

Anti-Doping Appeal Panel

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

To,

Date: 04.12.2023

Mr. Viknesh,
S/o Mr. Maria Star
R/o 11-1, Kootta Panai,
Poothurai Vilavancode,
Kanyakumari, Tamil Nadu - 629176
Email:- vikneshmaria27@gmail.com

Subj: Decision of the Anti-Doping Appeal Panel Case No.-36/ADAP/2023

NADA VS. MR. VIKNESH (ADAMS ID: - VIVIMA14391)

The order containing the decision of the Anti-Doping Appeal Panel dated 02.12.2023 in respect of final hearing of the above case held on 29.11.2023 is enclosed.

The receipt of this communication may be acknowledged.

Encl: 03 sheets.



(Yasir Arafat)

Senior Programme Associate

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

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. Secretary General, All India Football Federation, Football House, Sector-19, Phase 1, Dwarka, New Delhi: 110075.
3. Federation International de Football Association, FIFA – Stresse 20, PO Box 8044.
4. National Anti-Doping Agency, J.L.N Stadium, Gate No. 10 Hall No.103, Lodhi Road, New Delhi 110003.

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

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 36/ADAP/2023

IN THE MATTER OF:

Viknesh
(Football)

...APPELLANT

Vs

National Anti-Doping Agency

...RESPONDENT

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

Present: Mr. Viknesh, Athlete with Mr. Martin Stanislas.
Ms. Manpreet Kaur Bhasin Advocate with Mr. Yasir Arafat, Law Officer
for NADA.

Date of Hearing: 29.11.2023

Date of Order: 02.12.2023

FINAL ORDER

1. The Appellant Mr. Viknesh (Athlete) has filed an appeal against the order dated 05.04.2023 passed by the Anti-Doping Disciplinary Panel in Case No.- 255.ADDP.2022 (“Impugned Order”).

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

(i) The Dope Test of the Appellant was carried out during “36th National Games 2022” at Ahmedabad, Gujarat by the Dope Control Officer, National Anti-Doping Agency (hereinafter as the “NADA”). The Urine sample of Appellant upon collection was split into two parts A and B with a reference numbers assigned to them being “A 6501294” i.e. Sample ‘A’ and “B 6501294” i.e. Sample ‘B’. Thereafter, the Sample A i.e. A 6501294 was sent to National Dope Testing Laboratory, Delhi (in short “NDTL”) which is a World Anti-Doping Agency (WADA)-accredited laboratory. The said sample ‘A’ was duly analysed by the NDTL, in accordance with the procedures set out in the

WADA's International Standard for Laboratories. The Analysis of Sample 'A' returned an Adverse Analytical Finding (AAF) for the following:

“S3. Agonists / terbutaline”

(ii) Consequently, NADA issued Notification of Adverse Analytical Finding dated 12.11.2022 for violation of Article 2.1 and/or Article 2.2 of the ADR, 2021 to the Appellant. The Appellant was not provisionally suspended during the pendency of disciplinary proceedings before the NADA; however, the NADA allowed the Appellant to voluntarily accept a Provisional Suspension in terms of Article 7.4.4 of ADR, 2021. The Appellant was also informed regarding his right / opportunity to file an explanation to the said Notification on or before 26.11.2022. The Appellant did not file any explanation to the said Notification within the stipulated time period. Thereafter, the Respondent issued a Notice of Charge vide Letter dated 20.12.2022 to the Appellant for violation of Article(s) 2.1 and 2.2 of ADR, 2021. In the said Notice of Charge, the Appellant was again granted opportunity to file response by no later than 08.01.2023. Lately, in response to the said Notice of Charge dated 20.12.2022, the Respondent filed its Reply dated 06.02.2023 with a subject, “Request to withdraw doping allegations and disciplinary charges/Explanation regarding the notice letter No. K-11/5/2022-SPO dated 20-12-2022”, alongwith certain documents such as copy of medical prescription dated 22.09.2022 (in vernacular language) and Kerala Santosh Trophy Final Round List 2022-23, to the Appellant.

3. We have heard both the parties at length. The Appellant has submitted that on account of fever and cough the Appellant visited one Dr. Justin who prescribed Ascoril Syrup which contained the prohibited substance called Terbutaline. Further, it is submitted that the Appellant was completely unaware that the said Syrup contained prohibited substance and that is the reason the Appellant did not mention any medical prescription in the doping control form. The Appellant also submitted that this is the first-time the Appellant has been charged for anti-doping rule violation. Further, it is submitted that the Appellant is just a 12th grade pass out and comes from a poor background. The Appellant has relied upon case of an individual athlete namely Subrata Paul; however, it appears that the Appellant has neither filed any copy of the decision nor media report or provided any citation / date of the decision, even though as per the Index of Appeal a media report of Subrata Paul case is stated to be annexed as Annexure A-3. The Appellant did not challenge the presence of Prohibitive Substance.

4. On the other hand, Ms. Manpreet Kaur Bhasin, Advocate on behalf of NADA submitted that the prohibited substances were found in urine sample of the Athlete and under Article 2.1.1 it is an athlete's responsibility to ensure that no Prohibited Substance enters his/her body. Further, it was submitted by the NADA that the Prohibitive Substance found is listed under S3 of WADA's 2022 Prohibited List under the class of Specified Substances. The Respondent submitted that the Appellant Athlete did not have a Therapeutic Use Exemption (TUE) as such the substance found in-competition. It was submitted that the medical documents, as submitted by the Appellant Athlete, does not

satisfy the presence of Prohibitive Substance in the Appellant' Urine Sample. The Respondent also submitted that the Appellant admitted the consumption of prohibitive substance and the appellant has not exercised any, much less the basic degree of caution expected of an athlete at this level. It is further submitted by NADA that the violation of Rules has taken place and the Appellant is liable for sanctions under the applicable rules.

5. In the present case, the Appellant has consumed the Prohibited Substance and has also not challenged the fact of presence of Prohibitive Substance. The Appellant failed to produce any evidence to substantiate that the doctor was duly informed regarding the status of Appellant as an 'Athlete' so that he must not be prescribed any prohibited medicines. We cannot lose sight of the fact that "S3. Agonists / terbutaline", is listed under S3 of WADA's 2022 Prohibited List under the class of Specified Substances. Therefore, we are of the view that the Appellant showed complete negligence by not inquiring properly about the contents of medicines allegedly consumed by him. The Appellant failed to disclose the true source of the Prohibitive Substance, the ground of medication as taken by the Appellant is an after thought in light of the medical prescription dated 22.09.2022 which is 17 days prior to the date of sample collection i.e. 10.10.2022 during "36th National Games 2022" at Ahmedabad, Gujarat. Even otherwise the Appellant has not led any evidence to show that the substance in question was contained in any of the medicines ingested by him. The Appellant has not obtained any TUE either.

6. On careful scrutiny of the documents placed before this Appellate Panel, it is found that there is discrepancy in the operational part of the impugned judgment dated 05.04.2023, which is regarding the commencement of two (2) years of ineligibility as there is no such provisional suspension imposed by the Respondent nor any voluntary acceptance of provisional suspension in terms of Article 7.4.4 of ADR, 2021. Therefore, this Appellate Panel corrects the discrepancy in following terms hereafter.

7. We are of the considered opinion that the Appellant has committed an ADRV under Article 2.1 and Article 2.2 of the Anti-Doping Rules, 2021. Therefore, the Order dated 05.04.2023 in Case No. 255.ADDP.2022 passed by Anti-Doping Disciplinary Panel is upheld and the Appellant shall undergo ineligibility period of two (2) years from the decision of Anti-Doping Disciplinary Panel which is 05.04.2023. We also direct that under Article 10.10 all other competitive results obtained by the Appellant from the date of sample collection i.e. 10.10.2022 shall be disqualified with all resulting consequences including forfeiture of medals, points and prizes. A copy of the order be uploaded on the website of the NADA, and a copy be sent to the Appellant through all mode i.e. registered post and electronic mail.



Prashanti Singh
Member



Dr. Vivek Singh
Member



Abhinav Mukerji
Chairman