

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2006/A/1099 Singh v/Athletics Federation of India & IAAF

DECISION

pronounced by

THE BOARD OF THE INTERNATIONAL COUNCIL OF ARBITRATION FOR SPORT

on a petition for challenge of the Sole Arbitrator

in the arbitration between

NEELAM JASWANT SINGH, India

represented by Mr Sushil Dutt Salwan, attorney-at-law in New Delhi, India

- Appellant -

and

ATHLETICS FEDERATION OF INDIA, India

- Respondent -

and

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS, Monaco

represented by Mr Huw Roberts, solicitor in London, United Kingdom

- Intervener -

I Facts and procedure

1. On 2 June 2006 Ms Neelam Jaswant Singh (the “Appellant”) filed an appeal with the Court of Arbitration for Sport against the Athletics Federation of India (AFI) (the “Respondent”), with respect to a decision of the AFI dated 25 April 2006, in which the Appellant was suspended from competition for two years with effect from 12 August 2005, for an anti-doping rule violation.
2. With regard to the appointment of the arbitral panel, the Appellant’s statement of appeal stated the following: *“Appointment of the Arbitrator chosen by the appellant from the CAS list: The athlete is suggesting the following names as her choice of Arbitrator and has no objection if anyone of them is also chosen as the Sole Arbitrator by the respondent: i) Mr. Ram Kumar Anand, ii) Mr. Lin Kok Loh”*.
3. By letter from the CAS dated 9 June 2006 the Appellant was invited to clarify her position with regard to the appointment of the arbitration panel in the following terms: *“I invite you to clarify your position regarding the appointment of an arbitrator. Please inform the CAS Court Office, within ten days of receipt of the present correspondence, whether you agree to the appointment of a sole arbitrator by the President of the CAS Appeals Arbitration Division. If your preference is for a panel of three arbitrators be appointed to decide this matter, please appoint one arbitrator from the list of CAS members published on the CAS website (www.tas-cas.org), within the same deadline”*.
4. On the same day, a similar letter was sent by the CAS to the Respondent. In both letters, the parties were directed to the list of CAS members on the CAS website.
5. The appeal brief filed by the Appellant on 10 June 2006 stated the following: *“That in this appeal, the Athlete is also communicating names of her nominee who may be considered as the Member of the Arbitral Panel. The athlete would not object to the said name being also approved by the respondent, namely AFI, as Sole Arbitrator: (1) Mr. Ram Kumar Anand”*.
6. By letter to the Appellant dated 12 June 2006, the CAS acknowledged the Appellant’s request that Mr Ram Kumar Anand be appointed as arbitrator on a three-member Panel, or, with the agreement of the Respondent, that he be appointed as a sole arbitrator.

7. By letter from the CAS dated 12 June 2006, the Respondent was invited to inform the CAS whether it agreed to the Appellant's proposal that Mr Ram Kumar Anand be appointed by the President of the Appeals Arbitration Division as a sole arbitrator in this arbitration.
8. On 20 June 2006 the International Association of Athletics Federations (IAAF) applied to participate as a party to the arbitration and it requested confirmation from the CAS "*that the question of the appointment of arbitrators in the appeal shall proceed in accordance with CAS R41.4*".
9. By letter dated 20 June 2006 the Respondent stated the following: "*AFI is agreeable for Sole Arbitrator as Mr. Lin Kok Loh. Presently Counsel of Ms. Neelam J. Singh is not in city, hence, his confirmation to agree about Mr. Lin Kok Loh cannot be confirmed*".
10. On 12 July 2006 the IAAF filed its intervener brief. "*I understand from previous correspondence exchanged between CAS and the parties that the appointment of the Panel/Sole Arbitrator in this case will be made in due course. If it is helpful at this stage, however, I can confirm that the IAAF would be prepared to accept the other parties' choice of Mr Loh Lin Kok as Sole Arbitrator sitting in the case.*"
11. By letter dated 6 September 2006 Mr Lin Kok Loh was informed of his nomination by the parties as a sole arbitrator in this case. In such letter, Mr Loh was invited to complete a CAS Statement of Independence form if he chose to accept his nomination.
12. On 13 September 2007 Mr Loh returned a signed statement of independence form to the CAS Office, accepting his nomination as a sole arbitrator and confirming his independence from the parties, Ms Neelam Jaswant Singh and the Athletics Federation of India. On the completed statement of independence form, Mr Loh further stated: "*I am the Legal Adviser to the Asian Athletics Association of which the President, Mr Suresh Kalmadi was the President of the Athletics Federation of India (AFI) until quite recently*".
13. On 13 September 2006 the CAS issued a letter to the parties which was accompanied by a 'Notice of Formation of a Panel', confirming the appointment of Mr Lin Kok Loh as Sole Arbitrator, and a copy of the Sole Arbitrator's completed Statement of Independence form.

The letter to the parties stated the following: *"I remind the parties that pursuant to article R34 of the Code of Sports-related Arbitration, if any party should have an objection to the appointment of the Sole Arbitrator in this case, it should file a challenge within a deadline of seven days after the grounds for the challenge have become known"*.

14. On 25 September 2006, the IAAF (the "Intervener") was admitted as a party to the arbitration.
15. On 26 January 2007, the arbitral hearing took place in Lausanne, Switzerland. At the outset of the hearing, each party expressly confirmed that it had no objections regarding the constitution of the arbitral Panel. At the conclusion of the hearing, each party confirmed that it had no objection to the manner in which the proceedings took place.
16. By letter of 7 February 2007, Mr Susheel Dutt Salwan, counsel to the Appellant, expressed some concerns regarding the independence of the Sole Arbitrator in the following terms: *"As desired by the arbitrator, I am attaching the deposition statement of dr. suedha sahani, the expert witness on behalf of the appellant, the athlete, neelam jaswant singh. kindly have it placed before the learned arbitrator. I also wish to ascertain one important aspect. the sole arbitrator, in his written declaration under the CAS rules stated that except for being the legal advisor to AAA, where mr. suresh kalmadi was the president, he has no other association with the IAAF. however, from my return from luassane, i was informed by the client that the sole arbitrator is the president of Singapore Athletic association and that SAA is the member of IAAF and that the arbitrator cannot have an interest adverse to that of IAAF.*

my client wants to know as to why and how this aspect was concealed by the learned arbitrator and further, how would my client be sure of complete transparency and unbiased approach by the arbitrator. before the arbitrator would decide the appeal on merits, it is requested that he should deal with this aspect".
17. By letter of 8 February 2007, the Sole Arbitrator sent the following response to the Appellant's questions regarding his independence, which was immediately communicated to the parties by the CAS:

“With regard to the issue of the Sole Arbitrator’s independence contended by the Appellant’s counsel in his e-mail of 7 February 2007 to you, the word used by the Appellant’s counsel of concealment of the fact that the Sole Arbitrator is the President of the Singapore Athletics Association is too strong and in fact misconceived. It is a known fact that I have been the President of the Singapore Athletic Association formerly known as Singapore Amateur Athletic Association since 1981 and this fact was duly listed in my Curriculum Vitae submitted to the Court of Arbitration for Sport before my appointment as a member of CAS notified to me on 16 October 2002. I stepped down briefly for a term of two (2) years on 5 March 2004 and resumed the presidency on 29 June 2006.

Before my appointment as a member of CAS, it was also a known fact in the World of Athletics that I had been a member of the Arbitration Panel of the then International Amateur Athletics Federation since 1991 and also a member of the Legal Committee of the World Anti-Doping Agency since 2001. I was admitted as a member of the Court of Arbitration for Sport by virtue of CAS R14 to represent the distribution of one-fifth (1/5th) of the arbitrators selected from among the persons proposed by the International Federations, in this case IAAF, chosen from within their membership or outside.

The Sole Arbitrator concluded that it was inappropriate “for the Appellant’s counsel to contend that just because the Sole Arbitrator is the President of a member of IAAF, the Sole Arbitrator is incapable of complete transparency and unbiased approach or that he would favour IAAF. Further, the Sole Arbitrator was the Appellant’s own choice”.

18. By letter of 8 February 2007, the Appellant was invited by the CAS to “clarify her position with regard to any reservation that she may have had regarding the independence of the Sole Arbitrator”.
19. On 10 February 2007 counsel to the Appellant sent a letter to the CAS, the text of which is reproduced here in its entirety: *“I am in receipt of your communication dated 8th February, 2007 in response to appellant’s communication dated 7th February, 2007. I have communicated the same to the client. The appellant’s contention was based on the documents submitted to her by CAS (the notice of formation of Panel and Arbitrator’s acceptance and Statement of Independence). The said document, the sole Arbitrator has given his declaration about his independency wherein he had stated that he is the Legal*

Adviser to the Asian Athletics Association, of which Mr. Suresh Kalmadi was the President. The factum of his being the President of the Singapore Athletics Association was not disclosed therein.

According to the appellant, the sole Arbitrator being the President of Singapore Athletic Association, was not known to her. The credentials of the Arbitrator being specified by him now in your communicated dated 8th February, 2007 ought to have been done in the Arbitrator's Statement of Independence. The suggestion that it is a known fact is not correct as neither the rest of the world nor the athletes know about this. Had it been disclosed to her or had she knowledge of the same, she would have probably re-considered the appointment/recommendation. This is in view of the fact that the Athletic Federation of India, despite having announced the decision dated 13th March, 2006 of the AFI hearing panel, constituted in the appellant's case, has totally belied its stand and is now taking a contrary view alleging thereby that the decision dated 13th March, 2006 of the AFI hearing panel was never a decision and only a report. During the hearing, it was pointed out to the Arbitrator, in the present proceedings, that as per IAAF rules there is no concept of report being submitted by the hearing panel to IAAF for review or for comments. It was also appellant's contention that IAAF threatened to recover the entire cost from AFI as well as to take stern action against it, before the IAAF Council. This resulted in AFI compelling the hearing panel to change its decision. The influence of IAAF on its members is writ at large, and therefore, in this context the appellant in this case is obviously afraid that any person, directly or indirectly, associated with IAAF will be influenced. IAAF does not believe in giving justice or being fair or impartial. With these observations, the appellant is placing the matter again before the sole-Arbitrator for his consideration. Needless to say, the appellant has highest regards for Mr. Lin Kok Loh as a human being and also respects his legal acumen. The appellant has expressed her apprehension."

20. On 13 February 2007 the CAS Court Office wrote in the following terms to the parties: "I have taken note of the content of the Appellant's letter and have provided a copy of the letter to the Sole Arbitrator. However, the position of the Appellant remains unclear. I note that the Appellant is "placing the matter before the sole Arbitrator for his consideration", but I would respectfully advise the Appellant that the meaning of that sentence is unclear. I therefore repeat my request for the Appellant to clarify its position with regard to the

independence of the Sole Arbitrator, within three days of receipt of the present correspondence”.

21. By letter of 16 February 2007 from the Appellant's legal counsel, the Appellant filed a formal challenge to the independence of the Sole Arbitrator. The text of such letter is reproduced here in its entirety:

“In response to your e-mail dated 13th February, 2007, I have instructions from my client Ms. Neelam Jaswant Singh to state that the matter relating to Independence of the Arbitrator should be considered by the competent authority, as per CAS Rules & Regulations, in view of the specific plea of Ms. Neelam Jaswant Singh, as contemplated in the communication dated 7th February, 2007 and 10th February, 2007.

The contents of the communications are not reproduced herein for the sake of brevity. However, it is important to understand that the Sole Arbitrator was the President of S.A.A. at the time of making his statement of Independence and that this fact was not disclosed by him at the relevant time. Had it been specified at that stage, Ms. Neelam Jaswant Singh would have preferred appointment of some other Arbitrator and definitely not a person who is President or Office bearer of any National Athletic Federation.

Ms. Neelam Jaswant Singh has a grave apprehension that I.A.A.F. would not permit or support the concept of independency and specially through its Members. This is evident from the fact that I.A.A.F., unauthorisedly and illegally, made the AFI change the decision of AFI hearing panel pronounced on 13th March, 2005 and now both I.A.A.F. and AFI are taking a plea that decision of 13th March, 2005 was no decision but a report for consideration by the IAAF. Despite rules not supporting such a provision, IAAF did everything possible to coerce AFI with damages, action by Council etc.

How can one even believe that IAAF shall not influence SAA. Ms. Neelam Jaswant Singh contends that why were the facts not disclosed. Why is the learned Arbitrator taking a plea 'that the whole world of athletics knows'. For his kind information, according to the appellant, all athletes of India do not know who are the Presidents of other National Bodies except India. Even at the initial stage when the names were recommended, the appellant had suggested the name of Mr. Ram Kumar Anand besides the sole Arbitrator of the present case.

She was informed by AFI that Mr Lin Kok Loh is the legal advisor to AAA only. She was not even informed about his other credentials; which are now being informed to her by the learned Arbitrator.

The appellant strongly feels that the President/Chairperson of CAS should take a decision on the Independence of the Arbitrator as the appellant has her apprehension of fair justice, taking the facts and circumstances in to consideration. The appellant has already spent lot of money pursuing this appeal and she prays only for fair justice. The learned arbitrator instead of loosing his temper, as is reflected in his response, (reproduced in your letter dated 8/2/07), should appreciate appellants' contentions. In fact he does not deny the factum of non-disclosure but is taking other pleas. 'The world of athletics' suggested by him refers to persons who move with him in the world; persons who share the same platform with him. An innocent Indian Athlete, who comes from a village, is not expected to know that 'His world of Athletics'. She is only expected to know the World of Athletes who adhere to ethics, codes of discipline and sportsmanship.

The appellant accordingly prays to CAS to take a just decision on this aspect and in all fairness advise/request the Sole Arbitrator to abdicate the position of Sole Arbitrator in the present case and thereafter CAS should proceed to hear the appeal in accordance with CAS rules".

22. On 19 February 2007, pursuant to article R34 of the Code of Sports-related Arbitration, the CAS invited the Athletics Federation of India and the IAAF to submit their respective written comments regarding the challenge to the Sole Arbitrator.
23. On 20 February 2007 the Respondent submitted the following written statement to the CAS:
"Please refer to your fax message of 19th February 2007 regarding Ms. Neelam J. Singh's case. Athletics Federation of India has no objection regarding Sole Arbitrator and Federation had agreed for his appointment".
24. On 9 March 2007, the IAAF submitted a letter to the CAS, the content of which is reproduced here in its entirety:
"I refer to your letter dated 7 March 2007 inviting the IAAF to comment upon the challenge made by the athlete against the independence of the Sole Arbitrator in this case, Mr Lin Kok.

As we understand matters, the basis of the athlete's application is that Mr Lin Kok failed to disclose the fact that he is President of Singapore Athletics Association (SAA) and the athlete has a "grave apprehension" that the IAAF will seek to influence the outcome of this case through the SAA.

The IAAF opposes the athlete's application. In order to fully elaborate the IAAF's position, it is necessary first to set out the relevant rules and the law and then to analyse the facts of this case against such background.

Relevant CAS Rules

The starting point is the CAS rules themselves. They provide at CAS Rule 33 of the General Provisions:

"Independence and Qualifications of Arbitrators

Every arbitrator shall be and remain independent of the parties and shall immediately disclose any circumstances likely to affect his independence with respect to any of the parties."

Rule 34 provides:

"Challenge

An arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence. The challenge shall be brought within 7 days after the grounds for the challenge has become known."

Therefore, as a matter of a CAS Rules, two conditions need to be fulfilled if there is to be a successful challenge to the appointment of an arbitrator. These are:

- (i) that there be "legitimate doubts over his independence"; and*
- (ii) that the challenge be presented within 7 days.*

Relevant case law

The judgement of the First Civil Division of the Swiss Federal Tribunal in A and B v/IOC and FIS suggests that the relevant test as a matter of Swiss law is based upon the existence of objective facts which are likely, for a rational observer, to arouse suspicion concerning the arbitrator's independence.

In determining whether or not this is so, the decision in A and B v/IOC and FIS suggests that there are no absolute grounds for a challenge but that the matter should be evaluated on a case by case basis. However, that, in evaluating whether such suspicion exists, it is important to establish whether or not the arbitrator is linked in any way to the party that appointed him. It is not a reasonable ground for challenge that the judge or arbitrator dealt with the parties in a previous procedure, even if he ruled against a party. The Swiss Federal Tribunal's decision also notes that international arbitration is differentiable from court proceedings, in that the world of international arbitration is a relatively small one and the parties frequently come into contact with each other.

The IAAF's position

The IAAF does not consider that a fair minded observer would conclude that there were any legitimate doubts over Mr Lin Kok's independence. It has come to this conclusion for the following reasons:

- (i) none of the issues in this case have anything whatsoever to do with the SAA and the SAA has no interest in its outcome.*
- (ii) Mr Lin Kok was not appointed by the IAAF or the AFI in this case. Mr Lin Kok was appointed by the athlete herself and the AFI agreed to the appointment. The athlete now claims that, in making her appointment, she was not to know that Mr Lin Kok was SAA President. The IAAF notes that a cursory glance of the List of Arbitrators on the CAS website would have confirmed that position to her.*
- (iii) at the time of his appointment by the athlete, Mr Lin Kok disclosed that he was legal adviser to the Asian Athletics Association whose president had until quite recently also been the president of the AFI. The athlete therefore knew very well from the outset that Mr Lin Kok was actively involved in the Asian athletics community and she had no reason to question such involvement at the time (indeed, Mr Lin Kok's experience in adjudicating doping-related cases was no doubt one of the reasons why she appointed him in the first place). In the IAAF's respectful submission, there is no discernible difference in this regard between Mr Lin Kok's role as adviser to the Asian Athletics Association and his Presidency of the SAA within the Asian Area.*
- (iv) the athlete's claim that the IAAF will seek to influence Mr Lin Kok through the SAA is simply preposterous. It is notable that her contention is not based on any evidence but on allegations that she has maintained throughout these proceedings that the IAAF must have sought to influence the AFI in taking a decision against her in the first place and will now do the same with the SAA. These allegations have been consistently denied by the IAAF and the AFI gave direct evidence at the hearing in Lausanne that the athlete's allegations in this regard were completely false. There has been no contact whatsoever between the IAAF and either Mr Lin Kok or the SAA in relation to this case and that will remain the position. The athlete's suggestion in her counsel's letter that the IAAF specifically influenced Mr Lin Kok not to disclose his SAA Presidency is totally without foundation and indeed is libellous.*
- (v) finally, there has been no evidence in the course of the handling of these proceedings that Mr Lin Kok is anything other than independent of all parties. Indeed, Mr Lin Kok has gone to very considerable lengths to ensure that the athlete has been given the fairest possible chance to present her case. This included allowing the athlete to admit evidence from witnesses at the hearing on 26 January who had not previously been disclosed to the other parties in accordance with CAS Rule and also allowing the athlete to adduce expert evidence after the hearing in Lausanne notwithstanding that such evidence had not been filed on a timely basis in accordance with CAS Rules and notwithstanding that the athlete had failed on numerous occasions to respond to the Sole Arbitrator's procedural orders to file it in advance of the hearing.*

In the circumstances, the IAAF does not believe that any fair minded, rational observer would conclude that there were legitimate doubts over the independence of Mr Lin Kok in this case and the IAAF notes that the AFI has taken the same view in its letter to CAS dated 20 February 2007. Therefore, the first ground of challenge in Rule 34 of CAS Rules is not met.

Furthermore, it is not all clear that the challenge, even if it had merit, has been brought within time in accordance with the second limb of Rule 34. The letter from the athlete's counsel simply states that he was informed by his client that Mr Lin Kok was SAA President on return from the hearing in Lausanne. The clear indication is that the athlete herself knew of the position at the time of the hearing. No formal challenge was made to Mr Lin Kok's independence until more than 10 days after the hearing in an e-mail from the athlete's counsel to CAS on 7 February 2007.

In conclusion, the IAAF opposes the challenge made to Mr Lin Kok's independence. It considers that the fact that he is President of the SAA has nothing to do with the facts or issues relevant to the present case and could not conceivably be seen to pre-dispose him to decide the matter one way or another”.

25. On 15 March 2007 the Sole Arbitrator submitted the following final comments after receipt of the parties' respective comments:

“I refer to you faxed letter of 9 March 2007 to me inviting me to make any final comments that I may have regarding the challenge to my appointment.

In addition to what I had stated in my letter to you of 8 February 2007, when I filled in the Arbitrator's Acceptance and Statement of Independence form on 13 September 2006, it just did not occur to my mind that there could be any linkage between the interest of the athlete or the Athletics Federation of India or IAAF and the fact that I am the President of the Singapore Athletic Association to affect my independence both subjectively and objectively. There was certainly no question of concealment on my part. Of course anything is possible but one has to be objective.

The three (3) parties involved in this arbitration have all submitted their various comments and I would now leave it to the ICAS or its Board to rule on the challenge by the athlete.”

26. At all times from the filing of the appeal by the Appellant on 2 June 2006 until the present date, Mr Lin Kok Loh's profile has appeared on the CAS website as follows:

“Mr Lin Kok Loh (Singapore) - Singapore - E

Advocate & Solicitor of the Supreme Court of Singapore. Legal adviser, Asian Amateur Athletic Association. Legal adviser, Asian Bodybuilding Association. President, Singapore

Amateur Athletic Association. Former Member IAAF Arbitration Panel. Member of the Legal Committee of World Anti-Doping Agency”.

II Assessment by the International Council of Arbitration for Sport (ICAS) board

27. Article R34 of the Code of Sports-related Arbitration states:

“R34 Challenge

An arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence. The challenge shall be brought within 7 days after the ground for the challenge has become known.

Challenges are in the exclusive power of the ICAS which may exercise such power through its Board in accordance with the Statutes which are part of this Code. The petition setting forth the facts giving rise to the challenge shall be lodged by a party. The ICAS or its Board shall rule on the challenge after the other parties, the challenged arbitrator and the other arbitrators have been invited to submit written comments. It shall give brief reasons for its decision. The ICAS may decide to publish decisions related to petitions for challenge.”

28. The notion of independence of the Sole Arbitrator must be examined in the light of art. 180 §1(c) of the Swiss Federal Code on Private International Law (hereinafter “the PIL Act”), the wording of which is almost the same as that of the Code of Sports-related Arbitration, namely: “*An arbitrator may be challenged if the circumstances permit legitimate doubt about his independence*”.

29. The requirement of independence so embodied in the PIL Act is based essentially on the decisions of the Swiss Federal Tribunal in relation to art. 58 and 61 of the Federal Constitution (cf. Swiss legal compilation RS 101), and art. 19 of the Intercantonal Arbitration Convention, which was the law applicable prior to the entry into force of the PIL Act (cf. RS 279) (see decision of the Swiss Federal Tribunal [hereinafter “ATF”] 118 II 361; Patocchi/Geisinger, Code DIP annoté, Ed. Payot, 1995, p. 455; Bucher/Tschanz, International Arbitration in Switzerland, Ed. Helbing & Lichtenhahn, 1988, n. 123).

30. On this legal basis, independence means that an arbitrator may not have any link with the parties involved in the arbitration (see Dutoit, Commentaire de la loi fédérale du 18

décembre 1987, Ed. Helbing & Lichtenhahn, 1996, p. 480). However, neither the statute nor the writers give a formal definition of the independence of arbitrators.

31. In fact, there are no absolute grounds for challenge (see Lalive/Poudret/Reymond, *Le droit de l'arbitrage interne et international en Suisse*, Ed. Payot, 1989, ad art. 180 n. 5). Art. 180 §1 lic. c) PIL Act provides that an arbitrator's independence must be assessed according to the "circumstances" of the case, and thus not on the basis of general or subjective assumptions which are not objectively verified in the case in hand. *"A serious doubt regarding an arbitrator's independence must be based on concrete facts that can justify, objectively and reasonably, a lack of confidence on the part of a person reacting in a reasonable manner"* (Bucher/Tschanz, op. cit., n. 124; see also ATF 111 II 263: *"Selon la jurisprudence, il faut qu'il existe des faits qui justifient objectivement la méfiance. Celle-ci ne saurait reposer sur le seul sentiment subjectif d'une des parties; un tel sentiment subjectif ne peut être pris en considération que s'il est fondé sur des faits concrets, et si ces faits sont, en eux-mêmes, propres à justifier objectivement et raisonnablement un tel sentiment chez une personne réagissant normalement [and references quoted]"*); Jolidon, *Commentaire du Concordat suisse sur l'arbitrage*, Ed. Staempfli, 1984, p. 268; Lalive/Poudret/Reymond, op. cit., ad art. 180 n. 5; Pattochi/Geisinger, op. cit., p. 455; Rüede/Hadenfeldt, *Schweizerisches Schiedsgerichtsrecht*, Schuthess, 1993, p. 176).
32. In the present case, it was the Appellant who proposed the Appointment of Mr Loh as a sole arbitrator. This proposal was subsequently accepted by both the AFI and the IAAF. The names of CAS members available for appointment as arbitrators are listed on the CAS website for consultation by parties or potential parties to a CAS arbitration. Each Arbitrator's name is accompanied by a short professional profile. In accordance with normal CAS practice, during the process of nomination and appointment of the Panel, the parties were directed by the CAS to consult the list of CAS members on the CAS website in order to select the panel members.
33. At all relevant times, Mr Loh's profile on the CAS website clearly indicated, *inter alia*, that he was President of the Singapore Amateur Athletic Association and a former member of the IAAF Arbitration Panel.

34. At the moment that the Appellant proposed and agreed to the appointment of Mr Loh as sole arbitrator, she was, of course, familiar with the facts of the case and was aware of the possibility that the IAAF would become involved in the arbitration.
35. At the moment that Mr Loh accepted his appointment as sole arbitrator and completed his Statement of Independence form, the only information that was available to him regarding the case was that the case involved the Ms Singh and the AFI as the Appellant and Respondent respectively. Mr Loh completed his Statement of Independence form on this basis. No additional Statement of Independence form was completed by the Sole Arbitrator after the admission of the IAAF as a party to the arbitration.
36. During the course of the arbitral proceedings, including at the arbitral hearing, all parties expressed agreement with the appointment of Mr Loh as Sole Arbitrator.
37. The Appellant first raised concerns regarding the independence of the Sole Arbitrator on 7 February 2007. This was eight months after the Appellant proposed Mr Loh's appointment, over four months after the admittance of the IAAF as a party to the arbitration and 12 days after the arbitration hearing. Article R34 of the Code requires parties to bring a challenge within 7 days after the grounds for the challenge have become known.
38. The Appellant has failed to indicate the exact date upon which she became aware of a potential cause for concern regarding the independence of the Sole Arbitrator. Counsel to the Appellant has stated in his fax letter of 7 February 2007: "*from my return from luassane (sic), I was informed by the client that the sole arbitrator is the president of Singapore Athletic Association and that SAA is the member of IAAF*". In order for the challenge to the Sole Arbitrator to have been filed in a timely manner in accordance with article R34 of the Code, the Appellant can only have become aware of the supposed grounds for the challenge after 31 January 2007, i.e. five days after the arbitration hearing.
39. It appears from the Appellant's letter of 7 February that the Appellant was already aware of the supposed grounds for challenge before the counsel for the Appellant returned from the hearing in Lausanne, and provided him with this information upon his return. In light of the fact that it was the Appellant who originally proposed the appointment of Mr Loh as an arbitrator, it can be assumed that the Appellant had some knowledge of Mr Loh and his

professional activity at least as early as 2 June 2006, when she proposed his appointment. Considering that the parties were expressly directed to consult the list of CAS members on the CAS website during the appointment process, it can be concluded that the Appellant had knowledge, or should have had knowledge of the content of Mr Loh's profile, which is prominently displayed on the CAS website. It is therefore concluded that the Appellant had knowledge of the supposed grounds for challenge before 31 January 2007 and therefore did not bring the challenge within 7 days after the grounds for the challenge had become known, as required under article R34 of the Code.

40. Mr Loh submitted his Statement of Independence form before he was made aware of the potential involvement of the IAAF in this case. Although it would have been preferable for Mr Loh to have submitted an additional formal Statement of Independence following the acceptance of the IAAF as a party, he did not do so as he understood that the parties who had jointly nominated him as Sole Arbitrator had at least a general awareness of his professional background in the sporting domain.
41. The ICAS Board therefore concludes that the challenge brought by the Appellant against the Sole Arbitrator was not submitted in a timely manner in accordance with art. R34 of the Code and is therefore inadmissible.
42. The ICAS Board further concludes that had the challenge been admissible, it would not have been successful on its merits.

III. Decision

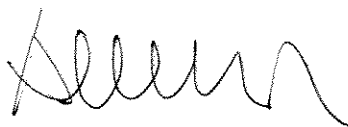
The Board of the International Council of Arbitration for Sport considers:

1. The petition for challenge to the appointment of Mr Lin Kok Loh, filed on 16 February 2007 by Ms Neelam Jaswant Singh, is rejected.
2. Mr Lin Kok Loh shall continue to act as the Sole Arbitrator in the case *CAS 2006/A/1099 Singh v/Athletics Federation of India & IAAF*.
3. The present decision is pronounced without costs.
4. The present decision is not subject to appeal.

Lausanne, 2 May 2007

The Board of the
International Council of Arbitration for Sport

Signed on its behalf by:



Mino Auletta

ICAS President ad interim