this Award only to the matters necessary to explain its reasoning and conclusions.

5. The Athlete is described by her counsel as "aged about 30 years", coming from a modest background and until now earning less than Rs. 320,000 (or 4,000 Swiss francs) per year. Through her efforts she has attained the status of an international-level athlete for India.

6. Between March and April 2019, the Athlete provided in-competition samples on four occasions:

18 March:	Federation Cup Senior National Athletics Championship, Patiala, Punjab, India
13 April:	Selection Trials, Patiala, Punjab, India
13 April:	Selection Trials, Patiala, Punjab, India
22 April:	Asian Athletics Championships, Doha, Qatar

She finished first in the 800 meters final in the Asian Athletics Championships.

7. Each of these samples were examined and revealed the presence of 19 Norandrosterone ("19-NA"), a metabolite of nandrolone. This substance, an anabolic androgenic steroid, is prohibited at all times under the WADA 2019 Prohibited List under the category S1.1B. Endogenous AAS.

8. On 17 May 2019, the AIU notified the Athlete of the Adverse Analytical Finding ("AAF") with respect to the 22 April 2019 sample and was provisionally suspended by the AIU. On 27 May 2019, she attended the opening and analysis of her B Sample at the WADA accredited laboratory in Doha. It confirmed the AAF in Sample A. Her provisional suspension has remained in effect since then.

9. On 16 September 2019, the AIU served the Athlete with a Notice of Charge for violations of the ADR and invited her to confirm how she wished to proceed. She responded on 25 September 2019, requesting a hearing. On 10 October 2019, she presented a written denial of knowingly violating the anti-doping rules and asserted various possible reasons for the presence of 19-NA in the samples.

10. On 30 October 2019, a presiding member of the World Athletics Disciplinary Tribunal to deal with the disputed finding was appointed and proceeded to issue directions. The two remaining members of the Tribunal were appointed in due course.

11. The AIU's written brief was submitted on 24 December 2019.

12. The Athlete's brief was submitted on 14 January 2020, accompanied with an expert report. The AIU's reply brief was submitted on 14 February 2020, along with an expert report and a statement from the Lead Doping Control Officer involved in the second and third samples.

13. On 23 March 2020, the Athlete's counsel submitted a request for postponement of the hearing (then scheduled for 27 March 2020) on the grounds that the COVID-19 outbreak had resulted in travel restrictions. The AIU objected to the request on the grounds that there was no impediment to a hearing by video conferencing. The Athlete's counsel responded that he could not get access to the case file given restrictions on travel *within* India and the fact that counsel, the expert, and the Athlete could not meet with each other. The Disciplinary Tribunal observed that there was no explanation as to why those intervening for the Athlete could not connect electronically from different places within India.

14. After having duly conducted a hearing on 27 March 2020 in the course of which it gave the parties occasion to present their opening statements, the Disciplinary Tribunal allowed a process of subsequent written briefs and expert reports to supplement and amplify the record. Closing statements were submitted by both sides on 6 May 2020. The lengthy Decision challenged by the present appeal was rendered on 26 May 2020. Its dispositive Order reads as follows:

"158. The Athlete violated ADR Articles 2.1 and 2.2, in that she had used a Prohibited Substance and that a metabolite of that Prohibited Substance was found to be present in her urine Samples numbered 6363569 provided In-Competition on 18 March 2019, 6364751 and 6364741 provided In-Competition on 13 April 2019, and Sample numbered 4339389 provided In-Competition on 22 April 2019.

159. The Panel imposes a period of Ineligibility of four years upon the Athlete.

160. The period of Ineligibility is ordered to run from 17 May 2019 (the starting date of the Provisional Suspension) and shall end at midnight on 16 May 2023.

161. The Athlete's competition results between 18 March and 17 May 2019 are disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money.

162. Ms Marimuthu is ordered to pay the AIU the total amount of £1000 as a contribution towards the legal fees and other expenses incurred in connection with these proceedings within 28 days of notification of this decision.

163. All other prayers for relief are dismissed."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 23 June 2020, the Athlete filed her statement of appeal with the Court of Arbitration for Sport (the "CAS) in accordance with Article R47 et seq of the Code of Sports-related Arbitration (the "CAS Code"). In her statement of appeal, the Athlete requested the appointment of a sole arbitrator. The Athlete's statement of appeal concluded with a request for "additional time" for her "to submit a statement of case containing a description of material facts and the legal arguments…, accompanied by declarations of the Appellant and experts, all exhibits and specifications which the Appellant intends to rely [sic]."

16. On 15 July 2020, the Athlete filed her Appeal Brief in accordance with Article R51 of the CAS Code.

17. On 27 July 2020, the Respondent objected to the admissibility of the Athlete's appeal brief. Specifically, under Article 13.7.1. of the IAAF Anti-Doping Rules, the deadline (A) for the Appeal Brief was 25 June (i.e. 30 days after the communication of the Decision of the Disciplinary Tribunal) and (B) for the Appeal Brief 15 days thereafter, i.e. 10 July. Accordingly, the AIU argued that the appeal should be deemed to be withdrawn.

18. In the same communication, AIU stated that it had no objection to the appointment of a sole arbitrator.

19. On 24 August 2020, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Prof. Jan Paulsson as Sole Arbitrator.

20. On 16 October 2020, following an agreed-upon extension of time, the Respondent filed its answer and exhibits. Within its answer, the Respondent noted that the Athlete had named no witness or expert in her appeal brief, and therefore, the expert opinion of Professor Martial Saugy which had been filed before the Disciplinary Tribunal stood unrebutted. The AIU submitted that opinion (dated 14 February 2020) as well as a "complementary report" which he had provided on 15 October 2020 (the text of the latter consisted of a three-page response to the Appellant's new contention regarding the possible effect of pregnancy; see Paragraph 29 below).

21. On 20 October 2020, the Appellant requested the opportunity to make submissions in a hearing before the Sole Arbitrator.

22. On 21 October 2020, the Appellant forwarded what she called an "Expert Opinion" by Dr. Soorya Sridhar "in support of the Appellant's case." She sought to excuse the tardiness of the submission by reference to the COVID-19 pandemic.

23. The following day, the Respondent objected to this submission, pointing out that under Article R56 of the CAS Code "parties are not authorized to amend or supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the filing of the Appeal Brief and the Answer." The Respondent also observed that the document in question was signed and dated 11 days before the filing of the Reply Brief on 16 July 2020, which in its view makes it clear that the failure to produce it earlier had "nothing to do with the COVID-19 pandemic." The AIU also stated that it did not consider an oral hearing to be necessary.

24. Dr Sridhar entitled his contribution as a "Declaration". He therein described himself as a General Physician and teacher of anatomy to undergraduate medical students in Stanley Medical College, Chennai. The Declaration is signed and dated 4 July 2020. Although the Sole Arbitrator has showed indulgence with the tardy

submission of the answer (see below in the section on Admissibility), such latitude is not warranted in this respect. Apart from the pertinent objections of the Respondent, it is clear that the "Declaration", if admitted, would not be of assistance unless yet further steps were taken to ensure not only to clarify the bases of Dr Sridhar's conclusions, which prima facie appear to be more in the nature of affirmation than demonstration, as well as references to a number of studies relating to polycystic ovary syndrome ("PCOS") which were not submitted, but also to allow the Respondent the opportunity to question him and to procure and evaluate the pertinence of the materials referred to in his footnotes.

25. The further delays which this would have entailed are unjustifiable in the circumstances. To the extent that Dr Sridhar takes issue with Professor Saugy, due process required that his conclusions to that effect be provided well *before* AIU required to produce its Answer – and certainly not thereafter (Professor Saugy's opinion of 14 February had long been available to the Appellant by the time her Reply was submitted; as for his "complementary report" of 15 October, it did not deal with novel topics but responded to contentions made in the Reply Brief.)

26. In its communication of 1 December 2020, CAS also informed the Parties that the Sole Arbitrator considered himself sufficiently well-informed to decide on the basis of the Parties' submissions without a hearing in accordance with Article R57 of the CAS Code. This matter does not, in the view of the Sole Arbitrator, involve factual disputes that call for the examination of personal testimony, but rather for verification of the record of the process and the consequent Decision as being compliant with the relevant rules.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Athlete

27. The Athlete's appeal brief quotes the following provisions of the Anti-Doping Rules, which she characterizes as the "legal framework" of her appeal:

> *"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*
>
> *2.1.1 It is each Athlete's duty to ensure that no Prohibited Substance enters their body. 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 Rule 2.1.*

2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Rule 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 B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

2.1.3 Except for those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an Anti-Doping Rule Violation.

2.1.4 As an exception to the general rule of Rule 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited

Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an Anti-Doping Rule Violation to be committed.

3.1 Burdens and Standards of Proof

World Athletics or other Anti-Doping Organisations shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether World Athletics has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

10.4 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 they bear No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated."

28. The Athlete contends that on the balance of probabilities it should be concluded that she did not intentionally commit an ADRV, and that the Respondent had in any event not provided sufficient proof that she ingested the prohibited substance in question. The difficulty with the first contention, as will be seen, is that the proof of intent in this context is exceedingly difficult to demonstrate, as the relevant rule (Art. 10.4 of the ADR) requires negative proof: the absence of fault or negligence. The difficulty with the second is that the Respondent, for its part, does not have to prove anything with respect to the act of ingestion; the *presence* in the body of a prohibited substance is enough (barring the aforementioned demonstration of absence of fault or negligence).

29. At any rate, the Athlete's case proceeds by seeking to prove that the samples are unreliable, that they were improperly handled by the laboratory, and that the Athlete had suffered a "spontaneous" miscarriage on 27 January 2019 after having become pregnant in late 2019, in combination of the effects of polycystic ovary

syndrome ("PCOS") likely causing an abnormally high concentration of endogenous 19-Norandrosterone.

30. With respect to her allegations of an improper testing process resulting in unreliability of the results, the Athlete contends that:

(A) Mishandling of the first sample was manifest in the discrepancy between the sample volume and the specific gravity recorded by the Doping Control Officer ("DCO") and those confirmed by the laboratory. This, she says, was likely to compromise the integrity of the sample.

(B) The second and third samples were processed in a manner that does not satisfy the International Standard for Testing and Investigations ("ISTI") because the laboratory did not complete the chain of custody forms. In any event, the third sample should be treated as void because the volume of the immediately preceding second sample had been adequate; it was therefore unnecessary.

(C) As to the fourth sample, the laboratory erred during both the preparation and the extraction procedure; the temperature and time in the oven were irregular as was the incubation temperature.

31. Finally, in her appeal brief, the Appellant requested the following relief:

a. To uphold the Appellant's appeal.
b. To annul/set aside the decision of the World Athletics Disciplinary Tribunal.
c. To find that the Appellant has not committed any violation of the Articles 2.1 and 2.2 of the ADR.
d. In the alternative, to find that the Appellant bears no fault or negligence and eliminate her period of ineligibility.
e. To set aside the order directing the Appellant to make payment to the AIU as contribution towards legal fees and other expenses incurred in connection with the proceedings before the Disciplinary Tribunal.
f. To order any other relief or reliefs for the Appellant that this Panel deems to be just and equitable in the facts and circumstances of this case and thus render justice.

B. The Respondent

32. In its Answer, after referring to Articles 2.1 and 2.2 of the ADR, the Respondent noted that all of the four collected samples were positive as each of them revealed the presence of 19-A in an adjusted concentration of at least 108/ng/mL or more, whereas the limit is 15ng/mL. The Athlete requested analysis of the B samples of all but the second of the four samples; all resulted in confirmation of the excessive concentration (the second sample is basically an irrelevancy because of the Athlete's failure to fill the A and B receptacles in the proper order, with the result

that the control was repeated immediately, thus leading to what is referred to as the third sample.)

33. With respect to the Athlete's assertion that her test results could have resulted from PCOS and miscarriage, the Respondent first invokes the expert evidence of Prof. Saugy to the effect that while PCOS increases the production of androgens in females, the rate of synthesis of nandrolone does not vary in individuals with PCOS as compared to those who do not have it and thus PCOS cannot explain a prohibited concentration of 19-NA; her allegation is moreover not consistent with the fact that none of eight samples collected from her on various prior occasions, from July 2015 to the end of 2018, resulted in adverse findings. Next, as for the miscarriage, the Respondent considers it "striking" that the Athlete never mentioned it when providing explanations to AIU and the Disciplinary Tribunal – not even at the time she claimed that she has PCOS.

34. As for the arguments of unreliability of the adverse findings, the Respondent's position is as follows:

(A) The alleged discrepancies in the first sample volume and specific gravity reported by the DCO and thereafter by the laboratory provide no evidence of any departure from the ISTI. Professor Saugy's report of 14 February 2020, available to the Appellant for many months yet never contested by her in a timely fashion, gives full explanation for the discrepancy, stating that it could result from "the measurement uncertainty (both in the sample collection vessel at doping control and in the A and B bottles at the laboratory) but also as result of the fact that a small amount of urine is left in the sample collection vessel (after measurement) in order to measure specific gravity." Professor Saugy further observes that measurements at the Doping Control Station are not carried out in a laboratory environment" and affirms that "the discrepancy is likely due to the different methods used by the DCO and the laboratories in determining the SG of the urine sample."

The Respondent adds that the laboratory verified that the seal condition was "properly intact" upon arrival and that the Athlete expressly confirmed the intact seal for the B Sample when she attended its analysis on 29 May 2019.

(B) The second sample was in effect replaced by the third. The latter was made necessary, as the Disciplinary Tribunal found, for the simple reason that the Athlete had made a mistake in reversing the order in which she poured the urine into the bottles when giving the second sample. To cure this error, the DCO properly collected another sample. Here too, the fact that the specific gravity of a sample as measured in a laboratory may be lower than what was measured by the DCO does not invalidate the analysis.

(C) The Appellant has failed to demonstrate how various alleged discrepancies in the laboratory operating procedures invalidated the fourth sample. The Respondent relies on the opinion of Professor Saugy to the effect that the small discrepancies alleged by the Appellant are not significant departures from internal procedures and his "unequivocal" conclusion to the effect that these discrepancies could never have resulted in the ex-vivo generation of nandrolone or 19-NA to the level of 99ng/Ml in the fourth sample.

35. Finally, in its Answer, the Respondent requested the following relief:

68. World Athletics respectfully requests the Sole Arbitrator to rule as follows:
(1) The appeal of Gomathi Marimuthu is dismissed in its entirety.
(2) The decision of the Disciplinary Tribunal (case ref. SR/Adhocsport/287/2019) dated 26 May 2020 is confirmed.
(3) The arbitration costs, if any, shall be borne by the Appellant.
(4) World Athletics is granted a significant contribution to its legal and other costs.

V. JURISDICTION

36. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

37. Article 13 of the World Athletics Anti-Doping Rules gives the right of appeal against decisions of the Disciplinary Tribunal. Subsection 13.1.1., entitled "Scope of Review Not Limited", provides that the scope of review is plenary and "expressly not limited to the issues or scope of review before the initial matter" [*sic*].

38. Neither Party objects to the jurisdiction of the CAS to resolve this appeal, and moreover, both Parties expressly consented to the jurisdiction of the CAS when signing the order of procedure. Accordingly, the Sole Arbitrator confirms that the CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY OF THE APPEAL BRIEF

39. At the outset, the Sole Arbitrator notes that there is no argument as to the admissibility of this appeal as it concerns the Appellant's filing of the statement

of appeal. This, for all purposes, was timely filed in accordance with Article 13 of the ADR.

40. What is in dispute, however, is the admissibility of the Athlete's appeal brief filed on 15 July 2020 (3 business days after the deadline). As asserted by the Respondent, this submission was untimely filed under Article 13.7.1 of the ADR insofar as the deadline (A) for the Statement of Appeal was 25 June 2020 (i.e. 30 days after the communication of the Decision of the Disciplinary Tribunal) and (B) for the Appeal Brief 15 days thereafter, i.e. 10 July 2020.

41. Specifically, Article R51 of the CAS Code provides that an "appeal shall be deemed to have been withdrawn if the Appellant fails to meet [the time limit for filing the appeal brief]".

42. The Respondent raises a single admissibility objection, to the effect that the appeal brief is untimely. The Sole Arbitrator has reviewed the considerable file of correspondence between the Athlete's counsel and CAS, and takes note of the practical difficulties experienced by counsel as it concerned postal and banking connections between Chennai and Lausanne. In such a case where inherent objective difficulties, caused by third parties and arguably outside the control of the Appellant - made literal compliance with Article R51 unmanageable, the Sole Arbitrator, under such extenuating circumstances, deems the Appellant's appeal brief admissible. A decision otherwise would be overly formalistic.

43. For this reason, the Sole Arbitrator confirms that the statement of appeal and appeal brief, and thus this appeal, are admissible.

VII. APPLICABLE LAW

44. Article R58 of the Code reads as follows:

> *The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

45. Article 13.9 of the ADR contains the following sub-sections:

> *shall be conducted in English, unless the parties agree otherwise. "13.9.4 In all CAS appeals involving World Athletics, the CAS Panel shall be bound by the [WADA]*

Constitution, Rules and Regulations (including the Anti-Doping Rules and Regulations). In the case of conflict between the CAS rules currently in force and the Constitution, Rules and Regulations, the Constitution, Rules and Regulations shall take precedence.

13.9.5 In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise.

13.9.6 The decision of CAS shall be final and binding on all parties, and no right of appeal shall lie from the CAS decision. Subject to Rule 14.1.5, the CAS decision shall be Publicly Reported by World Athletics within 20 days of receipt. However, this mandatory Public Reporting requirement shall not apply where the Player or other Person who has been found to have committed an Anti-Doping Rule Violation is a Minor. Any optional Public Reporting in a case involving a Minor shall be proportionate to the facts and circumstances of the case.

46. Article 20 of the ADR reads as follows:

*"20. **Interpretation***

20.1 These Anti-Doping Rules are sport rules governing the conditions under which sport is played. Aimed at enforcing anti-doping principles in a global and harmonized manner, they are distinct in nature from criminal and civil laws, and are not intended to be subject to or limited by any national requirements and legal standards applicable to criminal or civil proceedings. When reviewing the facts and the law of a given case, all courts, arbitral tribunals and other adjudicating bodies should be aware of and respect the distinct nature of these Anti-Doping Rules implementing the Code and the fact that these rules represent the consensus of a broad spectrum of stakeholders around the world as to what is necessary to protect and ensure fair sport.

20.2 These Anti-Doping Rules shall be interpreted in a manner that is consistent with the Code. The Code shall be interpreted as an independent and autonomous text and not by reference to the existing

law or statutes of any Signatory or government. The comments annotating various provisions of the Code and the International Standards shall be used to interpret these Anti-Doping Rules.

20.3 Subject to Rule 20.2 above, these Anti-Doping Rules shall be governed by and construed in accordance with Monegasque law.

20.4 The Definitions shall be considered as an integral part of these Anti-Doping Rules. Terms used in these Anti-Doping Rules beginning with capital letters shall have the meaning given to them in the Definitions.

47. Based on the above and considering that the applicable law is not in dispute, the applicable laws in this arbitration are the ADR (and regulations) and, subsidiarily, Monegasque law.

VIII. MERITS

48. The established and unquestionable rule of anti-doping is that all athletes are under a duty to ensure that no prohibited substance enters their bodies, and that its presence in and of itself constitutes a violation. Furthermore, Article 2.2 of the ADR makes clear that "it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to demonstrate an Anti-Doping Rule Violation for use of a Prohibited Substance or a Prohibited Method." True enough, Article 10.4 may save an athlete from ineligibility: "If an Athlete or other Person establishes in an individual case that they bear No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated." But such proof is a rare occurrence. It is not enough to say: "I have a clear conscience and no clue where it came from." Proof positive of tampering by adversaries is hard to come by. Other scenarios of an actual demonstration of the negative are conceivable, but would require extremely unusual circumstances. Here, there is nothing save for the Athlete's affirmation of innocence *of intent*. Since that is not enough, her sole route to exculpation for a failure to ensure the *absence* of a prohibited Substance in her body would thus be to show that AIU has not in fact adequately demonstrated its presence.

49. With respect to PCOS, the opinion of Professor Saugy begins by noting that it is known that this substance will increase the production of androgens in female athletes, and that this led antidoping scientists to inquire whether the syndrome could stimulate endogenous production of nandrolone and 19-NA. The Lund *et al.* study in 2005 reached the "clear" conclusion that: "There is no difference in the rate of synthesis of nandrolone between PCOS patients and the control group. This

means that even if the Athlete is suffering with PCOS, this cannot explain the high concentrations of 19-NA found in her urine samples." There was no timely attempt to rebut this conclusion.

50. As for the rather belated contention of a prior condition of pregnancy, the Sole Arbitrator also considers Prof. Saugy's unrebutted expert opinion to be decisive, to the effect that "a pregnant woman cannot excrete in her urine 19-NA in a concentration of the magnitude of what was actually found in the athlete's urine (the first test with 1664 ng/Ml is 100 times higher than the highest value found in the Mareck-Engelke study" and that moreover "if the pregnancy was terminated 6 weeks before the first test, there is no reason to think that the hormonal system of the athlete would be able to produce any endogenous 19-NA."

51. This leads to what thus becomes the decisive matter: the reliability of the sampling and testing process leading to the Adverse Analytical Finding.

52. This appeal, it must be said, is ambitious. It proceeds on the basis that (a) three separate controls (or four, if one counts the second of the four samples) under an international-level protocol were improperly conducted, (b) the world federation wrongly concluded that a violation had in fact occurred (knowing that it exposed itself to embarrassment if the Athlete successfully complained to a three-member Disciplinary Tribunal, and finally (c) a three-member Disciplinary Tribunal's lengthy examination also came to an erroneous conclusion (it too knowing that an error on its part could be overturned by CAS).

53. Of course, the Sole Arbitrator understands that CAS has plenary authority to set aside decisions by the Disciplinary Tribunal, but equally he considers that for that to happen it is incumbent on the Appellant to engage with the reasons for the offending decision. Presumably competent officials and a well-known specialist deeply versed in the science and process of doping control have confirmed the sanctions against the Appellant here. The Sole Arbitrator must determine to his comfortable satisfaction that the sanction was legitimate, and is therefore prepared to hold to the contrary – but only if the Appellant demonstrates that she was wronged in law and as a matter of fact. Mere protestations of innocence will not do.

54. The starting point is the question whether the AAF was correctly reached. If so, that is also the end point. Only on the contrary hypothesis does a second issue, namely that of the alleged absence of fault or negligence, arise under Article 10.4 (leading to a withdrawal of the period of ineligibility).

55. The Sole Arbitrator is comfortably satisfied that one of the three tests of pertinent samples (and indeed all three) legitimately resulted in an AAF. The Appellant has not made a dent in the very detailed and dispassionate Decision of the Disciplinary Tribunal; the objections made on her behalf are in the nature of conjecture, and

fail for the simple reason that they do not reveal a material error in the handling and analysis of her samples.

56. Professor Saugy states that discrepancies between the volumes recorded and the specific gravity as recorded by the Doping Control Officer and the laboratory are unsurprising because of the collection vessel used by the DCO does not have a "very accurate" volume scale; his or her visual assessment may be overestimated. What counts is of course the laboratory finding; there is no basis to suspect (let alone find) tampering on account of oratory. As for specific gravity, the DCO does not measure it in a laboratory environment and therefore may record a different and less reliable result. Again, what counts is the laboratory. Professor Saugy has more than 150 peer-reviewed publications in the anti-doping field and is a former director of the Swiss Laboratory for Doping Analysis. It seems utterly unlikely that he would misrepresent a familiar aspect of a process with respect to which so many officials and experts are well versed.

57. The Athlete alleges that the Doha laboratory departed from proper procedures and that the relevant Laboratory Documentation Package ("LDP") so proves. In particular, she makes these assertions:

a) There was a difference in the temperature of the oven for the hydrolysis of the sample (began at 56 Deg. and removed at 57.5) whereas the procedure of the laboratory indicates 50 +/- 2 Deg. Moreover, the time for the hydrolysis was 1 hour rather than 90 min as indicated in the procedure.
b) The temperature for the derivatization of the samples in the conical tubes was set 10 Deg higher than the range prescribed by the lab procedure.
c) Data in relation to the internal standards to the sample ratios are not clear.
d) The calibration ranges have not been provided.
e) The blank comparisons conducted are not clear.

58. Professor Saugy's 14 February 2020 report contains comprehensive and probative answers with respect to these five points. They merit quotation:

What are my comments on the athlete's arguments relating to the information in the LDP for Sample 4?

My answer:

a) Regarding the procedures and the difference in the temperatures and the time recorded for the hydrolysis of the samples and what is indicated in the lab procedure.
This step is performed in order to de-conjugate the steroids from the glucuronides. This step is done with an enzyme (glucuronidase) which acts at a certain temperature and for some time. Even if the temperature recorded is higher than the scale given in the procedure, we know from experience that the hydrolysis step

will be achieved in a larger scale for both parameters (temperature and time) than what is set in the procedure.

Moreover, it is important to note that an internal standard is also used to monitor that the process of hydrolysis has been achieved. This internal standard ("IS") is the "labeled-synthetic" 4-deuterated 19-Norandrosterone glucuronide (page 19/50 LDP). This IS passes through the entire process of sample preparation in the same way as the Athlete's sample, to show that all the steps were performed correctly. The analytical data are clear that the small differences in time and in temperature did not influence the efficiency of the hydrolysis of sample 4, as it can be seen on the data exhibited on page 27/50 of the LDP. This means that the AAF is fully reliable.

b) Regarding the temperature for the derivatization of the samples.

The higher temperature of the oven for the conical tubes in which the samples are derivatized follows the same reasoning. We know also from experience that the 10 Deg difference in temperature between that described in the procedure and the oven itself will not affect the derivatization process of the sample, then not affect the AAF. We have to consider that 95 Deg (given the 100 Deg +/- 5 as described page 20/50 LDP) is the minimum for the derivatization process in the conical tubes. Furthermore, the results for the IS and of the Calibration sample and of the Quality Control (QC) allows us to confirm that the procedure was applied correctly (pages 26-29/50 LDP).

c) d) and e) regarding the information contained in the LDP

The data of the internal standard, and the blanks appeared clearly in the LDP (pages 26-29/50). The calibration ranges are explained on page 22/50 of the LDP. In fact, one positive control contains 15 ng/ml of NA and a second positive control contains 20 ng/ml of NA and 5 ng/ml of Nor-Etiocholanolone (NE).

...

Has there been any departure from the International Standards (or of the Doha laboratory's procedures) and could such departure reasonably have caused the Adverse Analytical Finding?

My answer:

In my opinion, there has been no departure from the International Standards of Laboratories. Moreover, I do not consider the small discrepancies in the procedures alleged by the Athlete to be a significant departure from the Doha laboratory's procedures. In any event, the discrepancies could never have caused the Adverse Analytical Finding.

59. The fact that the Sole Arbitrator has plenary authority of review does not mean that the parties begin with a blank slate. The Appellant has the burden of demonstrating that the appealed Decision has misapplied the law or misconstrued the facts. She has not, and her appeal must fail.

60. Given this conclusion, the Sole Arbitrator finally turns to the issue of whether the Athlete has showed the absence of guilt or negligence, such that the AAF should not result in ineligibility. From the beginning, as is clear from the file, she has expressed consternation and disbelief, and cannot account for the presence of the Prohibited Substance. But this amounts to a profession of innocence, which is not proof of absence of fault/negligence. The Sole Arbitrator is wholly persuaded by the written analysis of Professor Saugy of 14 February 2020, which the Appellant has had more than ample time to consider and rebut; positing that he might be wrong is not an answer; the burden is hers to prove that her belated explanations are correct. This burden has not been met, and the Decision is therefore upheld in this respect as well.

IX. COSTS

61. This appeal is brought against a disciplinary decision issued by an international sports-body. Therefore, according to Article R65.1 and 2 of the CAS Code, the proceedings are free of charge, except for the Court Office Fee, which the Appellant has already paid and is retained by the CAS.

62. Article R65.3 of the CAS Code provides as follows: *"Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

63. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the parties beyond the Court Office fee of CHF 1,000 paid by the Appellant prior to the filing of her Statement of Appeal, which is in any event retained by the CAS.

64. Furthermore, pursuant to Article R65.3 of the Code and in consideration of the streamline nature of this procedure, with no hearing taking place and limited written submissions filed by the Parties, and noting the financial disparity between the Parties, the Sole Arbitrator considers that each party shall bear their own legal and other costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules as follows:

1. The appeal filed on 22 June 2020 by Ms Gomathi Marimuthu against World Athletics with respect to the Decision issued on 26 May 2020 by World Athletics' Disciplinary Tribunal is rejected.

2. The Decision of the World Athletics Disciplinary Tribunal on 26 May 2020 is upheld.

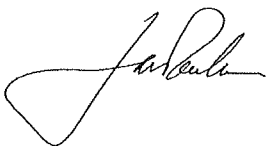
3. This arbitral award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Ms Gomathi Marimuthu, which is retained by CAS.

4. Each party shall bear their own legal and other costs.

5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland.
Date: 23 April 2021

THE COURT OF ARBITRATION FOR SPORT



Jan Paulsson
Sole Arbitrator