

PCB Anti-Doping Tribunal

D E C I S I O N

rendered by

THE ANTI-DOPING TRIBUNAL

sitting in the following composition

Chairman: Mr. Shahid Karim (Lawyer)

Member: Mr. Wasim Bari

Member: Dr. Ucksy Mallick

in the adjudication proceeding between

Pakistan Cricket Board (PCB)

**Represented by: Taffaz ul Haider Rizvi & Haider Ali Khan, Advocates,
Salman Naseem, Manager Legal, PCB**

- and -

Kashif Siddique (Cricketer)

Represented by: Mr. Mohammad Waseem Qureshi, Advocates

1. An Anti-Doping Tribunal (the Tribunal) has been appointed under The Pakistan Cricket Board's Anti-Doping Rules (The Rules) to sit and hear the case of Mr. Kashif Siddique (the Cricketer). This was done in conjunction with the Anti-Doping Manager of Pakistan Cricket Board (PCB), (the National Cricket Federation) by the President of the Anti-Doping Panel (Article 8.1.3). The Tribunal has the following three members:

Shahid Karim (Lawyer) (Chairman)

Wasim Bari (member)

Dr. Ueksy Mallick (member)

2. The appointment of the Tribunal was a development set in motion when PCB alleged that the Cricketer had committed an anti-doping rule violation (see Notice of Charge dated 28 February 2014, under Article 7.2.3 of the Rules) and the Cricketer denied the allegation (by responding to the Notice of Charge on 7 March 2014) and requested for exercise of his right to a hearing under Article 7.7.1. The request stated how the Cricketer responds to the Charge and explained (in summary form) the basis of such response.
3. In terms of Article 8.1.4 of The Pakistan Cricket Board's Anti-Doping Rules, the Chairman convened a preliminary hearing with the PCB and its legal representative and with the Cricketer. Meanwhile, since the Cricketer's A sample resulted in an Adverse Analytical Finding for a prohibited substance, that was not a specified substance; and a review in accordance with Article 7.1.2 did not reveal an applicable Therapeutic Use Exemption (TUE) or departure from the International Standard for Testing or the International Standard for laboratories that caused the Adverse Analytical Finding, the PCB was obligated in terms of Article 7.6.1, to Provisionally Suspend the Cricketer on 08 January 2014. The Provisional Suspension entailed that the Cricketer was temporarily barred from participating in the sport of cricket pending a decision on the allegation that he had committed an anti-doping rule violation. Article 7.6.5 further elaborates upon the consequences that flow from Provisional Suspension.

4. The Cricketer declined an opportunity for a Provisional hearing (Article 7.6.3) on a timely basis after imposition of the Provisional Suspension. In its stead, he opted for an opportunity for an expedited hearing in accordance with Article 8 on a timely basis.
5. The Notice of Charge had clearly spelt out the Cricketer's rights in respect of the *analysis of the B sample (as mandated under Article 7.2.3.3)*. The Cricketer has not made a request for the B Sample analysis to go ahead and is deemed to have waived his right to the B sample analysis and to have accepted the accuracy of the Adverse Analytical Finding in respect of the A sample. (The Rules by its Article 7.2.3.3(b) lends to this inference by its deeming clause).
6. At the preliminary hearing on 26 March 2014, dates were established in advance for submission of briefs and documents by the parties. PCB submitted its opening brief on 02 April 2014 and the Cricketer, its answering brief, on 05 April 2014. PCB declined to exercise its discretion to submit reply brief to the answering brief. The parties were also required to submit, in advance, the witness statements.

A. Facts:

7. Kashif Siddique (the Cricketer) is a professional Cricket player and plays for State Bank of Pakistan in the Pakistan domestic league.
8. Pakistan Cricket board (PCB) is the National Cricket Federation of Pakistan. It is a member of and is recognized by the ICC as the entity governing the sport of cricket in Pakistan.

B. The Events leading to Hearing before the Anti-Doping Tribunal.

9. The factual grounds for this Anti-Doping Tribunal (ADT) hearing originated at the Faysal bank T20 cup (2013) held at Lahore during the KRI V SBP match.
10. On 9 November 2013 at 1715 hours, a urine sample was taken from the Cricketer, In-competition. The urine sample was shipped from Pakistan to the National Dope Testing Laborating (WADA-accredited), New Delhi, India, for analysis.

11. On 6 January 2014, the laboratory issued its analytical report which identified the presence of Prohibited substances. The Report specified:

1. *19-norandrosterone (metabolite of nandrolone) (19-nortestosterone) or its precursors (19-norandrostenedione or 19 norandrostenediol) the concentration observed above 15ng/ml which is greater than the Decision Limit (DL) or 2.5ng/ml.*
2. *3-OH-Stanozolol & 16 beta-OH-Stanozolol (Metabolites of Stanozolol)-Anabolic Steroid*

12. Upon report from the laboratory, the matter was referred to the Review Board of the Anti-Doping Organization of Pakistan under the Rules. The Review Board executed the review in respect of the A-urine sample specimen no. 2233818 and concluded that:

2. *After receiving and going through the lab documentation package of sample no. 2233818 (LC-136401) & sample no. 2235280 (LC-136412) we conclude as follow:-*

- a. *There has been no apparent departure for the International Standard for Testing and International Standards for Laboratory that caused the A-typical Adverse Analytical Findings. Therefore "Notice of Charge" be issued to both the cricketers and their copies be sent to WADA, ICC and Anti-Doping Organization of Pakistan.*
- b. *If the player desires to get his "B" sample tested, ADOP should be informed within seven days of receipt of this letter. The player shall have the right: (i) to have the laboratory analyses the B sample to confirm the Adverse analytical Finding in respect of the A sample; and (ii) to attend at the laboratory (personally or through a representative, but at his own cost) to witness the opening and analysis of the B sample.*

C. LAW

13. The applicable rules are the Pakistan Cricket Board's Anti-Doping Rules, 2012.
14. The PCB Rules, provided at the material time and provide, so far as material, as follows:

Art. 1 *Doping is strictly forbidden as a violation of PCB Rules.*

Art. 2.1 *The offence of doping occurs when*

(a) a banned substance is found to be present within a cricketer's body tissue or fluids.

Art. 3.2.3 *Any departure from the procedures set out in these Rules and the Guidelines shall not necessarily invalidate a finding that a banned substance was present in a sample, ... unless such departure was such as to cause genuine doubt on the reliability of such a finding.*

Art. 2 *BANNED SUBSTANCES*

Art. 4.1 *Banned substances include those listed in Appendix 2 to the Rules*

Art. 2.1.1 *It is a cricketer's duty to ensure that no banned substance enters his body fluids. Competitors are responsible for any substance detected in samples given by them.*

Art. 5 *UNANNOUNCED TESTING*

Art. 5.1.1 *PCB may designate any Member, governmental agency or any other third party that is deemed suitable to collect samples in accordance with these Rules. Such designee shall be referred to in these Rules as a Sampling Agent ("SA").*

Procedural and administrative rules for the conduct of unannounced testing are as set forth in the Rules. It is understood that unannounced testing may occur at any time, including at the time or locale of any competition, it is also understood that it is preferred that unannounced testing be unannounced to the Cricketer.

Art. 8 *DUE PROCESS*

Art. 3.2.2 *Analysts of all samples shall be done in laboratories accredited by WADA. Such laboratories shall conclusively be deemed to have conducted tests and analyses of samples in accordance with the highest scientific standards and the results of such analyses shall conclusively be deemed to be scientifically correct. Such laboratories shall be presumed to*

have conducted custodial procedures in accordance with prevailing and acceptable standards of care; this presumption can be rebutted by evidence to the contrary, but there shall be no burden on the laboratory in the first instance to establish its procedures.

Art. 7.5.6 If there is an adverse report on a sample for a banned substance, PCB shall notify the Cricketer the ICC, WADA and the NADO of the Cricketer. Arrangements for testing the B sample shall be made as soon as possible.

Art. 7.6.1 A Cricketer for whom there is adverse report on the A sample may be provisionally suspended by the PCB without a hearing until a hearing before the Tribunal can be made following the test of the B sample.

Art. 7.7.1 When a Cricketer is notified that there is a case to answer under Art. 2 and a doping offence has taken place, the cricketer shall also be informed of his or her right to a hearing. If a cricketer does not request a hearing within fourteen (14) days of being so informed, the cricketer will be deemed to have waived the right to a hearing.

Art. 8.2 If a Cricketer is found to have violated a doping rule as set forth in these Rules, ... the Anti-Doping Tribunal ... that has heard the evidence shall impose sanctions in accordance with Art. 10.

D. Burden of proof and Standard of Proof: (Article 3)

15. The burden of proof lay upon PCB to establish that an offence had been committed. This flows from the language of the doping control provisions. The presumption of innocence operates in the Cricketer's favour until PCB discharged that burden. The standard of proof required of PCB is high: less than criminal standard, but more than the ordinary civil standard.

It is the presence of a prohibited substance in a competitor's bodily fluid which constitutes the offence under the PCB rules, irrespective of whether or not the Cricketer intended to ingest the prohibited substance.

If the presence of a prohibited substance is established to the high degree of satisfaction required by the seriousness of the allegation, then the burden of proof shifts to the Cricketer to show why the maximum sanction should not be imposed. It

is only at the level of sanction, not of finding of innocence or guilt, that the concept of shifting burden becomes relevant at all. And it is only at this juncture that questions of intent become relevant.

D. Findings As to Whether any Anti-doping Rule Violation has been Committed:

16. At the hearing, PCB, on the basis of witness statement and the documents submitted, was very clear that the case against the Cricketer stands established. The Cricketer denied that he was guilty of doping offences. In summary, he submitted:

- That he had not taken the prohibited substance
- He admitted to taking a medicine, namely, *Wingstole* and *Deca Durabolin* to heal up his shoulder injury sustained while playing cricket in England during September, 2013. And that he did not know that the use of said medicine was prohibited under law.
- He asserted that that medicine was potentially the source of what appeared to be positive nandrolone reading.
- He asserted, alternatively, that there was no fault or negligence on his part in respect of the anti-doping rules violation. The presence of prohibited substance in his body was not intentional or deliberate and the use of prohibited substance was not for enhancement of performance.

17. The Cricketer did not make any further submissions - neither in his petition nor in his contentions - and appeared as his own witness and produced none other. He did not rely upon any documents. PCB on the other hand, besides the oral testimony of Dr. Sohail Saleem, submitted the following documents:

1. *Sport drug test identification no. 183 of Kashif Siddique dated 29.11.2013 (SS 1)*
2. *Report dated 06.01.2014 (SS 2)*
3. *Review Board finding dated 21.02.2014 (SS 3)*
4. *Notice of charge dated 28.02.2014 (SS 4)*

5. *PCB Anti-Doping Rules (SS 5)*
 6. *The 2013 prohibited list, international standard. (SS 6)*
 7. *Doping Awareness programme 2011/2012 in which Kashif Siddique was in attendance (SS 7)*
 8. *TUE (therapeutic Use Exemptions) form (SS 8)*
 9. *Cricketers Doping Guide in Urdu. (SS 9)*
18. The Cricketer did not dispute the conclusion of the analysis of his urine sample taken at the Faysal bank T20 tournament in 2013 i.e. the presence of metabolite of nandorolone and stanozolol in his body. He has not challenged the Adverse Analytical Finding in respect of an A sample by waiving his right to B sample analysis. A referral to Review Board in terms of Article 7.2.1 did not reveal that: (a) the Adverse Analytical Finding is consistent with an applicable TUE; or (b) there has been an apparent departure from the International Standard for Testing or the International Standard for laboratories that caused the Adverse Analytical Finding. The Cricketer was made well aware that his waiver of B sample analysis will be deemed that he has accepted the accuracy of the Adverse Analytical Finding in respect of the A sample.
19. The Tribunal starts with a recognition of the seriousness of the matter from the Cricketer's standpoint. The fight against doping is no excuse for the conviction of innocent persons (*see CAS 92/70 N.U.F.E.I.*). The law that the Tribunal has to apply is that of the doping control provisions of PCB anti-doping rules in their present incarnation.
20. We are in no doubt that the burden of proof lay upon PCB to establish that an offence has been committed. This flows from the language of the doping control provisions. The presumption of innocence operates in the Cricketer's favors until PCB discharges that burden.
21. We are equally in no doubt that the standard of proof required of PCB is high: less than criminal standard, but more than the ordinary civil standard (Art. 3.1.1). Ingredients must be established to the comfortable satisfaction of the Tribunal having

in mind the seriousness of the allegation which is made. We must bear in mind that this is the private law of an association we are dealing with. The further question of what fact has to be proved to this standard requires to be disentangled.

22. It is the presence of a prohibited substance in a Cricketer's bodily fluid which constitutes the offence under PCB anti-doping rules, irrespective of whether or not the Cricketer intended to ingest the prohibited substance. This flows from the language of the doping control provisions (Art. 2.1.1) and the perceived purpose of strict liability, which eliminates the need to investigate more difficult questions of motive, intent and the like (*see e.g. CAS 95/141 C.V. FINA: 'indeed if for each case the sports federation had to prove the intentional nature of the act (i.e. to improve one's performance) in order to be able to give it the force of an offence, the fight against doping would become practically impossible'*).
23. The bulk of evidence produced by PCB was documentary and none by the Cricketer. If the presence of a prohibited substance is established to the high degree of satisfaction required by the seriousness of the allegation, then the burden shifts to the Cricketer to show why the maximum sanction should not be imposed. Under the PCB rules, it is only at the level of sanction, not of finding of innocence or guilt, that the concept of shifting burden becomes relevant at all. And it is only at this juncture too that questions of intent become relevant.
24. The analysis of A sample showed and confirmed the presence of a banned substance in the Cricketer's bodily fluids. The burden of proof which lay on PCB was therefore prima facie discharged. Some of the provisions of the rules, so far as they are relevant in the context of burden of proof, state as under:

Art. 2.1.1: It is each Cricketer's personal duty to ensure that no Prohibited Substance enters his/her body. A cricketer is responsible for any Prohibited Substance or its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Cricketer's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

Art. 2.1.2: Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following (unless the Cricketer establishes that such

presence is consistent with a therapeutic use exemption granted in accordance with Article 4.4): (a) the presence of a Prohibited Substance or its Metabolites or Markers in the Cricketer's A Sample, where the Cricketer waives analysis of the B Sample and the B Sample is not analysed.

Art. 3.2.1: Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.

Art. 3.2.2: Wada-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Cricketer or other Person who is asserted to have committed an anti-doping rule violation may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding

The Cricketer has not denied the presence of prohibited substance in his sample. Nor that it was his personal duty to ensure that no prohibited substance enters his body. He has pleaded lack of intent but in the context of sanctions/ineligibility which we shall deal shortly. There is no therapeutic use exemption (TUE) granted in accordance with Article 4.4 and he has waived analysis of the B sample. He has further not challenged the conduct of sample analysis and custodial procedures in accordance with the International Standard for laboratories. He has chosen not to rebut the presumption by establishing that a departure from the International Standard for laboratories occurred that could reasonably have caused the Adverse Analytical Finding. He merely submitted that the consumption of medicines was destined to counter the effects of shoulder injury.

25. The Tribunal concludes therefore that the Cricketer has committed an offence under PCB Anti-doping rules. He has failed to establish why he should not be sanctioned. Whether the sanction should be to the full extent is a question to be dealt with in the proceedings part of the decision. We find him guilty of the offence under Article 2.1 of the Rules.

E. Consequences:

26. The Cricketer submits that he did not know that the ingestion of the medicine viz. Wingstole and Deca Durabilin, for healing of his shoulder injury, was a source of nandrolone, a prohibited substance. Paragraph 3 of his affidavit (witness statement) brings forth his precise contention:

3. That there is no fault or negligence on my part in respect of the Anti-Doping Rules violation. The presence of Prohibited Substance in my body was not intentional or deliberate. And the use of Prohibited Substance was not for enhancement of my sport performance.

27. The violation of an anti-doping rule (Art. 2.1 in this case) is visited by sanctions of Disqualification of Individual Results in a PCB Event (during which an anti-doping rule violation occurs) (Art. 10.1) and Imposition of a Period of Ineligibility (Art. 10.2). These are, cumulatively, the Consequences (Appendix 1 – definitions, to the Rules), of the violation.

28. In other words, the Cricketer invites the Tribunal to believe that he did not know or suspect, or could have reasonably known or suspect even with the exercise of utmost caution, that the medicine he was taking or used could result in the presence of nandrolone and Stanozolol in his body (the definition of No Fault or Negligence in Appendix 1 to the rules).

29. If the Cricketer establishes that he bears *No Fault or Negligence* for the violation, he, in case of Disqualification, takes benefit of Art. 10.1.1 and, in case of Ineligibility, that under Art. 10.5.1 (Ineligibility is eliminated). The burden of proof at this stage shifts to him to bring home the fact and is on the basis of balance of probability. To qualify for any elimination or reduction, the Cricketer was obliged to produce corroborating evidence in addition to his word that establishes, to the comfortable satisfaction of the Tribunal, his claim to No Fault or Negligence. Lamentably, the Cricketer did not produce any evidence in addition to his own testimony to establish that he bears no Fault or Negligence for the violation.

30. In order to seek elimination of Ineligibility based on No Fault or Negligence, he had to, additionally, establish how the prohibited substance entered his system. He did assert that he was prescribed medicines for the treatment of injured shoulder yet a mere assertion without more is too tenuous an evidence and a slender thread on which to hang. In the first instance, it had to be stated and proved that the ingestion of Wingstole and Deca Durabilin could be the source of prohibited substances in the Cricketer's sample. This was not brought home. It thus remains a mere figment of imagination that the taking of these medicines was the cause of Adverse Analytical Finding. The Tribunal has no reason to accept, perfunctorily, that the medicines were the source. The Tribunal is compelled, under the circumstances, to draw the presumption that the source was other than these medicines. Further, no evidence is forthcoming to establish that the Cricketer did in fact take those medicines at all. Neither the prescription has been produced nor has the doctor's testimony given.
31. In order to examine whether the Cricketer was at fault i.e. has acted with intent or with negligence regarding the presence of a prohibited substance, one must determine the standard of care to be observed by him in such a situation and the knowledge to be expected from him. Conversely, if he has failed in that standard of care and acted with intent or with negligence, then he will have failed to establish that he bears No Fault or Negligence in respect of the anti-doping rule.
32. The Cricketer has been a professional Cricket player participating in the Pakistan domestic Cricket (and abroad, in England, by his own assertion) since long. As a professional athlete he must be considered to be highly sensitive and alert to issues of doping. The concept of strict liability has been applied consistently by International sports federations, CAS panels and prescribed in the World Anti-doping Code as well as echoed in most anti-doping regulations of sports federations and now of the PCB. The principle of strict liability means that a cricketer is responsible for whatever substances is in his body, without having regard to the reasons for such presence and the degree of any respective fault of the cricketer. While there are exceptions to this principle under the anti-doping rules, every cricketer must be considered to be aware

of the fact that he is responsible for any substance found in his body. This also means that every cricketer must be concerned about substances he is ingesting, in particular if this is done for a medicinal purpose.

33. The tribunal is of the opinion that in the light of these circumstances, the duty of care in the present situation and with the presumed knowledge of the cricketer should have lead him, at the very least, to enquire about the medicines he was ingesting. The cricketer does not allege that he was unable to make enquiries due to his state of health; there is no evidence indicating aggravating circumstances such as medical emergency or lack of adequate medical care. It has come in evidence (witness statement of Dr. Sohail Saleem on behalf of PCB) that the cricketer was lectured extensively on various issues of doping, with the aid of videos and pamphlets, and at the heart of those lectures was one crucial theme: to consult Dr. Sohail Saleem (General Manager Sports medicine) compulsorily before taking any medicine lest it may either be a prohibited substance or may prove to be a source for it. The Cricketer has not denied the imparting of such education and has admitted to attending those lectures. (See Exhibits SS 7&9). He has further admitted to failure to contact Dr. Sohail at any time prior to, or after, taking those medicines. This virtually takes care of his claim regarding No Fault or Negligence and that it should be thrown out. The Tribunal therefore finds that the Cricketer did not comply with his duty of care and thereby acted negligently.
34. In conclusion, the Cricketer cannot be considered as bearing no fault or negligence in the sense of Rule 10.5.1 of the Rules. An elimination of the sanction under said rule is therefore not possible.
35. Article 10.5 of the Rules has similar wording to the Word anti-doing Code. In its explanatory footnote to Art. 10.5, the WADC gives some guidance as to the interpretation. According to the WADC the exceptions are meant to have an impact only where the circumstances are truly exceptional and not in the vast majority of cases. The intention is to apply the exception in a very restrictive manner.

36. As a result of the reasons above, the following consequences are imposed upon Kashif Siddique, the Cricketer:

- i. A first Doping Offence has occurred under Art. 2.1 of the Rules. The Doping Offence involved the use of a Prohibited Substance found in the Prohibited List set out at Appendix 2 of the Rules.
- ii. Under Art. 9 read with 10.1 (since it was an In-competition test), the individual results obtained by the Cricketer's individual performance in the Match (KRL V SBP, Faysal Bank T 20 tournament, 2013) be disqualified. As a consequence, individual medals or other prizes awarded and any ranking points achieved are forfeited.
- iii. Under Art. 10.1, in addition to (ii) above, all individual results and performance statistics obtained by the Cricketer in the other matches that he participated in the Faysal bank T-20, 2013, be disqualified, with all resulting consequences, including forfeiture of any individual medals, individual ranking points, individual prizes obtained, and the non-inclusion of his performance statistics in those matches towards any official individual averages or records.
- iv. Under Art. 10.2, there being no exceptional circumstances existing under Art. 10.5, a period of ineligibility of two years is imposed for a First Offence.
- v. The status of the Cricketer during Ineligibility shall be as spelt out under Art. 10.10 of the Rules.

E. Date that such consequences shall come into force and effect pursuant to Art. 10.9.

37. The period of ineligibility, except as provided in Art. 10.9, commences on the date that the decision imposing the period of Ineligibility is issued. However, in circumstances delineated in Art. 10.9.1, 10.9.2 and 10.9.3, the period may be back-dated.

38. Art. 10.9.1 is triggered where substantial delays in the hearing process or other aspects of Doping Control not attributable to the Cricketer have taken place. This

provision was not invoked in aid by the Cricketer and it is nobody's case that substantial delays have occurred. The Tribunal, too, believes that there have been no delays and the whole process was held on a timely basis. This rule will therefore not effect the period of Ineligibility.

39. Art. 10.9.2 has no relevance in the case as no admission of the anti-doping rule violation was forthcoming on the part of the Cricketer.
40. In the Tribunal's opinion, Art. 10.9.3 will be engaged in the matter and the period of suspension shall be credited against the total period of Ineligibility to be served. We thus order that the Ineligibility period shall come into force and effect on 8th January, 2014, the date he was provisionally suspended.

F. Right to Appeal

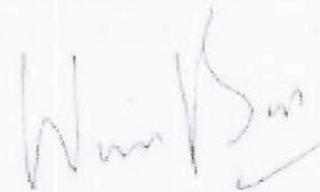
41. The Cricketer has a right of appeal against this Decision as set out in Article 13 of the PCB Rules. The appeal has to be filed within Fourteen (14) days of the date of receipt of the reasoned decisions of this Tribunal. It is made clear that this decision shall remain in effect while under appeal unless the appellate body orders otherwise.



CHAIRMAN
(SHAHID KARIM)



MEMBER
(Dr. Ucksy Mallick)



MEMBER
(Wasim Bari)