

**BOARD OF CONTROL FOR CRICKET IN INDIA**

**INDEPENDENT ANTI-DOPING TRIBUNAL**

**DECISION IN THE CASE OF MR PRADEEP SANGWAN**

**Tim Kerr QC, Chairman**

**Marie Demetriou QC**

**Dr José Antonio Pascual**

**Introduction**

1. This is the decision of the independent Anti-Doping Tribunal (“the Tribunal”) appointed by the Anti-Doping Manager of the Board of Control for Cricket in India (“the BCCI”) under Article 8.1.3 of the Anti-Doping Rules of the BCCI, effective from 1 January 2013 (“the Rules”) to determine a charge brought against Mr Pradeep Sangwan (“the player”). An oral hearing of the charge took place in London and Mumbai, by video link, on 1 October 2013.
2. The player attended and was represented by Mr Vidushpat Singhanian, Principal Associate, Lakshmikumaran & Sridharan, Attorneys. The BCCI was represented by Mr Rahul Mascarenhas, Legal Assistant to the BCCI, assisted by Dr Vece Paes and Dr Abhijit Salvi, Anti-Doping Managers. The Tribunal was grateful to all who attended for their helpful contributions, and to the representatives for their legal and factual submissions of high quality.
3. The player was charged by letter of 17 June 2013 with a doping offence following an adverse analytical finding in respect of a urine sample numbered 3050558, provided out of competition on 6 May 2013 in Mumbai, during the

Indian Premier League (“IPL”) season. The A sample returned an adverse analytical finding for stanozolol, an anabolic steroid which is prohibited in and out of competition.

4. By a letter dated 1 July 2013, the player stated that he had taken certain products for medical reasons. He said that he came from a rural background and did not take these medicines to enhance his performance. He asked for the B sample to be analysed. He stated that if he had violated the BCCI’s anti-doping rules, it was “out of ignorance and innocence”.
5. The B sample also returned an adverse analytical finding for stanozolol. By a letter from the player’s father dated 8 July 2013, he sought an oral hearing. At the hearing, he accepted the commission of the doping offence but disputed the Tribunal’s jurisdiction on the ground that the doping offence was admitted and the BCCI had not sought to specify the length of the appropriate period of ineligibility.
6. The player further submitted that if the Tribunal had jurisdiction, he had shown on the balance of probabilities that the stanozolol metabolites found in his urine sample came from stanozolol that entered his body through “fat burner” tablets he had purchased at a gymnasium and consumed before being tested; and that, applying Article 10.5.1 or alternatively Article 10.5.2, of the Programme, either there should be no period of ineligibility, or any such period should be no more than one year.
7. The BCCI submitted that the Tribunal had jurisdiction to try the case because the “Consequences” of the doping offence had been set out in the charge letter and had not been agreed between the parties before the hearing. The BCCI accepted the explanation of how stanozolol entered the player’s body and did not object to a period of ineligibility limited to one year; but submitted that it was for the Tribunal, not the BCCI, to decide the length and the starting date of that period.

8. By Article 18.2 of the Rules, they must be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of any signatory to the World Anti-Doping Code (“the WADA Code”) or of any state. Subject to that provision, by Article 18.6 the Rules are governed by and construed in accordance with Indian law. The two lawyer members of the Tribunal are qualified in English rather than Indian law, but the Tribunal is able to decide the case in accordance with Article 18.2.

### **The Facts**

9. The player was born on 5 November 1990 and is now aged 22. He comes from a rural part of India in the Delhi area. His parents are farmers. He has limited education and left school with poor grades. His mother is illiterate. He has limited command of the English language. He speaks, reads and writes in Hindi and can speak some English but cannot read or write in English. He can use email and the internet, but is not “internet-savvy”, as Mr Singhanian put it. He used a friend’s email account to communicate in this case.
10. After leaving school, the player concentrated on playing cricket, at which he excelled. He is a left arm medium fast bowler. He has played for the Delhi Daredevils and currently plays for the Kolkata Knight Riders (“KKR”). The KKR compete in the Indian Premier League (“IPL”). That league is organised and administered by the BCCI, which is the governing body for cricket in India and a member of the International Cricket Council (“ICC”). The player has also played at international level in the Under 19 World Cup in 2008.
11. In 2008, the BCCI adopted rules embodying the World Anti-Doping Code (“the Code”) promulgated by the World Anti-Doping Agency (“WADA”). In the sport of cricket in India, the Code is given effect by the Rules. They are binding on players in the IPL, including this player. His participation in the IPL as a player for the KKR is governed by a tripartite contract between the player, the company which runs the KKR, and the BCCI.

12. The detailed terms of that contract do not matter for present purposes. Its agreed effect is to make the Rules binding on the player. He is required under Article 1 of the Rules to be familiar with their content, to be responsible for what substances he takes and to keep his body free from prohibited substances. The BCCI is “responsible for promoting anti-doping awareness and education in the sport of cricket” (Article 1.10), but this is “[w]ithout prejudice to Articles 1.1 to 1.9”, which include the provisions imposing the obligations on the player just mentioned.
13. The player has not received formal anti-doping education. He is aware that he must avoid taking banned substances, but he does not know what substances are banned. He has been subjected to doping control about 10 to 15 times, always with negative result apart from in this case. Normally, he relies on advice about training and medical treatment from his team physiotherapist or from the Delhi & District Cricket Association (“DDCA”), his home state association.
14. An anti-doping seminar organised by the BCCI was held at the DDCA on 10 January 2011, but the player was not present. Other anti-doping seminars have been held at the DDCA, but after 6 May 2013 when this player provided the sample which tested positive. In 2012, the DDCA distributed some booklets in English to senior players, but not to junior players. We are not satisfied that this player received a copy. Even if he had done, the booklet was in English, which he cannot read. All the BCCI’s anti-doping literature is in English only. The BCCI plans to make it available in Hindi from next year.
15. In about December 2012, the player injured his left shoulder. The dates of some events in the history are not clear but we have seen a “Shoulder Injury Report” dated 17 June 2013, prepared by Mr Ashish Kaushik of the National Cricket Academy, which refers to a “7 months history of left shoulder pain in bowling and throwing which got worse when Pradeep rolled over it in an awkward position while fielding”.

16. We therefore accept that the pain started about seven months earlier, in about December 2012. The incident when the player exacerbated the injury while fielding is likely to have been during a match against the Services team in March 2013. The player's injury was known to his teammates, coaches and doctors, and was known to the DDCA, as shown by the report of Mr Kaushik, which describes his rehabilitation and treatment. However, we have little evidence about medical treatment received by the player in the period leading up to his positive test.
17. On 23 and 24 February 2013 he attended the Goyal Medical & Heart Clinic in New Delhi and a clinic in his village called Skin Solutions. He was prescribed medication and ointment for cold and skin rashes. The next day, he signed his name to acknowledge receipt of the Rules, to consent to testing procedures and to agree to be bound by the Rules. However, the form was in English, as were the Rules. He did not read or understand the form or the Rules.
18. At some point, probably in around March 2013, the player began taking "fat burner" tablets. The period during which he took them is not clear. His evidence on all issues of timing was very unclear but we accept that his injury and consequent inactivity had led to weight gain, and that he took the fat burner tablets with the intention of losing weight. He told us that he took them when he could not bowl and his weight went up to 92 or 93 kilos, that he took 20 to 25 tablets, and that he succeeded in losing weight.
19. The player did not keep the packaging and does not remember the name of the product. He told us that the package was small, that it was light green and white in colour, and that the tablets were white. In his evidence to us, he said: "[a]fter, I lose some weight and maybe I am thinking forward for surgery. That is why I stopped them" (transcript, page 35). He told us that the team physiotherapist, Mr Andrew Leipus, told him not to take them during training, only during "rehab".

20. The player's evidence was that the gym instructor at the gymnasium in his village recommended the tablets and the player purchased them. The gym instructor knew the player was a cricketer and should not take banned substances. We accept that the player or his lawyers approached the gym instructor in the hope of obtaining evidence from him, but that he was frightened at the prospect and refused.
21. We accept the player's evidence that he believed, wrongly, that a product containing a banned substance would carry a warning to that effect on the packet, like the health warnings on cigarette packets. We accept also that he had no awareness of the risk that the fat burner tablets could contain a banned substance, and that he did not conceal his use of them from his teammates or coaches.
22. The BCCI does not dispute the player's contention that the fat burner tablets he took contained stanozolol and that this explains how that substance, prohibited both in and out of competition, entered the player's body. Indeed, the BCCI relies on the player's admission that he took the fat burner tablets for the purpose of establishing the doping offence, namely the presence of stanozolol metabolites in his body. The BCCI does not contend that the player took the tablets with intent to enhance his performance.
23. In about April 2013, the player was injected with a steroid by KKR medical staff. This was done by or with the knowledge of Mr Leipus, the team physiotherapist. The DDCA was aware of this treatment. No "Therapeutic Use Exemption" ("TUE") was applied for. It is not clear what was injected, nor on how many occasions, nor when. It is unlikely that stanozolol was injected; the player's advisers would not recommend a banned substance. It was probably a glucocorticosteroid, prohibited in competition but not out of competition.
24. On 6 May 2013, the player was randomly selected for doping control, at a team practice session at the Wankhede Stadium in Mumbai. The KKR were due to

play the Mumbai Indians there the next day. We accept the player's evidence that he had by this time ceased taking the fat burner tablets. It is not clear when he ceased taking them.

25. The player provided a urine sample which was divided into A and B samples in the usual way. The sample collection process occurred without incident. However, the player did not disclose to Dr C. S. Jayaprakash, the Doping Control Officer, that he had been taking fat burner tablets. We do not accept that he disclosed this and that Dr Jayaprakash failed to record it on the doping control form. We prefer Dr Jayaprakash's evidence that no medication or supplements were declared.
26. The player's A sample was taken to the National Dope Testing Laboratory in Delhi, which is accredited by WADA. The A sample was analysed and returned an adverse analytical finding for stanozolol. The analysis result record was dated 22 May 2013. It is not possible from the laboratory documents to deduce the amount of stanozolol ingested, nor the timing of its ingestion.
27. On 10 June 2013, International Dope Testing and Management, in Lindigö, Sweden, informed the BCCI that a Review Board had determined that there was a case to answer, as the laboratory testing procedures appeared to be sound and there was no relevant TUE. The player, meanwhile, was continuing his rehabilitation. Mr Kaushik reported a week later that he was "[e]xpected to be bowling at full intensity in 4 weeks; [e]xpected to be throwing without any restrictions in 8 weeks". However, he subsequently underwent surgery.

### **The Proceedings**

28. By letter dated 17 June 2013 the BCCI charged the player with a doping offence under Article 2.1 of the Rules, namely the presence of stanozolol metabolites in the player's sample collected on 6 May 2013. In the charge letter, the BCCI reminded the player of his right to file a request for a hearing within the time limit set by Article 7.7.1 of the Rules (14 days from receipt of

the charge letter), and set out the “Consequences” should he not do so (a period of ineligibility of two years, subject to reduction or increase under Article 10.4, 10.5 or 10.6).

29. We accept that the player only received the charge letter on 27 June 2013, as he stated in his reply dated 1 July 2013. Mr Chetan Chauhan, Vice-President of the DDCA, helped the player with the letter. As noted above, the player stated that he had taken certain products for medical reasons; that he came from a rural background; and that he did not take these medicines to enhance his performance. He asked for the B sample to be analysed. He said that if he had violated the BCCI’s anti-doping rules, it was “out of ignorance and innocence”. He provided an email address at the end of the letter.
30. We accept the evidence of Mr Chauhan that he helped the player by eliciting information from him about what substances he had taken, and that Mr Chauhan then recorded this information when producing the letter, which he drafted and gave to the player to sign; that the player told Mr Chauhan about all the substances he had been taking; and that the player’s account was more likely than not to have been truthful.
31. We accept, furthermore, that the player gave to Mr Chauhan, at the latter’s request, the prescription for skin rash treatment which was attached to the letter; and that the player’s account, more likely than not truthful, included the following information conveyed by him to Mr Chauhan, and conveyed to the Tribunal by Mr Chauhan in his evidence to us (at page 55 of the transcript):

The gym instructor in charge gave him some kind of drug. He was not aware about drugs and banned items. He wanted to lose some weight on the abdomen side and that is what he told me. He took those tablets or herbal medicines for it.
32. The B sample was analysed on 3 July 2013 at the National Dope Testing Laboratory in Delhi. The player was present but due to leave shortly for surgery in London. On 8 July 2013, his father wrote to the BCCI on his behalf saying “I would like Pradeep Sangwan to attend the hearing of Anti-Doping

Tribunal personally”. On 9 July, the laboratory reported that the B sample had also returned an adverse analytical finding for stanozolol.

33. The same day, the BCCI wrote to the player provisionally suspending him from competition, pending the decision of the Anti-Doping Tribunal. The provisional suspension was stated to “have come into effect from the date of receipt of the Notice of Charge”. The player was, at the time, not competing; he underwent surgery in London on 15 July 2013. On 1 August 2013, the BCCI wrote informing him of the result of the B sample analysis, and that an Anti-Doping Tribunal would be appointed and a hearing of the charge arranged.
34. The Tribunal members were appointed. A telephone directions hearing took place on 19 August 2013. The player confirmed that he had no objection to the composition of the Tribunal. The hearing was fixed for 26 September 2013, but the date was subsequently changed by agreement to 1 October 2013. A timetable was set for delivery of the parties’ written briefs, and other directions were given for orderly preparation for the hearing.
35. The hearing took place on 1 October 2013. The Tribunal sat in London, at the offices of Bird & Bird LLP, solicitors, and was joined by video link to the parties, who attended at the BCCI’s headquarters at the Wankhede Stadium in Mumbai. The hearing was conducted in English; neither party asked for any evidence to be given through an interpreter. The hearing was simultaneously transcribed and lasted about five hours, with some short breaks.
36. At the hearing, the Tribunal considered first the question raised by Mr Singhania, for the player, as to whether the Tribunal had jurisdiction to hear and determine the charge. The BCCI submitted that we had jurisdiction to determine the period of ineligibility. For reasons given below, we decided that we did have jurisdiction and that it was our duty to proceed with the evidence and decide on the length and starting date of any period of ineligibility.

37. We heard oral evidence from the player, who attended the hearing in Mumbai. We then heard evidence by telephone from Mr Chethan Chauhan, Vice-President of the DDCA, and from Dr C. S. Jayaprakash, the doping control officer who collected the player's sample on 6 May 2013. Some of the evidence, particularly of Dr Jayaprakash, was not sufficiently audible to be faithfully transcribed, but we believe we understood correctly the sense of all the evidence.
38. We then heard closing submissions from Mr Mascarenhas, for the BCCI and finally from Mr Singhanian, for the player. We then deliberated in private and at the conclusion of the hearing announced our decision orally to the parties, with the written reasons to follow. As the transcript shows, the parties were informed that the Tribunal's decision was that a period of ineligibility should be imposed on the player for a period of 18 months, starting on the date of the sample collection, 6 May 2013, and expiring on 5 November 2014.

### **The Tribunal's Conclusions, With Reasons**

39. The following matters were either formally agreed or not contested and, subject to the Tribunal having jurisdiction to hear the case, were uncontroversial:
- (1) that the Rules are binding on the player;
  - (2) that stanozolol is prohibited in and out of competition;
  - (3) that a doping offence has been established by the presence of stanozolol metabolites in the player's body;
  - (4) that this was the player's first offence;
  - (5) that unless the player could bring himself within Article 10.5 of the Rules, there would be a mandatory period of ineligibility of two years.

40. The written and oral submissions of the parties made it clear that the issues the Tribunal had to decide, or might have to decide, were these:

- (1) whether the Tribunal has jurisdiction to hear and determine the charge against the player (the further issues arising only if it does);
- (2) how the stanozolol entered the player's body;
- (3) whether the player can succeed in establishing "No Fault or Negligence" within Article 10.5.1 of the Rules, and thereby eliminate any period of ineligibility;
- (4) if not, whether the player can succeed in establishing "No Significant Fault or Negligence" within Article 10.5.2 of the Rules, and thereby reduce the otherwise mandatory two year period of ineligibility by up to one half;
- (5) the length of any period ineligibility to be imposed on the player; and
- (6) the start date for any period of ineligibility to be imposed on the player.

*The first issue: jurisdiction of the Tribunal*

41. The player submitted that the Tribunal had no jurisdiction to hear and determine the charge, because the BCCI had not specified the length of the period of ineligibility it regarded as appropriate, either in the charge letter or in its opening brief. Mr Singhania pointed out that Article 8.1.2 provides for a case to be referred to an Anti-Doping Tribunal where a player "denies the allegation and/or disputes the Consequences ...."

42. Mr Singhania submitted that this player has done neither. He admits the allegation and has not disputed the "Consequences" because the BCCI has not specified what those consequences should be. He submitted that it was for the BCCI to propose a penalty and if it is agreed by the player, the Tribunal's

jurisdiction is not invoked and the penalty comes into effect without the need for a hearing. He suggested that the BCCI's disciplinary committee was the right body to decide on the appropriate penalty, and invited the BCCI to propose a penalty so that he could take instructions on whether it was agreed.

43. Mr Mascarenhas, for the BCCI, responded that it was not for the player to deny the Tribunal's jurisdiction; the hearing was only taking place because the player had asked for it. The BCCI had specified in the charge letter that the mandatory two year period of ineligibility would apply, unless the player could succeed in displacing it by successfully invoking the provisions for reduction of the two year period.
44. He submitted that the player had responded to the charge by seeking to do exactly that. He also referred us to Article 7.2.5 which provides that if (as in this case) the B sample analysis confirms the result of the A sample analysis, the matter "shall proceed to a hearing in accordance with Article 8". He added that the BCCI's disciplinary committee has no power to propose or impose any penalty, but that the BCCI would not object to a period of ineligibility limited to one year.
45. In our view it is clear that we have jurisdiction to hear and determine the charge, and that we are not bound by the common position of the parties that the appropriate period of ineligibility is one year (starting from a date to be determined by the Tribunal). The charge letter includes, under the heading "Consequences", notification to the player that (among other things) if he should fail to respond to the charge within the time limit, a period of ineligibility would be imposed.
46. That period of ineligibility is then stated in the charge letter to be two years unless reduced in accordance with Article 10.4 (which is not applicable here, stanozolol not being a Specified Substance) or Article 10.5 (on which the player relies); or unless increased under Article 10.6 (aggravating circumstances which

are not applicable here). The player responded (within the time limit) asking for leniency, i.e. by plain implication a ban of less than two years.

47. We are clear that the player thereby “dispute[d] the Consequences” within Article 8.1.2, with the result that, as he himself requested, the case stood “referred to an Anti-Doping Tribunal for adjudication”, under Article 8.1.2. Any other interpretation of the Rules, the charge letter, and the player’s response to it, would be unduly technical and unrealistic. It follows that the hearing was correctly convened.
48. The Tribunal is clear, also, that it is not bound to decide the case in accordance with the common position of the parties that the period of ineligibility should be one year (starting from a date to be determined by the Tribunal, which the player submitted should be 6 May 2013; the BCCI was neutral on the issue of the start date). A one year ban entails the conclusion that the player can bring his case within Article 10.5.2 (no Significant Fault or Negligence).
49. By Article 8.1.2, whether he can or not is for the Tribunal, not the parties, to decide. The player has to satisfy the Tribunal “by a balance of probability” (Article 3.1.2) that he satisfies the conditions for the application of Article 10.5.2, or indeed Article 10.5.1. To do so he can use “any reliable means, including admissions” (Article 3.2); but the Tribunal must decide whether it considers any admissions to be reliable.
50. For those reasons, we informed the parties at the hearing that we have jurisdiction to hear and determine the charge and that it was our duty to hear the evidence and decide on the appropriate period of ineligibility, including both the length and the starting date. We then invited the parties to present their evidence and submissions, and they did so.

*The second issue: how stanozolol entered the player’s body*

51. Under both Article 10.5.1 and Article 10.5.2, in order to achieve elimination or reduction of the two year period of ineligibility, the player must show, on the balance of probabilities, “how the Prohibited Substance entered his/her system”. Both the player and the BCCI submit that the most likely explanation for the presence of stanozolol metabolites in the player’s urine sample is that the player took fat burner tablets; that they contained stanozolol; and that stanozolol remained in his body when the sample was collected on 6 May 2013.
52. After careful consideration, we are prepared to accept the contention of both parties that, on the balance of probabilities, this is the most likely explanation for the adverse analytical finding. There are other possible explanations – for example, that the player deliberately doped himself, or that he was inadvertently doped by injection of a steroid during his medical treatment – but they are less likely to be the true explanation.
53. The first part of the explanation is that the player took fat burner tablets. We accept his evidence to that effect. It is unusual not to have any evidence from the provider of the tablets, in this case the gym instructor. It is even more unusual not to have evidence of the product ingested and the packaging. Normally, these omissions would be likely to disable the player from meeting his burden of proof.
54. However, in this case, we have not only the account of the player himself but that of Mr Chauhan. His evidence of information given to him by the player is convincing. We accept that the account given by the player to Mr Chauhan was full and frank, and it was supported by evidence, as far as the player was able to provide evidence. We accept that the player disclosed to Mr Chauhan every substance he could recall taking, and that Mr Chauhan recorded this information accurately in the letter dated 1 July 2013 which he prepared for the player’s signature.

55. The second part of the explanation is that the fat burner tablets contained stanozolol. We have no direct evidence to this effect, but it is quite common for supplements to be contaminated with a banned substance in an unregulated market, and we have no evidence of any other more likely source of stanozolol than the fat burner tablets.
56. We do not think the player is a dope cheat. He has been tested about 10 to 15 times, always with negative result until this case. He was not bowling in competitive cricket during part of March 2013, nor in April 2013, due to his injury. He had little motive to cheat in order to enhance his performance at a time when he was not bowling. On the other hand, he had a clear motive to attempt weight loss or avoidance of weight gain.
57. Nor do we believe that his medical advisers would be likely to have inadvertently injected him with stanozolol; still less, deliberately. Nor is it likely that medication for a common cold or for skin rashes would contain stanozolol. By a process of elimination, we conclude that the fat burner tablets are the most likely source.
58. The third and final part of the explanation is that stanozolol remained in the player's body on 6 May 2013 when his urine sample was collected. This is a more difficult issue, since the evidence about the period during which he took the fat burner tablets was wholly unclear. We did not have scientific evidence of the quantity of any stanozolol in the fat burner tablets, nor of the exact time it would have taken for stanozolol to be completely eliminated from the body, but we are aware that it does not take long to leave the body.
59. The player's evidence about the timing of his ingestion of the fat burner tablets was unclear. He is generally vague on questions of timing. We accept that he consumed about 20 to 25 tablets from some time in March 2013 onwards. We are just persuaded on the balance of probabilities that the player must have

taken the fat burner tablets up to a date close enough to 6 May 2013 for some stanozolol to remain in his body and produce the positive test result.

60. It follows that the player is entitled to raise the issue of “No Fault or Negligence” under Article 10.5.1, and the issue of “No Significant Fault or Negligence” under Article 10.5.2, in an attempt to achieve elimination or reduction of the otherwise mandatory two year period of ineligibility.

*The third issue: No Fault or Negligence*

61. We can deal with this issue briefly. We are clear that the player cannot come close to establishing that he bore “No Fault or Negligence” for the doping offence. This would require the player to establish “that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance ...” (the definition in Appendix 1).
62. By Article 18.4, the Rules are to be interpreted in a manner that is consistent with the ICC’s Anti-Doping Code, which in turn is based on the WADA Code. The comments annotating equivalent provisions of the WADA Code “shall (if necessary) be used to assist in the understanding and interpretation of the Rules” (Article 18.4). The commentary to Article 10.5.1 and 10.5.2 provides helpful guidance on the narrow scope of Article 10.5.1.
63. That commentary, and case law before the Court of Arbitration for Sport (“CAS”) which it is unnecessary to cite here, shows that cases of contaminated supplements and of inadvertent doping through medical treatment may fall within Article 10.5.2 - as to which see below – but would not fall within Article 10.5.1. A case could come within Article 10.5.1 “where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor”; but not where the sabotage was by a “spouse, coach or other Person within the Athlete’s circle of associates”.

64. As the commentary continues, the reason for the latter proposition is that “Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink”. They are also “responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance”.
65. In the present case, the player was clearly at fault to some degree by taking the fat burner tablets without any further precaution than an enquiry from the gym instructor. He made no attempt to check whether the tablets contained a banned substance. The player is responsible under the Rules for any fault on the part of the gym instructor in failing to draw his attention to the risk that the tablets might contain a banned substance.
66. For those reasons, the player cannot come near to bringing his case within Article 10.5.1. He cannot show that he bore “No Fault or Negligence” for the presence of stanozolol metabolites in the urine sample collected from him on 6 May 2013. It follows that he is unable to achieve the elimination of any period of ineligibility.

*The fourth issue: No Significant Fault or Negligence*

67. The next issue is whether the player can bring his case within Article 10.5.2 of the Rules, by establishing that he bore “No Significant Fault or Negligence” for the doping offence. This would require him to show that “his/her 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” (the definition in Appendix 1).
68. There are many cases in which players have relied, successfully and unsuccessfully, on Article 10.5.2 and its equivalents in the WADA Code and in the anti-doping rules of other sports derived from the WADA Code. We do not think it would be helpful to recite them. Each of them ultimately turns on its own facts.

69. The commentary on Article 10.5.1 and 10.5.2 in the WADA Code, referred to above, makes it clear that cases of inadvertent doping through contaminated supplements or through medical treatment can, depending on the facts, justify the conclusion that an athlete's fault was not "significant" in the sense defined in Appendix 1 to the Rules. It is a question of fact and degree whether that conclusion is justified or not.
70. The player relied on three cases; *Akhtar and Asif v. Pakistan Cricket Board*, 5 December 2006, a decision of the Anti-Doping Appeals Committee of the Pakistan Cricket Board; *Drug Free Sport New Zealand v. Jesse Ryder*, 19 August 2013, a decision of the Sports Tribunal of New Zealand; and *Drug Free Sport New Zealand v. Taani Prestney*, 15 December 2011, also a decision of the Sports Tribunal of New Zealand.
71. In each of those cases, the analysis was different. In the two New Zealand cases, the substances were "Specified Substances"; the issue arose as to whether the athletes could show lack of intent to enhance sport performance; and the range of possible bans was from zero to 24 months, rather than from 12 to 24 months as in this case. In the Pakistan case, the criteria of "no fault or negligence" and "no significant fault or negligence" did not apply at all.
72. We therefore find the cases relied upon by the player of little assistance. The point of most interest is that in the *Ryder* case a professional cricketer with greater knowledge of anti-doping and a more "internet-savvy" approach to research than this player was – generously to him, in our view - banned for only six months, in a range from zero to 24 months, where his purpose in taking the product concerned was weight loss, which was not equated with enhancement of performance.
73. Here, the player submits that his fault was not significant because he lacked knowledge of prohibited substances; the ingestion was inadvertent; he was open about his use of the tablets; he promptly admitted the rule violation; he did not

intend to enhance his performance; he was reliant on the DDCA and his team medical staff; he had received no anti-doping education; and his command of English was limited (see paragraph 6.3.3 of the player's defence brief, as developed in paragraphs 6.4-6.10 and in oral submissions).

74. The player also asked the Tribunal to take into account, as evidence of a general lack of sophistication on the part of the relevant cricket authorities in anti-doping matters, that no TUE for the player had been applied for by the DDCA or anyone else before he was injected with a steroid – probably a glucocorticosteroid prohibited in competition - in or about April 2013.
75. The BCCI did not accept that the player had received no anti-doping education; but it was not able to point to any evidence that it or the DDCA or anyone else had asked him to attend any anti-doping seminar or discussion, or provided any written materials other than a copy of the Rules, with a form consenting to be bound by them, in a language he could not read and of which he could speak only to a limited extent.
76. We accept Mr Singhania's submission that anti-doping education in Indian cricket has not yet permeated through to all players. We are conscious that in other sports such as international tennis, a high degree of personal anti-doping education is provided to each player through distribution of written materials in several languages, the holding of seminars and repeated drawing of players' attention to many available sources of information including websites and telephone help lines.
77. This degree of anti-doping education has not yet been achieved in cricket in India, even at the level of the IPL, which is the highest level of domestic competition. The player did have the experience of having been tested a number of times, and knew that he must avoid taking banned substances, as the Rules provide. But his ignorance of what substances are banned and what

products may contain them, is to some extent excused by an absence of anti-doping education and lack of fluent English.

78. The Tribunal notes that this is the first case under the Rules in which an Indian player in the IPL has tested positive for a banned substance and the matter has come before an Anti-Doping Tribunal. It will become more and more difficult in future for players to plead ignorance of anti-doping as a mitigating factor, as knowledge and education about anti-doping in India increase.
79. We conclude that in this case, the player is able to show that his fault and negligence was not “significant”. The player was at fault for trusting his gym instructor, but his fault was not significant when viewed in the totality of the circumstances. These include, in addition to the points already mentioned, the fact that the player was injured, that the fat burner tablets were taken out of competition, and that his motive was to lose weight rather than directly to enhance his performance.
80. In reaching that conclusion, we do not mean to belittle or criticise the efforts of the BCCI to fulfil its responsibility for anti-doping education in Indian cricket. India is a vast country, with many different languages and cultures, in which the national sport has only in the last five years become subject to the WADA anti-doping regime. It is likely that in any future cases the level of anti-doping education will be higher.
81. The player has succeeded in bringing his case within Article 10.5.2 and we therefore have discretion to reduce the length of his ban by up to one half, in the range from 12 months to 24 months.

*The fifth issue: length of period of ineligibility*

82. The fifth issue we have to decide is how long the period of ineligibility should be, within that range. It is well established that the criterion of personal fault is the determinant of the appropriate period. The issue is “the degree to which the

Athlete has departed from the standards of behaviour expected of him or her” (*Kendrick v. ITF*, CAS/2011/A/2518, 10 November 2011, at paragraph 10.16).

83. Once again, each case depends upon its own facts and the CAS has frequently emphasised that precedents are of limited value. In the present case, we have already set out above the factual points relied upon by the player in support of his contention that the degree of fault was small. We take them into account. We also take into account, but are not bound by, the indication from the BCCI that it would not object to the minimum period of ineligibility, namely one year.
84. However, we feel unable to accede to the suggestion that the minimum period of one year should be imposed in this case. The degree of fault was quite high, albeit not reaching the level of “significant” for the purposes of Article 10.5.2. The starting point, as always, is the player’s personal responsibility to acquaint himself with the Rules and abide by them. Ignorance can excuse his failure to do so only up to a point.
85. We take into account that the player, though young, has been involved in professional cricket for some years and has considerable experience of being tested. He plays cricket at the highest level of domestic competition. He has also played at international level, as an under 19 player. He has the benefit of advice from qualified professionals with the very knowledge of anti-doping which he himself lacks.
86. He ought to have taken the advantage he has of access to that degree of professional advice. He was, rightly, aware of his obligation to avoid taking banned substances, and could easily have avoided the risk he ran by asking for advice from the DDCA, the BCCI or the KKR medical staff. He ought not to have trusted the gym instructor to provide a product for him to take, without making further checks that it was safe to take it.
87. In all the circumstances, and after careful reflection, we consider that the appropriate period of ineligibility is one of 18 months, which represents the

mid-point in the range within which we have discretion. We informed the parties at the end of the hearing that this was our conclusion.

*The sixth issue: starting date of period of ineligibility*

88. The player submitted that he made a prompt admission of the doping offence when confronted with it, such that under Article 10.9.2 the period of ineligibility may be backdated as far as the date of sample collection, which was 6 May 2013. The BCCI was neutral on the question when the period should start and was content to leave the issue to the Tribunal.
89. In our view, the player's letter of 1 July 2013 responding to the charge can be fairly interpreted as a prompt admission of the doping offence. It would not be appropriate to interpret that letter in a technical way. The letter did not expressly state that the charge was admitted and asked for analysis of the B sample, but candidly stated all the substances the player had taken, stated that any violation was out of "innocence and ignorance", and asked for leniency.
90. In our view, that is just sufficient to amount to a prompt admission of the doping offence. Although it is unusual to ask for the B sample to be analysed while not denying the offence, the letter of 1 July 2013 was written with the assistance of Mr Chauhan but not after receipt of legal advice. Mr Chauhan is a distinguished former international cricketer but is not, as far as we are aware, a lawyer.
91. In the circumstances, we are prepared to exercise our discretion under Article 10.9.2 to backdate the period of ineligibility to 6 May 2013, and we so informed the parties at the conclusion of the hearing.

**The Tribunal's Ruling**

92. Accordingly, for the reasons given above, the Tribunal:

- (1) confirms the commission of the doping offence charged in the BCCI's letter of 17 June 2013;
- (2) finds that the player has succeeded in establishing by a balance of probability how the prohibited substance entered his body;
- (3) finds that the player has not succeeded in showing that he bore No Fault or Negligence in respect of the doping offence;
- (4) finds that the player has succeeded in showing that he bore No Significant Fault or Negligence in respect of the doping offence; and
- (5) declares the player ineligible for a period of 18 months commencing on 6 May 2013 and expiring at midnight (Mumbai time) on 5 November 2014 from participating in any capacity in any event or activity (other than authorised anti-doping education or rehabilitation programmes) or competition authorised, organised or sanctioned by the BCCI or any of the other bodies referred to in Article 10.10.1 of the Rules.

93. In accordance with the provisions of the Article 13 of the Rules, this decision may be appealed to an Appeal Panel by the player or any of the bodies referred to in Article 13.2. If no other party appeals, the WADA and the ICC may appeal this decision directly to the Court of Arbitration for Sport pursuant to Article 13.6.1.

**Tim Kerr QC, Chairman**

**Marie Demetriou QC**

**Dr José Antonio Pascual**

**Dated: 18 October 2013**