

INTERNATIONAL CRICKET COUNCIL

INDEPENDENT ANTI-DOPING TRIBUNAL

DECISION IN THE CASE OF MR UPUL THARANGA

Tim Kerr QC, Chairman

Dr Anik Sax

Professor Peter Sever

Introduction

1. This is the decision of the independent Anti-Doping Tribunal (“the Tribunal”) appointed Article 8.1.3 of the International Cricket Council (“ICC”) Anti-Doping Code (“the ICC Code”) by the President of the ICC’s Anti-Doping Panel in conjunction with the ICC’s Anti-Doping Manager to determine a charge brought against Mr Upul Tharanga (“the player”). An oral hearing in respect of the charge took place by video link in London and Dubai on 24 June 2011.
2. The player was represented by Ms Fiona Banks, instructed by Mr Mike Morgan of Squire Sanders Hammonds, solicitors in London, and was also assisted by Mr Dinal Phillips PC and Mr Viraj Premasinghe, his legal representatives in Sri Lanka. The ICC was represented by Mr Iain Higgins, Company Lawyer, of the ICC in Dubai, assisted by Ms Lorinda Rugless, the ICC’s Anti-Doping Manager. The Tribunal (which sat in London) is grateful to the representatives of both parties for their lucid written and oral submissions which were of great assistance.

3. The player was charged with a doping offence following an adverse analytical finding in respect of a urine sample no. 2583965 provided on 29 March 2011 at the conclusion of the World Cup semi-final match held in Colombo, Sri Lanka. The player's A sample tested positive for prednisone and prednisolone, which are in the category prohibited under S.9 of the 2011 WADA Prohibited List when administered by the oral, intravenous, intramuscular or rectal routes.
4. By Article 18.2, the ICC Code must be interpreted as an independent and autonomous text and not by reference to existing law or statutes of any of the organisations which are signatories to the World Anti-Doping Code ("the WADA Code"), or of any government. By Article 18.4 the ICC Code shall be interpreted consistently with the WADA Code and annotations to the latter should if necessary be used as an aid to interpretation. By Article 18.6 of the ICC Code, it is governed by and to be construed in accordance with English law, subject to Article 18.2.
5. The player accepted that his sample contained prohibited substances and therefore that he had committed a doping offence. He apologised, expressed his deep regret and submitted that the substances were specified substances ingested inadvertently through a medicinal preparation ingested orally to treat pain in his right shoulder, and were not intended to enhance sport performance.
6. With regard to sanctions, the player accepted that his results and statistics in all the 2011 World Cup matches must be disqualified, but invited the Tribunal to impose a ban, if at all, of such duration that he would not be prevented from playing for longer than the period during which he had voluntarily abstained from doing so.

The Facts

7. The player was born on 2 February 1985 in Sri Lanka and is therefore now aged 26. He is a Sri Lankan national, born of a modest family. His father is a

fisherman and his mother a housewife. He left school aged 16 to pursue a career in cricket. He rapidly rose through the ranks, playing in the Under-19 World Cup in 2004 and playing for a club in Essex, England.

8. In 2004 the Asian tsunami destroyed his home and all his cricket equipment. Fortunately, none of his family members lost their lives. He was able to resume his cricket career and continued to achieve highly. In July 2005 he was selected for the national squad. He has frequently represented his country in Test matches and One Day International matches since then. He is an admired left handed opening batsman with a distinguished record at the highest level.
9. The player gave oral evidence over the video link from Dubai in the Sinhala language, with the benefit of translation by an interpreter, assisted also with translation by Mr Premasinghe. The tribunal found the player to be an honest and truthful man of integrity. We accept his account of events. He did not try to embellish or alter his story to deflect or minimise any blame for what happened.
10. We heard evidence by telephone from the Sri Lanka national team physiotherapist, Tommy Simsek, who joined Sri Lanka Cricket as an employee in 2005. We also heard from the former national team captain, Kumar Sangakkara, a longstanding team mate of the player and until April 2011 national team captain. We accept the evidence of both as honest and truthful.
11. From about 2006 the player developed pain in his right shoulder, which was not serious enough to prevent him from playing but which inhibited his performance, particularly when throwing the ball. He consulted Mr Simsek who recommended physiotherapy and an adjustment to his throwing technique. Apart from pain killers (non-steroidal anti-inflammatory medication) he did not have specific medical treatment for his right shoulder.

12. The player has long been aware of anti-doping rules and his responsibility to comply with them. On 26 February 2007 a TUE was granted to him by the ICC Cricket World Cup 2007 Medical Committee permitting him to take 80mg of methyl prednisolone by soft tissue infiltration once. The reason was an injury to his left ankle. The player played in the 2007 World Cup in the West Indies. He was tested with negative result after playing in the final, which Sri Lanka lost to Australia in Barbados.
13. In Sri Lanka many people have a strong belief in Ayurvedic medicine which uses herbal remedies to treat ailments. Examples of remedies regarded as effective are use of coriander boiled in water, boiled calumba wood, and lime with salt for stomach ache. Ayurvedic medicine is treated with scepticism by many in western medical circles.
14. Mr Simsek is one such sceptic, though he believes the remedies can have a strong placebo effect. Mr Simsek is the only full time employee of Sri Lanka cricket with responsibility for medical matters. There is no full time team doctor. Mr Simsek regularly engages conventional medical doctors to treat team members, including the player. Many sportsmen and women in Sri Lanka, including cricketers such as Mr Sangakkara, also have a strong belief in the efficacy of Ayurvedic remedies.
15. Mr Eliyantha White is regarded as a leading doctor of Ayurvedic medicine in the Indian subcontinent. He is a Sri Lankan of partly British descent. There is a “blogspot” website about him which describes him as “Spiritual Healer of Traditional Medicine”. The website claims to be an independent article about Mr White rather than written by him. It appears to be favourable to him and to quote his words. It warns that the accuracy of the information in it cannot be guaranteed.
16. The website’s contents are consistent with other information in the public domain which we have, including an extensive interview with him in a Sri

Lankan magazine in September 2010. The website describes his “medical practice” as “neither Western nor strictly Ayurvedic. He uses herbs, blended according to ancient recipes. His treatments are mostly spiritual.” It goes on to record that he believes that ailments are “due to the sins of pasts births”, and lists 12 “famous figures” including several international cricketers he has treated.

17. The website goes on to assert: “Most of Eliyantha White’s herbs have been tested in USA for harmful ingredients including prohibited substance in Sports and have been found to be free of such ingredients.” We have no independent evidence to verify that claim. The author goes on to recount praise for the effectiveness of his treatment attributed to famous patients of Mr White.
18. According to a BBC Sinhala service website report made on 12 June 2011, Dr N. J. Nonis, the Registrar of the Sri Lanka Medical Council, has told the BBC that Mr White is not registered as a medical practitioner, nor as a dentist or assistant medical practitioner. Without such registration, according to the BBC’s report of Dr Nonis’ remarks, it would be an offence in Sri Lanka under the Cosmetics, Devices and Drugs Act to prescribe a drug such as prednisolone.
19. We have ample evidence of Mr White’s popularity in Sri Lanka and beyond its borders. He is revered as a healer and celebrity and is believed to be the personal physician of the President of Sri Lanka and other wealthy and powerful individuals in the world of show business, business, commerce and sport.
20. Mr Sangakkara became national team captain in March 2009. He is a very experienced cricketer with a distinguished record. The same month, on 3 March, the Sri Lanka national team suffered a terrorist attack while on a bus in Lahore, Pakistan. The player was not on the bus at the time. Another national team member, Thilan Samaraweera, was shot in the thigh during the attack.

His subsequent rapid recovery was attributed by many to the healing powers of Mr White, who treated him.

21. After that, Mr White's popularity increased still further, to the point where he became a national celebrity in great demand, who commanded the confidence of the Sri Lankan government, including the President, and in the sporting field, of the Ministry of Sport, the National Sports Council, the National Council on Banned Substances (the Sri Lankan national anti-doping organisation), and Sri Lanka Cricket.
22. The player, like many others in Sri Lanka, formed the belief that Mr White was a great man capable of great deeds. The player is a believer in Ayurvedic remedies. Like many others, he was prepared to place his trust in Mr White and regarded it as a privilege to be treated by him. Mr Simsek appreciated the influence of Mr White but was sceptical about him and did not want to be professionally associated with him.
23. Mr Sangakkara is a believer in Ayurvedic medicine. He met Mr White at a cricketer's birthday party in 2009 or 2010. He spoke to Mr White who assured Mr Sangakkara that the substances he used in his treatments were free from banned substances and that tests had shown this. He did not say what tests he was referring to, and Mr Sangakkara did not press him on the point.
24. Mr Sangakkara received many similar assurances through the cricketing authorities during his time as national team captain. We have no evidence that it occurred to anyone associated with cricket in Sri Lanka, or indeed with any sport in Sri Lanka, to seek independent verification of Mr White's claim that his treatments could not lead to any violation of anti-doping rules.
25. The ICC Code came into effect from 1 January 2010. Players were made aware of its contents in various ways, and this included being made aware of their personal responsibility to ensure that they did not inadvertently take banned substances during medical treatment. On 4 March 2010 the player signed a

form confirming his agreement to be tested and that he had had the opportunity to review the ICC Code and seek clarification on any points.

26. On 25 June 2010, the player had a magnetic resonance imaging (MRI) scan on his right shoulder in Colombo. Also during 2010 he underwent a doping test, again with negative result, at a practice match in Brisbane, Australia, during a One Day International tour.
27. In September 2010 Mr White's reputation in Sri Lanka was very high. The magazine *Hi!* published a long interview with him describing his achievements and the extent of demand for his services, which was such that Mr White warned against paying money to persons claiming falsely to be in a position to arrange treatment by him. According to the interview, Mr White clarified that appointments with him had to be made through the President's office alone.
28. The player does not read English well and would therefore not have read the magazine interview in the English language version, but was well aware of Mr White's high reputation and of how highly prized an appointment with him would be. Mr White's first language is Sinhala, like the player's.
29. On 7 December 2010 a copy of the 2010 version of the ICC's anti-doping wallet card was provided to the player and other players by Ms Rugless, at an anti-doping education session in Hambantota, Sri Lanka. Copies of the 2011 version of the anti-doping wallet card were provided to the national team representative for distribution to all the players shortly before the start of the 2011 World Cup. We accept the player's evidence that he keeps the wallet card with him at all times and produces it to "conventional" or "western" doctors when obtaining treatment from them.
30. Shortly before the World Cup, Mr Sangakkara had a hamstring injury. It was not very serious and was getting better, so he did not consider that he needed treatment for it. We accept his evidence that he resisted pressure on him from the cricketing authorities to seek treatment from Mr White. We accept his

evidence that he was asked by the Chairman of Sri Lanka cricket to request Mr White's services to treat players who needed treatment and that unspecified "certain people" would be unhappy if he did not.

31. Mr Sangakkara did not arrange treatment for himself by Mr White, but he acceded to the Chairman's request that he should write to Mr White asking him to be available to treat players who needed it. Accordingly, Mr White was made available to treat Sri Lanka team players during the 2011 World Cup. Mr Simsek's advice was not sought before this happened. Mr Simsek did not want anything to do with Mr White. However, Mr White was present on occasion in the Sri Lankan players' dressing room during the 2011 World Cup.
32. The player was encouraged by his team mates to see Mr White for treatment of his right shoulder, which was giving him some pain. By chance, the player met Mr White in a hotel lobby a few days before the Sri Lanka match against England, which was played on 26 March 2011 in Colombo. The player was in awe of Mr White and seized the opportunity to approach him and ask him if he could treat the player's shoulder. Mr White agreed. An appointment was arranged for 27 March 2011.
33. The player played in the quarter final match against England on 26 March 2011, which Sri Lanka won. The following day, he drove alone to Mr White's house to keep the appointment. He did not mention to Mr Simsek that he was going to see Mr White as he was aware that Mr Simsek does not believe in Ayurvedic medicine and he thought Mr Simsek might see the consultation with Mr White as a sign of disrespect to Mr Simsek, whom he did not want to offend.
34. When the player arrived at Mr White's house on 27 March 2011, he saw Mr White alone. Mr White examined the player's shoulder and asked what the difficulties were. The player explained. Mr White checked his pulse, then asked the player to wait, left and returned a few minutes later with a vial about

five centimetres high containing a murky liquid coloured between yellow and brown with solid bits in it. Mr White shook the vial a bit.

35. The player said he was bound his anti-doping code and there are substances he cannot take. Mr White responded that there was nothing harmful in it and that it had been tested in the USA twice. He said that the ICC had confirmed that his treatments were free from such substances. He asked whether Sachin Tendulkar (the famous Indian cricketer) would take his medicine if it contained any banned substances.
36. The player found this compelling especially as the thought had already occurred to him that if Sachin Tendulkar was ready to trust Mr White's medicines, then they must be alright. He did not ask any further questions of Mr White as he felt fully reassured. He did not ask what the vial contained. He did not ask for details of the tests Mr White claimed had been done in the USA. He did not ask whether he might need a TUE.
37. The player did not ask such questions because he was in awe of Mr White; because he felt privileged and fortunate to have obtained an appointment with him; because he did not want to appear disrespectful and doubting of so great a man; and because he did not want Mr White to think him a fool. He had his 2011 wallet card with him but did not produce it to Mr White as he thought this might annoy Mr White. He drank the contents of the vial and left, agreeing to return to take two more doses on the two following days.
38. The next day, 28 March 2011, he again drove alone to Mr White's house by appointment. Mr White asked how his shoulder was. The two men had a few minutes of ordinary conversation. Mr White then again left the room for a few minutes, returning with a vial with a liquid in it and plaster around the top, which Mr White removed. The player then drank the liquid. It looked and tasted the same as the previous day.

39. After the visit to Mr White's house that day, the player later saw Mr Sangakkara and mentioned that he had received two doses of treatment from Mr White and had one to go, and that his shoulder was feeling much better. Mr Sangakkara did not think to warn the player about any risk of an anti-doping rule violation, since he too trusted the assurances he had heard that Mr White's substances were "clean".
40. The next day, 29 March, was the day of the semi-final match against New Zealand. The pain in the player's shoulder had all but disappeared. He went a third and last time to Mr White's house before the match started. They talked about the match due to be played that day. The procedure was repeated. The player drank the liquid prepared by Mr White. He then left and played in the match which started later the same day.
41. The player did not take any of the precautions recommended in the ICC's documents and education programme, such as calling the helpline. He did not tell Mr Simsek that he had received treatment from Mr White, since Mr Simsek is "from the west", as the player put it to us. If consulted beforehand, Mr Simsek would have advised against taking any substance without knowing exactly what ingredients were and checking that the ingredients were safe to take. This is no more than the ICC Code requires; Article 2.1.1 starts with the words:
- It is each Player's personal duty to ensure that no Prohibited Substance enters his/her body. ...
42. Sri Lanka defeated New Zealand in the semi-final on 29 March 2011. The player scored 30 runs and took a catch. After the match he was selected for doping control and asked to provide a urine specimen. He did so at 11.10pm. He did not declare any medication on his doping control form. He explained to us that he did not consider Mr White's remedies as medicine, but rather as natural herbal cures which do not count as medicine for the purposes of a

declaration on a doping control form, just as traditional remedies such as boiled coriander would not be regarded as medicine.

43. On 2 April 2011 the player played in the World Cup final against India in Mumbai. India won the match and the World Cup. The player was unaware when he played this match that his A sample would subsequently test positive for banned substances. He was not worried about his doping test because it did not occur to him that Mr White's remedies might contain any banned substance.
44. The player's A sample was analysed at the WADA accredited laboratory at the University of the Free State, South Africa. The sample was found to contain prednisone in a concentration approximately in the range from 150-250 ng/ml; and prednisolone in a concentration approximately in the range from 800-900 ng/ml. The certificate of analysis was dated 20 April 2011.
45. These concentrations are not inconsistent with the player's assertion that the liquid he drank from the three vials obtained from Mr White on 27, 28 and 29 March 2011 must have contained prednisone or its metabolite, prednisolone. We accept the player's evidence that he took no other medicine or remedy, in the period leading up to the semi-final match on 29 March 2011, which could have accounted for the positive test result.
46. In a letter dated 28 April 2011 Ms Rugless, the ICC's Anti-Doping Manager, informed the player that his A sample had tested positive for prednisone and prednisolone; that an independent review board would be appointed; and that he was required to cooperate with the investigation and to provide a written explanation.
47. This letter led to the player's agent contacting Mr Simsek in late April 2011 and enquiring of him whether the player might have taken any particular medication that could be responsible for the positive test result. It was in this telephone call that Mr Simsek learned for the first time, from the player's agent, that the player had been treated by Mr White.

48. On 5 May 2011 the player's advisers prepared a letter to Ms Rugless for him to send –he does not speak or write good English himself – giving his explanation, which was that the banned substances must have been present in the liquid solutions given to him by Mr White to drink on 27, 28 and 29 March 2011, the morning of the match. His account in that letter was consistent with the evidence in his witness statement and the evidence he gave orally to us.
49. On 6, 7 and 8 May 2011 the player played for his club in a first class domestic league match in Sri Lanka, knowing that his A sample had tested positive for steroids but not yet knowing whether he would be charged or not. He has not played in any domestic or international cricket match since then. The Sri Lankan national team played a match against Middlesex County from 14-16 May 2011 but the player was not selected.
50. On 10 May 2011 the player, again with help from his advisers, sent to Ms Rugless an email to which was attached an amended version of his letter of 5 May in which Mr White was not identified by name, but was instead described as “a well-respected Sri Lankan Ayurvedic doctor who has treated many sportspersons, celebrities and politicians in recent years”. The letter was otherwise in similar terms to the previous version, but the concluding paragraph attributing the positive test result to the liquid solutions administered by Mr White, was omitted.
51. Anyone with knowledge of the recent history of Sri Lankan cricket would have readily concluded that the person described by the player in his revised letter was Mr White. Ms Rugless emailed back the same day pointing out that the original version of the letter would “remain on file” and would be likely to form part of the evidence if a charge was brought. She assured the player that confidentiality would be maintained to the extent possible under the rules.
52. The player responded the next day, 11 May 2011, saying he was worried about the consequences if it became known that the player had disclosed Mr White's

identity as the probable source of the treatment leading to the positive result. He even offered to plead guilty and accept the “maximum penalty” if necessary to prevent the original version of his response letter being disclosed to Sri Lanka Cricket.

53. Ms Rugless responded on 14 May 2011 by email, saying that it would not be possible to treat the original version of the response letter as if it had never been sent, but assured the player that the letter had been anonymised for the purposes of the review board procedure and that it would not be disclosed to Sri Lanka Cricket without further discussions with the player or his agent.

The Proceedings

54. On 15 and 16 May 2011 the review board certified that there was no relevant TUE and that there was a case to answer. The player was accordingly charged by letter of 18 May 2011 with a doping offence under Article 2.1 of the ICC Code, namely the presence in his urine specimen of prednisone and prednisolone. The letter informed him of the charge and of his right to have the B sample analysed, attached supporting documents and informed him of his further procedural rights under the ICC Code.
55. On 24 May 2011 the player responded by email with contact details of his lawyer, Mr Phillips PC, saying that he would be pleading guilty to the charge and that he waived his right to have the B sample tested. He also said that he hoped to mitigate his sentence for which purpose he requested a swift oral hearing, pending which he would not be playing any further cricket. He also asked for confidentiality to be maintained.
56. On 26 May 2011 a telephone conference was held with the parties and the Chairman, following which the Chairman issued a procedural order fixing the hearing for 10 June 2011, and establishing a timetable for the filing and service of written briefs as required under the ICC Code.

57. The ICC filed its opening brief on 30 May 2011. The player instructed English lawyers and it was agreed that the hearing should be postponed until 24 June 2011 to enable to be fully instructed. Revised directions were given by consent in a procedural order dated 6 June 2011.
58. At about this time – we do not know exactly when – the player and Mr White separately gave evidence to an internal enquiry established by the Ministry of Sports. By this time news of Mr White’s alleged involvement in the affair had leaked and was being reported in the Sri Lankan press. The player said he thought he gave his evidence to the internal enquiry in early May 2011, but we think it likely that it was later, possibly as late as early June.
59. Present at this internal enquiry was Dr Geethanjana Mendis who heads the Sri Lankan national anti-doping organisation and also heads the medical unit of the Ministry of Sport. The player was asked for his version of events and we accept his evidence that he related the facts truthfully as he has done in his evidence to this Tribunal.
60. On 12 June 2011 the BBC Sinhala service reported on its website that the Sri Lanka Medical Council’s Registrar had confirmed that Mr White was not registered as a medical practitioner in Sri Lanka and that a person who is not registered cannot lawfully prescribe prednisolone in Sri Lanka. The same report stated that Dr Mendis had declined to answer when it was put to him that he had allowed Mr White to treat national sports personnel including members of the national cricket squad.
61. On 15 June 2011 the player produced his witness statement with the help of English lawyers. It was not written by the player in Sinhala and translated into English. It was written in the English language and the content explained to the player in Sinhala. However we are confident that it correctly records the player’s instructions and account of events, and that his account is honest and truthful.

62. The player included in his witness statement an apology for the embarrassment his case has caused to his sport and his country. This expression of contrition was repeated in the written brief filed by his lawyers on 17 June 2011, and in his oral evidence to us. We accept the sincerity of the player's apology and contrition.
63. On 20 June 2011 the BBC Sinhala service reported on its website that the former captain, Mr Sangakkara, had made a written request to Mr White to make his services available to the national team during the 2011 World Cup. This was coupled with a denial attributed to Mr Nishantha Ranatunga, the Secretary of Sri Lanka Cricket, that it had officially appointed Mr White to provide his services to the national team.
64. We accept Mr Sangakkara's explanation of the context in which his written request was made, as we have mentioned above. Mr Sangakkara's evidence is uncontradicted by any evidence from the ICC or from Sri Lanka Cricket and has not been challenged. The unchallenged evidence we have is that Sri Lanka Cricket was happy for Mr White to treat its players and indeed encouraged him to do so. We have no further explanation of this from Sri Lanka Cricket, nor from any other cricket related body or from any other organisation in Sri Lanka.
65. On the evidence before us, there is ample material from which to draw the inference that Sri Lanka Cricket, the Sri Lankan national anti-doping organisation and the Ministry of Sport all regarded Mr White's services as a welcome asset, and that it did not apparently occur to any of these bodies to question his assertion that the substances he used to treat patients were free from banned substances and would not lead to violations of anti-doping rules, and that tests in the USA had confirmed this.
66. The hearing by video link took place in London and Dubai on 24 June 2011. We heard evidence from Mr Sangakkara, by telephone; from Mr Simsek, by telephone; and from the player himself, by video link from Dubai. We had

available to us three files of documents prepared by the parties, and the benefit of clear and helpful written and oral submissions from Ms Banks, for the player, and Mr Higgins, for the ICC.

The Tribunal's Conclusions, with Reasons

67. The following matters were agreed:

- (1) that the player's sample contained prednisone and prednisolone, which are glucocorticosteroids and as such prohibited in competition when administered by the oral, intravenous, intramuscular or rectal routes (see the 2011 Prohibited List, at S.9);
- (2) that the player had no therapeutic use exemption ("TUE") permitting the use of prednisone or prednisolone at the material time;
- (3) that the player has therefore committed a doping offence under Article 2.1 of the ICC Code (presence of a prohibited substance or metabolite in a player's sample);
- (4) that the player is not able to establish "No Fault or Negligence" within Article 10.5.1 of the ICC Code;
- (5) that pursuant to Article 10.1 and 10.1.1 of the ICC Code, the player's individual results and performance statistics from all the matches in the 2011 World Cup must be disqualified; and that
- (6) prednisone and prednisolone are "Specified Substances" (not falling within the exceptions set out in the preamble to the 2011 Prohibited List) attracting the potential applicability of Article 10.4 for the purpose of reduced sanctions.

68. In the light of those agreed matters, it was further agreed that the issues for the decision of the Tribunal were the following:

- (1) whether under Article 10.4 of the ICC Code the player could establish on the balance of probabilities how the prohibited substances entered his body;
 - (2) if so, whether the player could establish to the comfortable satisfaction of the Tribunal, with corroborating evidence over and above the player's word, the absence of any intent to enhance sport performance;
 - (3) what should be the period of ineligibility, if any; and
 - (4) on what date that period, if any, should commence.
69. In relation to (2) above, the player entered a reservation as to the legality of imposing a "comfortable satisfaction" burden on the defence under the relevant rules, but for reasons which follow that issue is not one which we need to decide in this case, and we express no view upon it.

The first issue: how the prohibited substances entered the player's body

70. The player asserts that he has proved on the balance of probabilities that the prohibited substances entered his body when he drank the liquids supplied by Mr White. The ICC notes that Mr White was not called to give evidence but does not seek to advance any alternative explanation for the presence of the prohibited substances in the player's body, nor to impugn the player's credibility.
71. The ICC further accepts that the concentrations found are not inconsistent with the player's explanation and that it is to some extent corroborated by the evidence of Mr Sangakkara, who was told by the player on 28 March 2011 about his treatment by Mr White after the player had ingested the first and second of the three doses.

72. The ICC points out that it has never given any assurance to Mr White or anyone else that Mr White's treatments are free from banned substances. We accept that the ICC would not do any such thing. However, we accept the player's evidence that Mr White gave him a verbal assurance on 27 March 2011 that the ICC had confirmed to him, Mr White, that his substances were free from any banned substances. We have no evidence to contradict that account.
73. We also accept that the player's representatives made reasonable efforts to contact Mr White to ask him to provide evidence to this Tribunal, but that the enquiries made of him were not answered. We do not find it surprising that Mr White would not wish to be involved in giving evidence to this Tribunal, given his celebrity and connections in Sri Lanka and given the anxiety of the player, in the early stages of the investigation leading to the charge, to prevent Mr White's name being associated with this case.
74. We therefore find that, deliberately or otherwise, Mr White gave wrong information to the player when he gave him reassurances to the effect that his treatment could not lead to any violation of anti-doping rules. The ICC does not advance any positive case to the contrary. We accept that the player has discharged the onus on him of showing, on the balance of probabilities, how the prohibited substance entered his body.

The second issue: absence of intent to enhance sport performance

75. The player asserts that the evidence he has called should comfortably satisfy the Tribunal that the "Specified Substances" he ingested were not intended to enhance his sport performance. To satisfy this requirement the player must produce corroborating evidence over and above his word: see Article 10.4.2 of the ICC Code.
76. As the ICC points out, the commentary to Article 10.4 of the WADA Code gives examples of what such corroborating evidence might be: that the substance would not have been beneficial to performance; that the athlete

openly disclosed its use; or that there were objective and documented medical grounds for its use.

77. The ICC accepts that there was an objective medical reason for treatment – namely, the pain in the player’s right shoulder – and that treatment with glucocorticosteroids would be appropriate for that condition, albeit that the Tribunal does not regard oral administration of glucocorticosteroids as best medical practice for the player’s pathology. The ICC points out that the player did not disclose his treatment to Mr Simsek, but the ICC does not dispute that the player made no secret with his team mates and captain of having seen Mr White.
78. The player submitted that an athlete cannot intend to enhance sport performance through the ingestion of a prohibited substance unless the athlete is aware that he has ingested the substance in question. That submission is consistent with the decision of the CAS in *Flavia Oliveira v. USADA*, CAS 2010/A/2107, given in Lausanne on 10 December 2010 (see at paragraphs 9.9-9.21); but inconsistent with the subsequent decision of the CAS sitting in Sydney in *Kurt Foggo v. National Rugby League*, CAS/A2/2011: see at paragraphs 35-36 and 45-47, where the court declined to follow *Oliveira*.
79. We do not need to resolve that conflict of CAS authority, and it is more appropriate that it should be resolved at a higher level than that of this Tribunal. In the present case we are comfortably satisfied on the evidence that the player did not intend to enhance his performance by ingesting the liquids provided by Mr White. We accept that his intention was only to achieve a reduction or elimination of the pain in his right shoulder.
80. The existence of that pain is demonstrated by the evidence of the player and of Mr Simsek, and corroborated by earlier medical records and by the evidence of Mr Sangakkara, to whom the player openly disclosed his treatment for it by Mr White. It is easier to be comfortably satisfied of lack of intent to enhance sport

performance in a case such as this where medical treatment is objectively justified, than in dietary supplement cases where the intention of the athlete is more likely to be open to question.

81. In the present case, the player has discharged the burden on him. It follows that we do not need to consider the player's reservation of his position as to whether the setting of the standard at the level of comfortable satisfaction rather than the balance of probabilities is lawful; and we say no more about that point.

The third issue: length of period of ineligibility

82. Under Article 10.4.1 of the ICC Code, the range of sanctions open to the Tribunal is therefore from a reprimand and no period of ineligibility, to a period of ineligibility of two years. We note that this is a different provision from that applied in *Koubek v. ITF*, CAS/2005/A/828, which was cited by both parties. In *Koubek* the maximum period of ineligibility on the facts proved was one year; here, it is two years.
83. The player submitted that the degree of his fault was small and called for a ban of no more than one month. His fault should be measured in its context: he came from a humble family and grew up in a society where belief in Ayurvedic medicine is widespread and Ayurvedic remedies are unlikely to contain banned substances.
84. The player submitted that he was not cavalier about anti-doping rules. He took the word of an eminent and acclaimed healer with a track record of spectacular success and no track record of causing doping offences, who had the approval of the President himself as well as the entire cricketing, sporting, business and political establishment of Sri Lanka.
85. In that context, submitted Ms Banks, it was only slightly careless for the player not to go further than he did in adopting Mr White's assurances that the contents of the liquid he provided were risk free. Furthermore, the player had

sought no sporting advantage. He had apologised and was contrite. He could have obtained a TUE for the treatment of his condition by glucocorticoides, if not for the route of administration. The assurances he received were bolder than those given in *Koubek*: they included an assurance that the substances had been tested in the USA and given a clean bill of health by the ICC itself.

86. The player drew attention to certain other precedents including press releases relating to cases in the USA where athletes had been given a warning and no period of ineligibility in certain cases of inadvertent ingestion of glucocorticosteroids for medicinal purposes, without obtaining a TUE, under medical care. We did not find any of the authorities cited especially helpful on the facts, which are unique here.
87. The ICC submitted that the starting point was the player's personal responsibility under Article 1.1.1 of the ICC Code for ensuring that all advisers as well as himself are aware of the requirements of the ICC Code; and under Article 1.1.3 for ensuring that anything the player "ingests or uses, as well as any medical treatment he/she receives, does not give rise to an anti-doping rule violation ...".
88. The ICC submitted as follows. Ayurvedic or herbal remedies can give rise to anti-doping rule violations and there is no warrant for assuming them to be safe. We have no evidence to contradict the press article attributing to the head of the medical registration authority in Sri Lanka the statement that Mr White was unregistered as a medical practitioner. He was not a specialist in sports medicine, as the doctor in *Koubek* was. The ingredients of so-called herbal remedies were likely to be difficult to discover; this ought to discourage, not encourage, their use.
89. The ICC went on to submit that the player ought to have sought advice from Mr White and from others, for example the ICC's anti-doping helpline and Mr Simsek, about whether to apply for a TUE before taking the treatment. The

player ought to have produced his wallet card to Mr White, as he does to “western” doctors. Had he looked at his wallet card, he would have been reminded of the numerous warnings in it including the specific warning about “herbs, homeopathic remedies or traditional medicines ...”.

90. The ICC submitted that it was rash to accept a liquid of whose contents the player is even now ignorant, except that it must have contained prednisone and/or prednisolone. Notwithstanding Mr White’s eminence, he ought to have asked Mr White about the ingredients and simply refused to drink the liquid if not provided with them, especially since the condition of his right shoulder was not very serious and deferring the treatment would not have ruled him out of playing in the semi-final.
91. The ICC submitted further that the player had taken the initiative in seeking out Mr White; that he did not stand to lose any prize money in the present case, unlike in *Koubek*; that loss of ranking points affect prestige only and do not determine eligibility for tournaments as in tennis; and that his apology and contrition, while welcome, were not relevant to the degree of his fault and were relevant only to the credibility of his explanation and the date on which his period of ineligibility should commence.
92. We considered these rival contentions carefully and announced at the conclusion of the oral hearing that we considered the appropriate period of ineligibility to be three months. We assessed the degree of the player’s own fault, not that of his entourage. We do not attribute to him the blame that must attach to the cricketing, sporting and governmental authorities in Sri Lanka for making Mr White’s services available to the national team and encouraging them to consult him, without troubling to check his credentials and claims.
93. The player’s fault here lay in placing his trust in Mr White without having good grounds to do so. He was certainly in exalted company in placing trust in Mr White. However, the fact that others were more blameworthy than he in

allowing the conditions leading to his doping offence to exist, does not mean that he was absolved from his personal responsibility under the ICC Code for ensuring that medical treatment should not lead to any anti-doping rule violation.

94. The player was over-deferential to Mr White. He allowed the latter to cloud his vision and disregard his basic obligations under the ICC Code, which he well knew and which he normally performed without difficulty, for example by producing his wallet card to conventional doctors. He ought to have consulted Mr Simsek before taking the treatment. Mr Simsek is employed by Sri Lanka cricket to give advice on medical treatment.
95. In summary the player, like his governing body, his national anti-doping organisation and even his government, allowed itself to treat Mr White as a person in whose presence the ordinary precautions of the anti-doping regime could be disregarded. That was wrong. No mortal person, however revered and acclaimed, is above the anti-doping regime enshrined in the ICC Code.
96. We take into account that the player will not lose any prize money as a result of the agreed disqualification of his results and performance statistics; but he will suffer the less tangible loss of recognition, at least by official cricket sources, of his achievements during the whole of the 2011 World Cup, including centuries against Zimbabwe and England.
97. We accept, with some reluctance, Mr Higgins' submission that the player's apology and genuine contrition are not relevant to the degree of fault of which he was guilty and therefore do not bear on the length of any period of ineligibility, but only on the start date (to which we are coming next) and evidential issues such as the credibility of a player's explanation. The correctness of the submission is inescapable on the wording of Article 10.4 of the ICC Code, though the effect is harsh.

The fourth issue: commencement of period of ineligibility

98. Under Article 10.9.2 of the ICC Code, where the player promptly (meaning in any event before competing again) admits the doping offence after being confronted with it by the ICC, the Tribunal has discretion to backdate the start of the period of ineligibility as far back as the date of the sample collection, provided that the commencement date may not be backdated such that the player “actually serves less than one-half of that period”, i.e. the period of ineligibility.
99. The language of the concluding words of Article 10.9.2 is not as clear as it might be. Does it mean that where the preconditions are met, a tribunal may in its discretion backdate the start of a ban so that it covers a period while the player was still playing, but only if the player does not play competitively for at least half the total period of the ban? Or does it mean that where the preconditions are met, a tribunal may backdate the start of a ban but only so that it covers a period at least half of which predates the tribunal’s decision and during no part of which the player was actually playing?
100. The former interpretation would remove some of the obscurity of certain earlier similar rules which left unclear whether a tribunal could or should ban a player retrospectively in respect of a period when he was still playing, which in turn leads to complications and artificiality with regard to performance statistics, prize money and ranking points. The latter interpretation appears to give too much significance to the date of the tribunal’s decision, to which Article 10.9.1 (dealing with process delay) is also relevant.
101. The equivalent provisions in the WADA Code are differently phrased and also difficult to follow. They include a separate article (Article 10.9.4) which corresponds approximately to Article 10.9.3 of the ICC Code and gives an athlete credit for time voluntarily served before the tribunal’s decision. The commentary to the WADA Code indicates that Article 10.9.2 “shall not apply where the period ineligibility already has been reduced under Article 10.5.4 ...”.

102. On what date was the player “confronted with” the anti-doping rule violation for the purposes of Article 10.9.2? In this case we think it is clear that this occurred on 18 May 2011 when the player was charged. Neither side suggested any earlier date. Ms Rugless’ correspondence carefully indicated that a charge was not inevitable, until the charge was brought. Indeed the review board did not find a case to answer until 16 May 2011.
103. Here, the player did not compete after 8 May 2011 and admitted the violation, in substance, even before he was charged, as well as indicating more formally on 24 May 2011 that he would plead guilty to the charge. We are therefore satisfied, and the ICC accepts, that he should be entitled to credit for a period of voluntary abstinence from competition. We are also satisfied that the preconditions in Article 10.9.2 of the ICC Code are met and that we are entitled to backdate the start of the three month period as far back as 29 March 2011, provided that we do not do so in such a way as to infringe the concluding words of Article 10.9.2.
104. In all the circumstances, we think it right to exercise our discretion to backdate the start of the period of ineligibility to 9 May 2011, the day after the player ceased competing. Whatever the correct interpretation of the concluding words of Article 10.9.2, we do not believe they preclude us from exercising our discretion in that way. Indeed we have considered the wording of the equivalent provisions in the WADA Code and, in the light of them, we have some doubt as to whether the concluding words of Article 10.9.2 have any application at all in the present case.

The Tribunal’s Ruling

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

- (1) confirms the commission of the doping offence specified in the notice of charge set out in the ICC's letter dated 18 May 2011;
- (2) orders that the player's individual results and performance statistics in the World Cup semi-final played in Colombo on 29 March 2011 and all other matches in which the player played in the same World Cup competition from 20 February 2011 to 2 April 2011 shall be disqualified, with all resulting consequences, including individual medals and ranking points, any individual prizes obtained in those matches and the non-inclusion of his performance statistics in those matches towards any official individual averages and/or records;
- (3) finds that the player has succeeded in establishing by a balance of probability how the prohibited substances entered his body;
- (4) finds that the player has established to the comfortable satisfaction of the Tribunal that his use of the prohibited substances was not intended to enhance sport performance; and
- (5) declares the player ineligible for a period of three months commencing on 9 May 2011 and expiring at midnight London time on 8 August 2011 from participating in any capacity in any match or event covered by Article 10.1.1 of the ICC Code, other than authorised anti-doping education or rehabilitation programmes.

106. This decision may be appealed to the Court of Arbitration for Sport by any of the parties referred to in Article 13.2.2 of the ICC Code.

Tim Kerr QC, Chairman

Dr Anik Sax

Professor Peter Sever

Dated: 15 July 2011