



**COURT OF ARBITRATION FOR SPORT (CAS)
TRIBUNAL ARBITRAL DU SPORT (TAS)
Ad hoc Division – XVIII Commonwealth Games in Melbourne**

INTERIM ORDER

in the arbitration between

CAS arbitration N° CG 06/01

The Commonwealth Games Federation (CGF)

("Applicant")

and

Mr Raju Edwin

("Respondent 1")

CAS arbitration N° CG 06/02

The Commonwealth Games Federation (CGF)

("Applicant")

and

Mr Tajinder Singh

("Respondent 2")

* * *

I **FACTS AND PROCEDURE**

1. It is the purpose of an ad hoc panel of the Court of Arbitration for Sport (CAS) at Major international Games to give a decision “within 24 hours of the lodging of the application” (art. 18 of the Arbitration Rules for the XVIII Commonwealth Games in Melbourne (“the Rules”).
2. However, the same Rules recognise that this may not always be achievable (see art. 15 (b) and article 20 (a)) which permits the Panel to “refer the dispute to arbitration by the CAS in accordance with the Code of Sports-related Arbitration” mentioning in particular the parties right to be heard. These are such cases. The Panel observes that the urgency which might otherwise exist is absent given that one of the Respondents Mr Tajinder Singh was withdrawn from the Games, and that the other, Mr Raju Edwin, was placed fourth and accordingly was not a medallist.
3. On 25 March 2006, for the reasons set out in an interim order that the Panel delivered, it gave the Respondents the opportunity to consider with the aid of an expert whether the analysis of the Respondents’ samples relied on to support a case of violation of the anti-doping rules was in any way flawed.
4. By a letter hand delivered on 25 March 2006, the Respondents’ representatives indicated that since Saturday was a holiday in Dehli, they had been unable to contact their chosen expert, Dr Sheila Jain at the Sports Authority of India. They also said that they had sought the help of The Hon. Consul General of India in Melbourne, who had informed them that because of the coincidence of the week-end and the climax of the Games, he too was unable to locate any available expert.
5. It is a matter for regret that the Respondents’ representative did not make use of the offer of the CAS to identify potentially available experts but it appears that this was the result of a misunderstanding and that there is no basis for concluding that their omission was in any way a deliberate means of seeking to delay the Panel’s proceedings.
6. In the same letter, the Respondents asked for “at least til Tuesday evening 28 March 2006 so as to get two working days to analyse the data and file our appeal”. The Panel interprets the latter phrase to refer to the filing of a defence since the present proceedings are not appellate in nature.

II ORDER

7. Having heard submissions from both parties which resulted in a measure of consensus and in consideration of article 20 of the CAS ad hoc Rules, the Panel directs as follows :

- (1) By 06:00pm Swiss time on 28 March 2006, the Respondents produce a report from their expert on the analytical data to be distributed in accordance with directions of the CAS Secretariat.
- (2) By 06:00pm Swiss time on 29 March 2006, the Respondents indicate to CAS in Lausanne whether in the light of such report, the Respondents continue to dispute the findings of violation of an anti-doping rule, and if so, on what basis.
- (3) If and in so far as the Respondents continue to dispute the findings on the basis that the analysis of their samples was in some material way flawed, the CGF has until 06:00pm Swiss time on 31 March 2006 to produce a report in defence of the analysis to be distributed on the same basis.
- (4) The Panel refers the dispute to arbitration by the CAS in accordance with the Code of Sports-related Arbitration (Article 20 (a) and (c) (i) and (iii) of the ad hoc Rules)
- (5) If a defence is advanced by the Respondents, further directions will be given for its resolution.

If, however, the Respondents advance no defence, the Panel will as soon as possible determine that an anti-doping rule violation has been committed (see article 28.8 (d) of the CGF Constitution), and the Federation Court will thereafter impose the sanctions provided for under article 28.9. (The Panel further draws attention to article 28.10, although its implementation is not a matter for it.)

III ADDITIONAL REMARKS

8. It may be helpful if the Panel adds the following observations :

(1) The relevant anti-doping rule violation relied on by the Federation Court is "*the presence of a Prohibited Substance or its metabolites ... in an athletes bodily specimen*" (Regulation 10 of the CGF Constitution).

(2) Furthermore, the applicable Commonwealth Games Anti-Doping Standard for the Melbourne 2006 Commonwealth Games ("the Standard") provide that

5.2.1 WADA-accredited Laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories (current version 4.0 dated August 2004).

The athlete may rebut this presumption by establishing that a departure from the International Standard occurred. If the athlete rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the CGF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

5.2.2 Departures from the International Standard for Testing which did not cause an Adverse Analytical Finding or other Anti-Doping Rule Violation shall not invalidate such results. If the athlete establishes that departures from the International Standard occurred during Testing then the CGF shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation.

These provisions read together provide a presumption of regularity as well as an anti-doping technicality rule.

9. Various points have been raised by the Respondents in correspondence

(1) a denial that either used any prohibited substance

(2) a reference to negative tests within the recent past of each carried out by both WADA and the Indian Authorities

(3) a suggestion that the prohibited substance whose metabolites was found that is to say stanozolol would have had no performance enhancing effect.

The Panel observes that established precedent suggest that none of these points could avail against the results of a properly conducted test which revealed the presence of a prohibited substance in an athlete's urine.

10. The Panel has no doubt that, consistent with the realistic attitude they have displayed throughout these proceedings, the Respondents' representatives will take these matters into account when they come to determine, in consultation with the Respondents, their future course of action. "

Melbourne, 26 March 2006

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

The Hon. Michael J. **Beloff** QC

President of the Panel

Judge Hugh **Fraser**

Arbitrator

Henry **Jolson** QC

Arbitrator