



Arbitration CAS ad hoc Division (OG Rio) 16/025 World Anti Doping Agency (WADA) v. Narsingh Yadav & National Anti-Doping Agency (NADA), award of 21 August 2016 (operative part of 18 August 2016)

Panel: Mr Mark Hovell (United Kingdom), President; Mr Jinwon Park (South Korea); Mrs Andrea Carska-Sheppard (Czech Republic)

Wrestling

Doping (methandienone)

Time when the dispute arises

Dispute “in connection with” the Olympic Games

Type and weighing of evidence

1. When WADA is challenging with the ad hoc Division the decision of a national anti-doping organisation’s anti-doping body to exonerate an athlete from the charges of violating the anti-doping rules of the national anti-doping organisation, it is the day of that decision that triggers the time when the dispute arises. It is not the date of the out-of-competition testing that led to the decision or of the decision to provisionally suspend the athlete.
2. The decision to exonerate an athlete from the charges of violating the anti-doping rules of the national anti-doping organisation and to allow him or her to participate in the Olympic Games is clearly “in connection with” the Olympic Games.
3. A CAS panel can accept both circumstantial evidence and witness evidence and, indeed, other evidence, but it is for the panel to determine what weight to attach to all the evidence before it and the panel can only be guided by the evidence proffered by each party in support of its case.

1. PARTIES

- 1.1 The Applicant is the World Anti-Doping Agency (“WADA”), based in Montreal, Canada, the organisation responsible for anti-doping in the world.
- 1.2 The First Respondent is Mr. Narsingh Yadav (the “Athlete”), a wrestler from India.
- 1.3 The Second Respondent is the National Anti-Doping Agency (“NADA”), based in New Delhi, India, the organisation responsible for anti-doping in India.

- 1.4 The First Interested Party is the United World Wrestling (the “UWW”) based in Corsier-sur-Vevey, Switzerland, the organisation responsible for the sport of wrestling in the world.
- 1.5 The Second Interested Party is the Indian Olympic Association (the “IOA”) based in New Delhi, India, the National Olympic Committee for India.

2. FACTS

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 On 12 April 2016, Mr Jithesh entered the wrestlers’ training facility at Sonapat, where he remained until 30 June 2016.
- 2.3 On 19 May 2016, the Regional Director of the Northern Regional Centre wrote to the Director General of the Sports Authority of India, expressing her concerns about the “ongoing issue” between the Athlete and Mr Sushil Kumar (his competitor and rival), suggesting that they did not train in the same facility.
- 2.4 On 5 June 2016, Mr Chandan (a wrestling partner of the Athlete) alleged that Mr Jithesh (a junior wrestler and a member of Mr Sushil Kumar’s entourage) was in the kitchen of the wrestlers when he was not supposed to be there. When he saw Mr Chandan, Mr Jithesh ran away. Mr Chandan alleged that the curry prepared for the Athlete had been contaminated with a powder, so he threw it away. Mr Chandan failed to mention this at that time to the Athlete.
- 2.5 On 6 June 2016, the Athlete left Sonapat to travel to Bulgaria, returning to Sonapat on 23 June 2016.
- 2.6 On 6 June 2016, a legal challenge brought by Mr Sushil Kumar against the selection of the Athlete for the 74 kg Men’s Free Style wrestling event at the Rio 2016 Olympic Games (the “Rio Games”) was dismissed by the High Court of Delhi.
- 2.7 On either 23 or 24 June 2016, the Athlete alleged that his energy drink was contaminated by Mr Jithesh.
- 2.8 On 25 June 2016, an out of competition anti-doping test sample of urine was collected from the Athlete and given number 6175961. On the same day, the Athlete’s roommate and training partner, Mr Sandeep Yadav, was also tested.
- 2.9 On 5 July 2016, another out of competition anti-doping test sample of urine was collected from the Athlete and given number 6174047.
- 2.10 On 15 July 2016, the A sample from 6175961 was tested and revealed the presence of metabolites of methandienone (Methandienone Met 2 (17-epi-metandienone), Methandienone

Met 3 (6b Hydroxymethandione) and long term metabolite (LTM) of Methandienone (17-beta Hydroxy methyl 17 alpha methyl-18 norandrost-1, 4, 13- triene-3-one)). Mr Sandeep Yadav's sample returned a similar finding, however his test revealed the parent substance (methandienone) too.

- 2.11 On 16 July 2016, the Athlete was provisionally suspended.
- 2.12 On 22 July 2016, the B sample from 6175961 was tested and confirmed the finding of the A sample.
- 2.13 On 22 July 2016, the A sample from 6174047 was tested and revealed the presence of the long term metabolite of methandienone (17-beta Hydroxy methyl 17 alpha methyl-18 norandrost-1, 4, 13-triene-3-one). The Athlete accepted this finding and the B sample was not tested.
- 2.14 On 23 July 2016, the Athlete provided NADA with a list of various food and nutritional supplements that he was taking, requesting that these be tested by NADA at the National Dope Testing Laboratory in New Delhi.
- 2.15 On 26 July 2016, the Laboratory's report noted that no banned substance was detected in any of these supplements.
- 2.16 On 26 July 2016, the Athlete filed a complaint with the police alleging he has been the victim of sabotage.
- 2.17 On 27 July 2016, the Athlete pleaded his innocence to NADA on the grounds that he had been the victim of sabotage by Mr Jithesh. He alleged that Mr Jithesh had mixed some of the prohibited substance into the Athlete's energy drink.
- 2.18 Between 23 and 29 July 2016, the Anti-Doping Disciplinary Panel (the "ADDP") of NADA convened 4 hearings before rendering its decision on 1 August 2016 (the "ADDP Decision") concluding that:

"...the athlete deserves the benefit of Article 10.4 of the Anti-Doping Rules of NADA 2015 as there is no fault or negligence on his part and he is a victim of sabotage done by a competitor.

Therefore, keeping in view of the facts and circumstances said above, the Panel exonerates the athlete from the charges of violating Anti-Doping Rules of NADA".
- 2.19 The Panel notes that the ADDP heard from Messrs Paswan, Rahul Kumar and Pankaj Kumar, who confirmed the presence of Mr Jithesh in the kitchen where they worked on 5 June 2016. Mr Paswan saw Mr Jithesh pour a powder into the curry and Mr Pankaj Kumar saw it "*frothing unusually*". Finally, Mr Rahul Kumar also confirmed the presence of Mr Jithesh in the kitchen.

3. CAS PROCEEDINGS

3.1 On 13 August 2016 at 13.40 (time of Rio de Janeiro), WADA filed an application with the CAS Ad Hoc Division against the ADDP Decision.

3.2 On 13 August 2016 at 19.00 (time of Rio de Janeiro), the CAS Ad Hoc Division notified the Parties of composition of the Panel:

President: Mr. Mark A. Hovell, United Kingdom

Arbitrators: Mr. Jinwon Park, South Korea

Mrs. Andrea Carska-Sheppard, Slovakia/Canada

3.3 In the same communication, the Panel directed the Respondents to provide their replies to WADA's application and the Interested Parties their amicus curiae before 15 August 2016 at noon (time of Rio de Janeiro). Moreover, such communication called the parties to a hearing on 16 August 2016 at 09.00 (time of Rio de Janeiro). Finally, the Respondents were advised of the possibility to utilise the services of pro bono counsel in Rio.

3.4 On 15 August 2016 at 12.30 (time of Rio de Janeiro), as neither of the Respondents had filed an Answer, nor had the Interested Parties filed an amicus curiae, the CAS Ad Hoc Division contacted the International Olympic Committee to ask it to make contact with the IOA direct in order to ensure that the Respondents were fully aware of WADA's application and the procedural calendar.

3.5 On 15 August 2016 at 16.30 (time of Rio de Janeiro), the CAS Ad Hoc Division spoke with Mr Gupta Rakesh, the Chef de Mission – India, who confirmed that the Athlete was now aware of WADA's application.

3.6 On 15 August 2016 at 20.00 (time of Rio de Janeiro), Mr Rakesh, on behalf of the Athlete, requested a 15 day extension to furnish his response, as his lawyer in India had not received the application with today being a public holiday in India.

3.7 On 16 August 2016 at 03.30 (time of Rio de Janeiro), NADA requested 3 further days to file its response.

3.8 On 15 August 2016 at 08.45 (time of Rio de Janeiro), the Athlete filed his Answer.

3.9 On 16 August 2016, at 09.00 (time of Rio de Janeiro), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr Brent Nowicki, Counsel to the CAS, and following persons also attended the hearing: for WADA, Messrs Ross Wenzel and Jean-Pierre Morand, both Counsel and Mr Julien Sieveking, the Legal Director of WADA (in person); and for the IOA, Messrs Rajeev Mehta and R. K. Sacheti. At the hearing WADA were asked for its position regarding the applications for extensions. Its position was that only a short extension should be granted so a full hearing could proceed on the merits before the Athlete was due to compete on 19 August 2016 or, if a longer extension was to be granted, then the

Athlete should be provisionally suspended by the Panel. The Panel determined to adjourn the hearing for 2 days.

- 3.10 On 16 August 2016 at 10.45 (time of Rio de Janeiro), the Panel directed NADA to provide its response to WADA's application before 17 August 2016 at 12.00 (time of Rio de Janeiro). Moreover, such communication called the parties to a hearing on 18 August 2016 at 15.00 (time of Rio de Janeiro). Additionally, the Panel pointed out to the Athlete that he could request the Panel to refer the case to the CAS in Lausanne in order to have more time to prepare for a hearing on the merits, but that if the Panel granted such request, it would then hear the Parties at the reconvened hearing on the question of whether to provisionally sanction the Athlete pending such hearing.
- 3.11 On 17 August 2016 at 12.00 (time of Rio de Janeiro), NADA filed its Answer.
- 3.12 On 17 August 2016 at 15.20 (time of Rio de Janeiro), the Athlete filed supplemental submissions in support of his Answer.
- 3.13 On 17 August 2016 at 19.20 (time of Rio de Janeiro), WADA filed a copy of a study on the long term metabolite of methandienone and the Registered Testing Pool list for wrestling 2016.
- 3.14 On 17 August 2016 at 19.50 (time of Rio de Janeiro), WADA filed a copy of *CAS OG 06/001* in support of its position regarding the jurisdiction of the CAS Ad Hoc Division in the case at hand.
- 3.15 On 18 August 2016 at 08.45 (time of Rio de Janeiro), the Athlete filed a copy of a different study on the long term metabolite of methandienone.
- 3.16 On 18 August 2016, at 15.00 (time of Rio de Janeiro), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr Antonio De Quesada, Counsel to the CAS, and following persons also attended the hearing: for WADA, Mr Jean-Pierre Morand, Counsel and Mr Julien Sieveking, the Legal Director of WADA (in person); for the Athlete (who could not attend personally, as he was preparing for the competition), Messrs Vidushpat Singhania and Nitin Miptal, both counsel; for NADA, Mr Singh, counsel; and for the IOA, Messrs Rajeev Mehta and R. K. Sacheti. Also in attendance were Mr Gupta Rakesh, the Chef de Mission – India, Mr Sarai from the Indian Wrestling Federation and Mr Sharad Rao, as an observer. Additionally, the Panel heard expert evidence from Professor Christiane Ayotte. The Athlete had three witnesses available that had provided written affidavits. These were accepted as evidence by WADA, so were not heard. At the beginning of the hearing, the parties confirmed that they had no objections to the constitution of the Panel. At the end of the hearing, the parties confirmed that the right to be heard had been respected.

4. PARTIES' SUBMISSIONS

4.1 The Parties' submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

a. WADA's Requests for Relief

4.2 WADA's requests for relief are as follows:

1. *The Application of WADA is admissible.*
2. *The challenged decision is set aside.*
3. *The Athlete is sanctioned with a four year ineligibility period starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by the Athlete before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
4. *All competitive results obtained by the Athlete from and including 25 June 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
5. *WADA is granted an award for costs".*

b. The Athlete's Requests for Relief

4.3 The Athlete did not make any express requests for relief in his Answer or the supplemental submissions; however the Panel noted that the Athlete supported the ADDP Decision, claiming that he had been the victim of sabotage.

c. NADA's Requests for Relief

4.4 Likewise, NADA did not make any express requests for relief in its Answer, instead objecting to the jurisdiction of the CAS in the matter at hand.

5. JURISDICTION AND ADMISSIBILITY

5.1 Article 61.2 of the Olympic Charter provides as follows:

"61 Dispute Resolution

[...]

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

5.2 In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. However, the jurisdiction of the CAS Ad Hoc Division was contested by NADA.

5.3 Article 1 of the CAS Arbitration Rules for the Olympic Games (the “CAS Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.

5.4 NADA objected to the jurisdiction of the CAS on two principle grounds: firstly, that it had 21 days to appeal against the ADDP Decision, so should be allowed to do this before WADA could appeal; and, secondly, that Article 1 of the CAS Ad Hoc Rules is not applicable, as the dispute arose from an out of competition event and a provisional suspension issued on 16 July 2016, neither of which had anything to do with the Rio Games, nor was in connection therewith.

5.5 The Athlete did not contest the jurisdiction of the CAS.

5.6 WADA submitted at the hearing that the dispute arose from the ADDP Decision, not just from the out of competition event and a provisional suspension issued on 16 July 2016, and this decision was rendered on 1 August 2016 and cleared the Athlete to participate in the Rio Games. As such (and as the previous Ad Hoc panel in *CAS OG 06/001* determined), the dispute is clearly “in connection with” the Olympic Games. The Athlete was an international-level athlete and WADA could therefore appeal against the ADDP Decision to CAS, pursuant to Article 13 of the ADR.

5.7 The Panel shares the position of WADA. NADA referred to the test and the provisional suspension, but the ADDP went further and took a decision and this decision is the root of the dispute at hand. This fell within the window of the CAS Ad Hoc Division’s jurisdiction pursuant to the CAS Ad Hoc Rules. Additionally, the Panel notes the wording of Article 13.1.3 of the Anti-Doping Rules of NADA 2015 (the “ADR”) which enables WADA to appeal the ADDP Decision, without exhausting any internal remedies, if no other party has appealed such decision already. Whilst NADA could have appealed before WADA appealed, it did not do so before 13 August 2016, when WADA made its application. At the hearing, it confirmed that the ADDP had rendered over 300 awards and that it respected its decision making and had not appealed any of its decisions, even though its external lawyers had been instructed to consider the ADDP Decision.

5.8 Accordingly, the CAS Ad Hoc Division has jurisdiction to hear WADA's application.

6. APPLICABLE LAW

6.1 Under Article 17 of the CAS Ad Hoc Rules, the Panel must decide the dispute *"pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate"*.

6.2 The Parties also referred in their submissions to the ADR which the ADDP Decision was rendered upon.

6.3 The Panel hereby confirms that these proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of arbitrators, pursuant to Article 7 of the CAS Ad Hoc Rules.

6.4 According to Article 16 of the CAS Ad Hoc Rules, the Panel has *"full power to establish the facts on which the application is based"*.

6.5 In the case at hand, the Panel determines to apply the ADR.

7. DISCUSSION

a. Position of WADA

7.1 Methandienone is prohibited under S1.1.a of the Prohibited List of WADA (the "Prohibited List"). It is an exogenous androgenic steroid. The presence of this prohibited substance or its metabolites or markers in the Athlete's sample is prohibited by Article 2.1 of the ADR. The Athlete has committed an anti-doping rule violation ("ADRV").

7.2 According to Article 10.2.1.1 of the ADR, the period of ineligibility shall be four years where the anti-doping rule violation does not involve a specified substance, unless the athlete can establish that the anti-doping rule violation was not intentional.

7.3 The Athlete has failed to establish on the "balance of probabilities" that the ADRV was not intentional. He cannot establish the source of the prohibited substance, he has merely claimed that his drink must have been spiked during a training session on 23 or 24 June 2016. There is no evidence at all relating to this, only evidence that his food was allegedly tampered with some 20 days before. Further, according to the expert evidence of Dr Christiane Ayotte, methandienone would not completely dissolve in a drink, even if it had been ground down, so

the Athlete would have seen traces in the drink; the concentrations of methandienone were not consistent with a few micrograms having been ingested as a dispersed powder in a drink taken even the day before; and by the time the second sample of 5 July 2016 was taken, the concentration of the long term metabolite was too high to be consistent with a one-time ingestion.

- 7.4 With regard to the sabotage scenario, the Athlete has attempted to establish the context of an initial sabotage (of the curry), however, this was never reported at the time; despite this initial attempt, the Athlete left his drink unattended on 23 and 24 June 2016; and both he and his roommate then have their drinks tampered with (even though their test results differ). This scenario is different from the cases *CAS 2014/A/3475* and *CAS 2009/A/1926 & 1930*, as in their cases neither athlete had any reason to ingest cocaine and both had evidence that could be assessed by the panel (for *CAS 2014/A/3475*, the bottle containing the substance was tested and with *CAS 2009/A/1926 & 1930*, there was evidence that the athlete interacted with a cocaine user). In the case at hand, the Athlete was yet to compete and he had not retained his bottle.
- 7.5 The Panel, when assessing this scenario on the balance of probabilities, should conclude that the more likely explanation was that the athlete was doping, not that he was a victim of sabotage. For the same reasoning he cannot succeed with a plea of no fault or negligence either and he must be banned accordingly.
- 7.6 In summary, the Athlete must be sanctioned with an ineligibility period of 4 years (with a credit for the provisional suspension effectively served) and all results obtained by the Athlete from the 25 June 2016 until the commencement of the period of ineligibility should be disqualified, in accordance with Article 10.8 of the ADR.

b. Position of the Athlete

- 7.7 The Athlete submitted that he is the victim of sabotage. Mr Jithesh, allegedly one of the Athlete's competitors, mixed the prohibited substance with the Athlete's amino drink on 23 or 24 June 2016.
- 7.8 The Athlete cited *CAS 2014/A/3475* as jurisprudence to support his position that in the case at hand, the Panel can rely upon circumstantial evidence. There had been a foiled attempt on 5 June 2016 to mix the prohibited substance into the Athlete's food, as he then travelled to Bulgaria between 6 and 22 June 2016, the sabotage must have occurred on 23 or 24 June 2016, whilst the Athlete was training. Mr Jithesh had been at the training facility at the appropriate time. There had been threats on the Athlete's life, which had been reported to the police; the police were also investigating the attempted sabotage of the Athlete's food. There was no need to cheat, as the Athlete had already qualified for the Rio Games. Additionally, the Athlete was, by 23 June 2016, on a weight reduction programme and the prohibited substance would increase the weight of the Athlete, so would not benefit him at all.

- 7.9 The amino drink of the Athlete consisted of his usual supplement mixed with water. There were always fragments of powder floating in the drink, as these supplements are not completely soluble. It would not have been possible for the Athlete to detect the prohibited substance by eye, as WADA's expert has alleged, once it had been introduced to the drink by Mr Jithesh.
- 7.10 The Athlete's case was stronger than *CAS 2014/A/3475*. There was an identifiable culprit (Mr Jithesh) who had access to the training facility, who was part of Mr Kumar's entourage and who had already attempted to spike the Athlete's curry. The Panel was urged to follow the CAS jurisprudence cited and to conclude that the sabotage by Mr Jithesh was more likely than not to have occurred. This is the required standard of proof. WADA had not put forward any other scenario to consider.
- 7.11 At the hearing, the Athlete's counsel explained that the police were looking into his complaint against Mr Jithesh, but that Mr Jithesh had absconded. It was acknowledged that the criminal case would take some time, but once the police locate Mr Jithesh they would take his statement that could support the Athlete's position that he had been the victim of sabotage. Pursuant to Article 3.2.4 of the ADR, this would provide the Panel with "*irrebuttable evidence*", as such, the Panel should refer the matter to CAS Lausanne.

c. *Position of NADA*

- 7.12 NADA's Answer concentrated on the jurisdiction of the CAS, as detailed above.

d. *The evidence of Professor Ayotte*

- 7.13 WADA called Professor Ayotte as an expert witness and she provided the Panel with a written statement and was examined by WADA, the Athlete and the Panel at length. The Panel found her testimony extremely measured and pertinent to the facts of this matter. She was at pains to explain that "this is not an exact science" and careful not to give an opinion where it could not be supported by the science.
- 7.14 She explained that when the prohibited substance was ingested the body breaks it down, in the liver, and one would expect to see the parent compound of the substance itself and its metabolites then pass into the urine, to be excreted. These metabolites can be short term, medium term and long term metabolites. The laboratories can use various methods to test for the presence of these metabolites in urine. The laboratory in Delhi uses the same instruments as in Cologne, where research has been carried out on methandienone and its metabolites.
- 7.15 Using this research and from her analysis of the two test results carried out on the Athlete and on the one test result of his roommate, Professor Ayotte was able to conclude as follows:
- 7.15.1 There was at least 12 to 20 hours difference between the ingestion of the prohibited substance by the Athlete and by his roommate;

- 7.15.2 The ingestion was from a therapeutic dose, rather than from a suspension in water, and
- 7.15.3 The long term metabolite reading in the Athlete's first sample was 4ng/ml, yet 10 days later the long term metabolite reading in the second sample was 20ng/ml. While the reading can increase, it would only do so in the first 2 or 3 days after ingestion. As there was no trace of the parent compound in the first reading, the likely ingestion was a few days before 25 June 2016. The conclusion is that the long term metabolite in the second test was from a different (second) ingestion of the prohibited substance.

e. Considerations by the Panel

- 7.16 The Panel was grateful to the counsel of the Parties and the IOA for attending the hearing at short notice and for their written and oral submissions. This better enabled the Panel to understand the context in which and the circumstances that existed at the time the ADDP Decision was taken.
- 7.17 The Panel had to consider whether the matter at hand was best dealt with in CAS Lausanne, then considering whether to provisionally suspend the Athlete in the meantime, or whether to proceed and hear the matter in full on the merits in the Ad Hoc Division. The determining reason to refer would be if there was some pending decision from the criminal authorities in India regarding Mr Jithesh. The Panel had the impression that whilst a complaint had been made, there was nothing before it that evidenced that there would be an imminent decision from a criminal court, as required for Article 3.2.4 of the ADR. On the other hand, WADA confirmed that if any such decision was rendered at a later stage by a criminal court in India which confirmed the alleged sabotage, then any award made by this Panel could be reviewed by the Supreme Court in Switzerland, in the light of such new evidence and the Respondents and the Interested Parties were informed of this option at the hearing. In addition to submissions made by NADA, the Panel had on file the submissions from the Athlete and WADA, documentary evidence (including the affidavits from the Athlete's witnesses). The Athlete was fully represented by counsel during the procedure, as such the Panel determined that it was sufficiently well informed to proceed into the merits and to render this award.
- 7.18 The issues before the Panel were as follows:
- 7.18.1 Has there been an ADRV?
- 7.18.2 Who has the burden of proof and what standard of proof is to be applied?
- 7.18.3 Was the ADRV not intentional?
- 7.18.4 Are there any other reasons to reduce the mandatory period of ineligibility?
- 7.18.5 Costs.

1) *Has there been an ADRV?*

7.19 The Athlete did not dispute that the prohibited substance was in his system, as confirmed by both the A and B sample test results from the 25 June 2016 sample and from the A sample test results from the 5 July 2016 sample. The substance Methandienone is prohibited under S1.1.a of the Prohibited List. It is an exogenous androgenic steroid. It is not a specified substance. The presence of this prohibited substance or its metabolites or markers in the Athlete's sample is prohibited by Article 2.1 of the ADR:

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her 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 Article 2.1"

7.20 The Athlete has committed an ADRV.

7.21 The Panel notes the standard sanction for this ADRV is set out in Article 10.2 of the ADR:

"The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The Period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a specified substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

...

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years".

2) *Burden and standard of proof*

7.22 Having noted that the Athlete starts with a four year ban, in order to reduce this to two years, he must "establish that the anti-doping rule violation was not intentional". The Panel noted that the Athlete has the burden of proof.

7.23 Article 3.1 of the ADR states:

"...Where the 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 probabilities".

3) *Can the Athlete establish that the ADRV was not intentional?*

7.24 The Panel noted that the Athlete had put forward that he had been the victim of sabotage. The Panel was invited to follow other CAS panels that had considered circumstantial evidence. This, in itself, was acceptable to the Panel, however, the Panel would do this in the light of the

evidence of Professor Ayotte. The Panel can accept both circumstantial evidence and witness evidence and, indeed, other evidence, but it is for the Panel to determine what weight to attach to all the evidence before it and the Panel can only be guided by the evidence proffered by each party in support of its case.

- 7.25 In summary, the Athlete had submitted that the sabotage must have been carried out by Mr Jithesh, who had previously attempted to tamper with the Athlete's food and who was an associate of Mr Kumar, a rival wrestler who had made threats to the Athlete; these threats had been made known to the police; the sabotage must have taken place on 23 or 24 June 2016, at the training facility where the Athlete, his roommate and Mr Jithesh were all present; it involved Mr Jithesh putting the prohibited substance, in powder form, into the Athlete's (and also into his roommate's) amino drink, whilst he was training and out of his view; Mr Jithesh mixed it in a sufficient quantity to give the first test results and for the long term metabolite to show an increase in the second test some 10 days later (although at the hearing, the Athlete's counsel submitted that there could have been a further sabotage by Mr Jithesh); and that the powder, when mixed with water would appear the same as the amino supplement when mixed with water, so would not appear out of the ordinary to the Athlete.
- 7.26 WADA relied upon Professor Ayotte to challenge the sabotage submissions and circumstantial evidence. The expert evidence was that this was not a one-time ingestion (the reading of the long term metabolite in his second test was consistent with a second ingestion towards the end of June 2016); the roommate's ingestion was not at the same time (he had the parent compound of methandienone in his test results, so he must have taken the substance sometime after the Athlete, as opposed to them both having their drinks spiked at the same training session); and the concentration of the prohibited substance in the first test result was so high that it had to come from an oral ingestion of one or two tablets of methandienone, rather than from a drink where the powder had been mixed with water.
- 7.27 The Panel had to weigh the circumstantial evidence of the Athlete against the scientific evidence of WADA to determine whether it was satisfied with the Athlete's position that he did not take the prohibited substance intentionally. The Panel is conscious that the expert evidence offered by Professor Ayotte may be susceptible to qualification by other expert(s), however the Panel has no reason to question the scientific data offered and/or her expert testimony. The Panel reviewed the video clip filed by the Athlete and carefully listened to the examination of Professor Ayotte by the Athlete's counsel, in addition to examining her herself, however nothing undermined her expert report and testimony. The Panel noted in the closing remarks that the Athlete's counsel submitted that he may have been subject to further sabotage, but all in all found the sabotage(s) theory possible, but not probable and certainly not grounded in any real evidence. The Panel therefore determined that the Athlete had failed to satisfy his burden of proof and the Panel was satisfied that the most likely explanation was that the Athlete simply and intentionally ingested the prohibited substance in tablet form on more than one occasion.

4) *Other reductions?*

- 7.28 The Panel noted the wording in Article 10.2 of the ADR, that any period of ineligibility would be “*subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6*”.
- 7.29 Article 10.4 of the ADR deals with No Fault or Negligence. However, the Panel having already determined that the sabotage explanation was not satisfactorily proven by the Athlete, cannot apply Article 10.4 of the ADR either.
- 7.30 Article 10.5 of the ADR is available to cases involving Specified Substances or Contaminated Products, neither of which are relevant to the case in hand. Finally, Article 10.6 is available to athletes that have made an admission of the ADRV and who have offered substantial assistance, so again, is of no use to the Athlete.
- 7.31 The Athlete’s period of ineligibility is four years.

5) *Costs*

- 7.32 The Panel noted the request by WADA for its costs. The procedures before the CAS Ad Hoc Division are free of costs, so this request is rejected.

8. CONCLUSION

- 8.1 In view of the above considerations, the Panel are satisfied that the Athlete has committed an ADRV and makes the following award:
1. The ad hoc Division of the Court of Arbitration for Sport has jurisdiction to hear the application filed by the World Anti-Doping Agency on 13 August 2016.
 2. The application filed by the World Anti-Doping Agency on 13 August 2016 is partially upheld (and not fully upheld due to the fact the request for the payment of legal costs was dismissed).
 3. The decision rendered by the Anti-Doping Disciplinary Panel of the National Anti-Doping Agency on 1 August 2016 is set aside.
 4. Mr Narsingh Yadav is sanctioned with a four-year ineligibility period starting today. Any period of provisional suspension or ineligibility effectively served by Mr Narsingh Yadav before the entry into force of this award shall be credited against the total period of ineligibility to be served.
 5. All competitive results obtained by Mr Narsingh Yadav from and including 25 June 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).
- 8.2 All other prayers for relief are dismissed.

The ad hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The ad hoc Division of the Court of Arbitration for Sport has jurisdiction to hear the application filed by the World Anti-Doping Agency on 13 August 2016.
2. The application filed by the World Anti-Doping Agency on 13 August 2016 is partially upheld.
3. The decision rendered by the Anti-Doping Disciplinary Panel of the National Anti-Doping Agency on 1 August 2016 is set aside.
4. Mr Narsingh Yadav is sanctioned with a four-year ineligibility period starting today. Any period of provisional suspension or ineligibility effectively served by Mr Narsingh Yadav before the entry into force of this award shall be credited against the total period of ineligibility to be served.
5. All competitive results obtained by Mr Narsingh Yadav from and including 25 June 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).
6. All other motions or prayers for relief are dismissed.