

# Anti-Doping Disciplinary Panel

J.L.N Stadium, Gate No. 10 Hall No.103  
1<sup>st</sup> Floor, Lodhi Road, New Delhi 110 003  
Telefax : 011-24368274

To,

Date: 13.02.2023

Ms. Aishwarya B.  
D/o Sh. Babu Sab,  
R/o No. 274-C, Parvati Nagar, Attible Masid Road,  
Bangalore, Karnataka  
Email: [aishwaryanaidu1506@gmail.com](mailto:aishwaryanaidu1506@gmail.com)

**Subj: Decision of the Anti Doping Disciplinary Panel Case No.- 61.ADDP.10.2022**

**NADA Vs. Aishwarya B (ADAMS ID – B.AIFA94541)**

The order containing the decision of the Anti-Doping Disciplinary Panel dated 10.02.2023 in respect of final hearing of the above case held on 06.02.2023 is enclosed.

Please note that according to Article 13.2.2 of Anti-Doping Rules of NADA 2021, **the time to file an appeal to the National Anti-Doping Appeal Panel shall be twenty one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti Doping Rules 2021 may be downloaded from NADA website at the following link:-[www.nadaindia.org/en/anti-doping-rule-of-nada](http://www.nadaindia.org/en/anti-doping-rule-of-nada)

The receipt of this communication may be acknowledged.

Encl: 04 sheets.



(Yasir Arafat)

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary Panel for information and action deemed necessary:

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700)  
P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. Secretary General, Athletics Federation of India, A-90, Naraina Industrial Area,  
Phase-1, near PVR cinema, New Delhi- 110028.
3. International Association of Athletics Federations, 17, Rue Princesse Florestine BP  
359, MC 98007, Monaco.
4. National Anti-Doping Agency, J.L.N Stadium, Gate No. 10 Hall No.103 , Lodhi Road,  
New Delhi 110003.

## **BEFORE THE ANTI DOPING DISCIPLINARY PANEL**

In the matter of Ms. Aishwarya B for violation of Articles 2.1 and 2.2 of National Anti-Doping Agency Anti-Doping Rules, 2021

**Quorum:** Mr. Chaitanya Mahajan, Chairman, ADDP  
Dr. Sanjogita Soodan, Medical Member, ADDP  
Mr. Jagbir Singh, Sports Member, ADDP

**Present:** Mr. Yasir Arafat, NADA  
Ms., Aishwarya B, Athlete  
Mr. Saurabh Mishra, Counsel for Athlete

### **J U D G E M E N T**

**13.02.2023**

1. The present proceedings before this Anti-Doping Disciplinary Panel (**“this panel”**) emanate from the Adverse Analytical Finding (**“AAF”**) against Ms. Aishwarya B. (**“the athlete”**). The athlete is a **“Jumps”** athlete and her date of birth as stated by her in the Dope Control Form (**“DCF”**), happens to be **15.06.1997**.
2. That the brief facts of the case are as follows:
  - 2.1 On June 13th and 14th 2022, during 61<sup>st</sup> national Inter State Senior Athletics Championship, Chennai held at Chennai, Tamil Nadu, a NADA Doping Control Officer ("DCO") collected a urine Sample from the Athlete.
  - 2.2 The athlete was assisted by the DCO and the Sample was split by the Athlete into two separate bottles, which were given reference numbers A 6491720 & 6493116 (the "A Sample") and B 6491720 & 6493116 (the "B Sample").
  - 2.3 The said Samples were transported to the World Anti-Doping Agency ("WADA")-accredited Laboratory, National Dope Testing Laboratory, Delhi. The Laboratory analyzed the A Sample in accordance with the procedures set out in WADA 's International Standard for Laboratories. Analysis of the 'A' Sample returned an Adverse Analytical Finding ("AAF") for the following:

## **“Sl.2. Other Anabolic Agents/SARMS Enobosarm (Ostarine)”**

2.4 The said Substance is an Anabolic Steroid and is listed under S 1 of WADA's 2022 Prohibited List which are non-specified substances.

3. As per NADA's records, the Athlete did not have a Therapeutic Use Exemption ("TUE") to justify the presence of above Anabolic Steroids in her system.
4. The athlete vide her Written Submissions dated 04.08.2022, waived off her right to B-Sample analysis.
5. The Initial Review and Notification of “AAF”, provisionally suspending her was issued by NADA on 18.07.2022.
6. The Athlete submitted her Written Submissions on 04.08.2022.
7. NADA issued the Notice of Charge stating Potential Consequences on 22.09.2022.
8. Submissions made by the athlete through her Written Submissions dated 04.08.2022 are reproduced herein:

8.1 It is submitted that athlete did not take any prohibited substance in order to enhance her performance. She had suffered injury in the past when her shoulder had dislocated while lifting weights in the gym in February 2021. She took the proper treatment and then recovered from this injury. In the run up to the competition, she pushed herself too much which led her to the painful discomfort on the same place.

8.2 Fearing her injury might resurface if she continues her training with same vigour, she discussed this issue with her colleague named Jagdish who is also an athlete. As she was just few days away from the competition and she was confident of winning gold medal like previous year, she did not want to skip this competition. So, Jagdish suggested her to take Ostarine tablet claiming that its completely safe and it would help her to get rid of pain and muscle healing. Since Jagdish is an

active sportsperson, she believed on his claim and took Ostarine tablets on the advice of her colleague Jagdish being completely ignorant that it is banned by WADA.

8.3 It is submitted that athlete has never been tested positive for any prohibited substance in the past and has been tested many times before this. The athlete took all due care and was very careful about her food and supplements.

9. Further during Anti-Doping Disciplinary Panel (“**ADDP**”) Proceedings, the Athlete through her counsel orally submitted that:

9.1. That the Athlete had gone through multiple Dope Tests earlier but came out to be negative.

9.2. That in order to substantiate her claim of Injury, the Athlete attached a prescription from one Sparsh Hospital.

9.3. The athlete while making oral submissions brought to the knowledge of the AD DP Panel that she had sought a Medical Consultation from ‘Apollo Hospital’ and later on went for her further medical examination in Sparsh Hospital. The document pertaining to her treatment in Sparsh Hospital is on record as part of her written submissions

9.4. The Athlete along with her counsel, in addition to her Written Submissions, orally pleaded to bring forth a third-party namely one Mr. Jagdish as a witness. The said request was vehemently objected by NADA representative. The panel keeping in mind the Principles of Natural Justice, turned down the request of the athlete to present a witness without prior intimation to NADA.

9.5. The submissions made in the form of Written Submissions were reiterated orally through the Athlete’s counsel and are not being repeated for the sake of brevity.

## 10. Submissions by NADA

10.1. NADA submitted that the Athlete has not disputed the presence of prohibited substance.

10.2. NADA also submitted that the Athlete is trying to shift the burden of violation on a Third-Party.

10.3. NADA submitted that as per Article 10.2.3 of the NADA ADR, 2021

“The term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.”

10.4. NADA further submitted that the Athlete did not take the reasonable care to consult a medical practitioner and now she is trying to shift the blame on a third-party.

11. After hearing both the Parties, the panel passed an Interim Order dated 03.01.2023 keeping in mind the facts which were brought into light during the ADDP Hearing, the relevant excerpt from the order is reproduced herein:

*“4. Upon athlete’s insistence to bring witness on record the panel unanimously agrees and directs the following;*

*a) A valid prescription of Apollo Hospital with date, Doctor’s Name and Registration number.*

*b) Sworn Affidavit of the Doctor of the Apollo Hospital bearing details of the treatment/advise extended to the Athlete along with his/her registration number.*

*c) Sworn Affidavit of the Doctor of the Sparsh Hospital bearing details of the treatment/advise extended to the Athlete along with his/her registration number.*

*d) Sworn Affidavit of the Third-Party witness Mr. Jagdish entailing the details of the incident.”*

*5. That the panel directs the above-mentioned Affidavit be placed on record by 5<sup>th</sup> of January, 2023, 11:00 AM and the same be circulated electronically.*

*6. The Matter stands adjourned for final hearing on 12.01.2023 (Thursday).”*

12. Further, the panel during the hearing dated 12.01.2023 noticed that due to an inadvertent error on the part of NADA, the Interim Order dated 03.01.2023 could not be served upon the Athlete or her Counsel. The panel took into consideration the Affidavits of Dr. Madan Ballal, Dr. Padmanabhan Sekaran and Mr. Jagdeesh placed on record by the Athlete.

13. The Panel, keeping in mind the principles of Natural Justice directed NADA to serve the order dated 03.01.2023 to the Athlete and her Counsel and the panel deemed it fit to grant penultimate opportunity to the athlete to make any additional written submissions.

14. Relevant paragraph from the Interim Order dated 12.01.2023 is reproduced herein:

*“5. The panel hereby directs the athlete and her counsel:*

*a. To comply (if any) to the above-mentioned order dated 03.01.2023.*

*b. Oral submissions made during the course of hearing be made a part of the Written Submissions.”*

15. The Athlete through her counsel submitted Additional Written Submissions dated 06.02.2023 which are reproduced herein:

*“It is submitted that the athlete comes from a humble background with limited means of income. She is also not much educated as she, did her schooling from a rural government school in Karnataka and sole focus on her sports career took a toll on her education. That’s why she finds it difficult to understand and comprehend the English language communication as she is not good both in speaking and writing in English. This is the reason when she asked by ADDP about her place of treatment in English, she became nervous and mentioned the name of Apollo hospital by mistake. It is submitted that athlete has been undergoing intense mental trauma since ADRV has been reported in her case. So, she was frightened when she appeared before the ADDP. Under such state of affairs, she mentioned the name of Apollo hospital where she had gone for a different medical purpose few years back.”*

*“It is submitted that she took medical consultation from Dr. Madan Ballal and Dr. Padmanabhan Sekaran for her shoulder injury. The affidavits by two abovementioned doctors have already been placed before this Panel.”*

### **Observations and Findings of the Panel**

We have heard the arguments made by the Athlete, arguments by NADA and perused the available material on record shared with us.

16. The panel has perused the Affidavits brought on record, the panel notes that the Injury referred to in the Written Submissions dates back to February, 2021, the panel would here like to mention that the samples of the Athlete were collected in June, 2022.
17. The panel fails to understand that if the problem of the Athlete was persistent for more than 1 (one) year why did the athlete not approach a hospital or a Registered Medical Practitioner?

18. The Panel would here like to reiterate Article 2.1.1 of the NADA ADR, 2021

*“It is the Athletes’ personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an antidoping rule violation under Article 2.1.”*

19. The Athlete in the present case totally disregarded the above-mentioned rule and took “Ostarine Tablets” on advice of her colleague. The Athlete should have consulted a doctor or her coach/trainer before ingesting anything in her body.

20. It is an accepted fact that the Athlete was aware of the Anti-Doping Rules as she had been through multiple Dope-Tests prior to the one in the present case.

21. Now, here it is for the panel to decide whether this case is a case of Intentional Doping or not, the panel would like to reproduce Article

*“10.2.3 As used in Article 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the*



*substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”*

22. Here the panel would also like to reiterate that the substance found in the Athlete’s body was an Anabolic Steroid and is listed under S 1 of WADA' s 2022 Prohibited List, keeping in mind the medical usage of the said substance and based on opinion taken from Experts, it is clear that this drug is used for “Performance Enhancement”.
23. In the CAS Judgement in CAS 2020/ A/7536 Ashley Kratzer v. International Tennis Federation the Hon’ble Sole Arbitrator noted the Following:

*“It is well-known in the world of sport that particular care is required from an athlete when applying medications, because the danger of a prohibited substance entering the athlete's system is particularly high in such context, i.e. significant (e.g. CAS 2020/A/7299 no. 133 et seq.; CAS 2013/A/3327, no. 75; CAS 2016/A/4609, no. 68).*

*89. It is uncontested between the Parties that the Appellant received some anti-doping education. She stated that she is aware that supplements and medications must be checked for prohibited substances before being administered. Thus, in the abstract, the Appellant is and was aware that self-medication is associated with a significant doping risk. This is conoborated by the fact that the Appellant competes at an elite level already for many years and was at the relevant time "already" 21 years old.*

*90. What appears questionable, however, is whether the Appellant recognized the significant doping risk in relation to the specific circumstances of this case, i.e. whether she qualified the use of the Cream as administering or applying a medicine. Such assumption would be easier to make, if the Appellant had bought the Cream in a*

*pharmacy, if the Cream had be given to her by doctor or if the Cream had been labelled as a medicine. This is not the case here. However, in the view of the Sole Arbitrator, it suffices that the Appellant in a parallel evaluation from a layperson's perspective knew enough to qualify her behaviour as some form of self-medication.”*

24. It was further noted that:

*“In case of an ADRV involving a non-specified substance, an athlete is presumed to have acted intentionally (Article 10.2.1.1 TADP). However, the athlete can rebut such presumption. In the case at hand the substance found in the Appellant's sample is a non-specified substance. Consequently, the burden of proof rests on the Player to demonstrate that she did not commit the ADRV intentionally. She, thus, needs to convince the Sole Arbitrator by a balance of probability (Article 8.6.2 of the TADP) that she lacked intentionality within the meaning of Article 10.2.3 TADP.”*

25. The panel believes that the Athlete being a seasoned player was totally aware of the consequences and “significant risk” involved with ingesting an unknown substance in her body, the panel also agrees that a seasoned player who has been through multiple dope-tests would be extra-cautions and vigilant and not just ingest any substance.

26. The assertion that the Athlete had pain and discomfort cannot be used as a mere excuse to ingest an “unknown substance” into one’s body, no matter how much pain or discomfort the Athlete was going through, there is always an option to visit the Hospital or take Advice from a Registered Medical Practitioner before consuming anything.

27. Based on the findings above it is clear that this is a case of “Intentional Doping” as there is no reason to believe that an athlete of her stature and repute would be so naïve to ingest any substance in her body on advice of someone else.

28. The Athlete is clearly trying to shift the blame on an unrelated third party for the ADRV committed by her.
29. All these circumstances clearly reveal that the intention of the Athlete was to Dope, as no Athlete of her level and understanding of the Anti-Doping Rules would behave in the manner she did.
30. In view of the Facts, Circumstances, Precedents and Rules mentioned above, it is held that the Athlete has violated Article 2.1 & 2.2 of the NADA ADR, 2021, **she is hereby sanctioned with an ineligibility of four (04) years as per Article 10.2.1 of the NADA ADR, 2021. The period of ineligibility shall commence from the date of provisional suspension i.e, 18.07.2022.** It shall be noted that the athlete has **failed to satisfy the panel that the ADRV was non-intentional as per Article 10.2.1.1 of the NADA ADR, 2021.**
31. That as per **Article 10.10 of the NADA ADR, 2021**, the athlete is hereby disqualified of all of the individual results obtained in the said Event with all Consequences, including forfeiture of all medals, points and prizes.
32. The athlete is entitled for the credit period of provisional suspension already undergone under Article 10.13.2.1 **The panel hereby directs that the Athlete be given credit period of her provisional suspension** which she had already undergone for calculating her total period of ineligibility of four (04) years.

The matter is disposed of, accordingly.

Digitally signed by  
CHAITANYA MAHAJAN  
Date: 2023.02.14  
13:50:38 +0530'  
**Mr. Chaitanya Mahajan**  
(Chairman)

  
**Dr. Sanjogita Soodan**  
(Medical Member)

  
**Jagbir Singh**  
Member