

CAS 2024/A/10872 World Anti-Doping Agency (WADA) v. National Anti-Doping Agency of India, Radhika Radhika

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Heiner Kahlert, Attorney-at-law, Munich, Germany

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Mr Nicolas Zbinden and Mr Robert Kerslake, Attorneys-at-law, Lausanne, Switzerland

Appellant

and

National Anti-Doping Agency of India, New Delhi, India

First Respondent

Radhika Radhika, Israna, India

Second Respondent

I. THE PARTIES

1. The World Anti-Doping Agency (“**Appellant**” or “**WADA**”) is the international anti-doping agency. It has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.
2. The National Anti-Doping Agency of India (“**First Respondent**” or “**NADA India**”) is the National Anti-Doping Organisation (“**NADO**”) for the Republic of India. It operates pursuant to the provisions of the Indian National Anti-Doping Rules 2021 (the „**ADR**”).
3. Ms Radhika Radhika (“**Second Respondent**” or “**Athlete**”) is a wrestling athlete born on 2 June 2000. Among other sporting achievements, she placed second in the 2024 Senior Asian Championships.
4. The First Respondent and Second Respondent are jointly referred to as the “**Respondents**”, while the Appellant and the Respondents are jointly referred to as the “**Parties**”.

II. FACTUAL BACKGROUND

A. Introduction

5. The present appeal proceeding concerns a decision taken by NADA India on 15 May 2024 (“**Appealed Decision**”), whereby it decided not to bring the Athlete’s case forward as an Adverse Analytical Finding¹ (“**AAF**”).
6. Below is a summary of the relevant facts based on the Parties’ submissions. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts transpiring from the Parties’ submissions (including the evidence adduced) in the present proceeding, he refers in his Award only to the facts he considers necessary to explain his reasoning.

B. Facts

7. On 1 October 2022, the Athlete was subject to an in-competition doping control, during which a urine sample with the number 6500944 (“**First Sample**”) was collected from her.
8. On 1 November 2022, the National Dope Testing Laboratory of India (“**NDTL**”) reported an Atypical Finding (“**ATF**”) for clenbuterol in the First Sample. According to a report submitted by the NDTL on 23 November 2022, the estimated concentration of clenbuterol present in the First Sample was 0.01 ng/mL. Clenbuterol is a Prohibited Substance listed under S1.2 of the WADA Prohibited List as an “*Other Anabolic*”

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the ADR.

Agent”. Under the WADA Technical Letter – TL23 (“**TL 23**”), clenbuterol is subject to a Minimum Reporting Level (“**MRL**”) of 5 ng/mL.

9. On 23 December 2022, the Athlete was subject to another in-competition doping control, during which a urine sample with the number 6493615 (“**Second Sample**”) was collected from her.
10. On 5 January 2023, the NDTL reported no presence of any prohibited substance in the Second Sample.
11. On 6 May 2024, NADA India conducted an interview with the Athlete via video conference.
12. A report issued by NADA India at an unknown date thereafter (“**Investigation Report**”) summarizes the interview and other information gathered by NADA India in relation to the Athlete as follows:

“(a) During interview that athlete informed that she has not visited any country China, Mexico and Guatemala in Oct 2022 and not taking any medicine in 2022.

(b) She is following normal diets and taking Mutton and Chicken regularly and fish occasionally. The quantity of Mutton and Chicken is 300-400 gram and fish approx. ½ kg.

(c) After 01.10.2022, she has participated in National and International events and she is found Negative during all events. Latest international event was held on 13.04.2024 at Bisket, Kyrgyzstan and won Silver Medal during the competition. The test history of the athlete after 2022 as per ADAMS are as follows :

<u>S. No</u>	<u>Competition</u>	<u>Sample type</u>	<u>Test dates</u>	<u>Result</u>	<u>Testing Authority</u>
1	In Competition	Urine	11-Apr-2024	Result Not Updated on ADAMS	UWW - United World Wrestling
2	In Competition	Urine	11-Mar-2024	Negative	IND-NADO
3	In Competition	Urine	04-Feb-2024	Negative	IND-NADO
4	Out of Competition	Urine & Blood	02-Sep-2023	Negative	IND-NADO
5	In Competition	Urine	22-Jul-2023	Negative	IND-NADO
6	In Competition	Urine	16-Jun-2023	Result Not Updated on ADAMS	UWW - United World Wrestling

7	In Competition	Urine	23-Dec-2022	Negative	IND-NADO
8	In Competition	Urine	01-Oct-2022	Atypical Result Finding (ATF)	IND-NADO
9	In Competition	Urine	25-Jun-2022	Result Not Updated on ADAMS	UWW - United World Wrestling
10	In Competition	Urine	25-Mar-2022	Negative	IND-NADO

[...]

(g) *The case is of two-year-old [sic] and the athlete is no idea about the more details of the case.*

Recommendation –

1. No further investigation can be carried out as the case is from 2022 and the athlete has no further details to provide.

2. The case may be closed as the athlete was follow up tested in December 2022 and the test came back as negative and as per the WADA stakeholder document regarding potential meat contamination case Point B Serial number 2 which states that “As soon as possible, and in any event before notifying the Athlete of the Atypical Finding, collect another urine Sample from the Athlete in a No Advance Notice test”.

3. Additionally, the athlete since then has been tested multiple times and all the results have come back negative.” (bold print and underline as in the original)

13. On 15 May 2024, NADA India issued the Appealed Decision, which reads as follows, in its relevant part:

*“As per International Standard of Result Management (ISRM) Article 5.2.1 ‘Initial Review’ of the mentioned ATF case was conducted. Further, as a part of Investigation, follow-up urine sample of the mentioned athlete was conducted on 23/12/2023 and reported as Negative (**Sample Code 6493615**) by the Lab.*

Conclusion

Therefore, as per ISRM article 5.4, NADA India has decided not to move forward ATF as a AAF.” (bold print as in the original)

14. On 28 May 2024, WADA requested the case file of the Appealed Decision. After receiving elements of the case file on 6 August 2024, WADA made a follow-up case-

file request on 22 August 2024 and received further elements of the case file on 23 August 2024.

III. THE PROCEEDING BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 13 September 2024, the Court of Arbitration for Sport (“CAS”) received the Appellant’s Statement of Appeal within the meaning of Article R48 of the Code of Sports-related Arbitration (2023 edition) (“CAS Code”). In its Statement of Appeal, the Appellant requested that the case be submitted to a sole arbitrator.
16. On 19 September 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited the Respondents to comment on the requested appointment of a sole arbitrator within 5 days. The Respondents did not submit any such comments within the said time limit, or at all.
17. On 16 October 2024, within the time limit as previously extended, the Appellant filed its Appeal Brief within the meaning of Article R51 of the CAS Code. Moreover, it requested that the case be submitted to the same sole arbitrator as in CAS 2024/A/10871 due to a partial identity of the parties and a material overlap in the issues to be determined.
18. Likewise on 16 October 2024, the CAS Court Office invited the Respondents to file their Answers within the meaning of Article R55 of the CAS Code.
19. On 8 November 2024, within the time limit as previously extended, the First Respondent filed its Answer. The Second Respondent did not file an Answer.
20. On 13 November 2024, the CAS Court Office invited the Parties to indicate whether they preferred a hearing and/or a case management conference to be held in this case.
21. On the same date, the Second Respondent confirmed by email that she had received all CAS correspondence up to that date.
22. On 20 December 2024, the Appellant submitted its view that there was no necessity for a hearing. The Respondents did not state their positions on this matter.
23. On 5 December 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel to decide the present dispute was constituted as follows:

Sole Arbitrator: Dr Heiner Kahlert, Attorney-at-law in Munich, Germany.
24. On 30 December 2024, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide the case based solely on the Parties’ written submissions, without the need to hold a hearing.

25. On 15 and 16 January 2025, respectively, the First Respondent and the Appellant returned signed copies of the Order of Procedure. The Second Respondent did not return a signed copy of the Order of Procedure.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

26. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all submissions made by the Parties, including the evidence adduced, regardless of whether there is any specific reference to them in this Award. As a result of the Sole Arbitrator's decision to bifurcate the present proceedings, the present section shall be limited to the bifurcated issue of jurisdiction.

A. WADA's submissions and requests for relief

27. WADA has a right to appeal under Article 13.2.3 of the ADR as the Athlete is an International-Level athlete. If she were not International-Level, WADA would have a right of appeal to CAS under Article 13.1.3 of the ADR.
28. The appeal was filed in time pursuant to Article 13.6 of the ADR, given that the appeal was filed within 21 days of WADA's receipt of elements of the case file.
29. As the First Sample contained clenbuterol below the MRL, resulting in an ATF, Article 5.2.1 of the International Standard of Results Management ("**ISRM**") required NADA India as the Results Management Agency ("**RMA**") to "*conduct the required investigation*". The comment to that Article provides that the RMA "*may contact WADA to determine which investigative steps should be undertaken. These investigative steps may be provided for by WADA in a specific notice or other document*".
30. Instructions as to the requirements for investigations into clenbuterol ATFs have been provided in the TL23 and the WADA Stakeholder Notice regarding potential meat contamination cases ("**Stakeholder Notice**"). Section B of the Stakeholder Notice sets out a list of nine steps ("**Steps**") which must be taken by an RMA, whereas paragraph 10 of the Stakeholder Notice clarifies that those Steps are intended to be a minimum requirement, with further investigative steps being required on a case-by-case basis.
31. The Stakeholder Notice states that if the RMA is satisfied, once the investigation is completed, that the ATF was caused by the inadvertent consumption of contaminated meat, the RMA shall take no further action against the athlete. The corollary is that an AAF shall be reported if the investigation yields no evidence to establish such meat contamination scenario.
32. NADA India did not adequately investigate the ATF. In particular:
- There is no indication that NADA India conducted Step 3, which requires review of the Athlete's steroid Athlete Biological Passport ("**ABP**") and prior testing history for any potential abnormalities.

- Steps 4-6 require collection of information on the Athlete's whereabouts and meat consumption prior to the "*collection of the sample that returned the Atypical Finding*." While NADA India interviewed the Athlete and she provided some information on her general diet, there is no indication that NADA India inquired specifically with respect to the 72 hours prior to the collection of the First Sample (as required by Step 6). There is also no information as to exactly what type of meat she allegedly ate in that period, and when. Similarly, there is no evidence that the Athlete's statement was in any way investigated or checked, or that NADA India investigated the origin of the allegedly consumed meat.
 - Equally, there is no indication of an investigation by NADA India as to the possibility that meat could be contaminated with clenbuterol in India, as required by Steps 6-8. In a similar case, NADA India admitted that clenbuterol was illegal to use on animals as a growth promoter, which prompted them to speculate that the substance may be used illegally; in the present case, there is no indication that this question was investigated at all. It is worth recalling that in 2022, out of 3,867 samples collected, there was only one ATF for clenbuterol in India, which is the present one. Similarly, in 2023, out of 5,606 samples collected, there were only six ATFs for clenbuterol in India, five out of which were concerning the same athlete. If clenbuterol-contaminated meat was truly a concern in India, it is obvious that many more positives would have been reported.
33. In reality, the Appealed Decision was issued on the sole basis that the Second Sample returned negative. However, this says very little (if anything) in terms of whether the ATF returned by the First Sample could have been the result of meat contamination, which is the question to be determined under the applicable framework. The collection of a further sample after an ATF is only one step, and only a preliminary one, under the Stakeholder Notice.
34. Moreover, it is inexplicable that NADA India sat on this investigation for 19 months before even interviewing the Athlete. Such timelapse does not absolve NADA India of its responsibility to investigate in accordance with the required steps set out in the WADA rules, to assess whether the source of the ATC was more likely than not meat contamination. Also, NADA India misconstrued the rules when it decided to close the case as "*no further investigation can be carried out*" (as per an investigatory report apparently predating the Appealed Decision): indeed, if the investigation produces no evidence to support the scenario of meat contamination (as in the present case), the rules are clear that the ATF must be progressed as an AAF, not the other way around.
35. As a result of the above, the Appealed Decision must be set aside and the matter must be returned to NADA India to follow proper results management steps. Alternatively, given the absence of any concrete evidence of meat contamination, the Athlete should be found to have committed an anti-doping rule violation ("**ADRV**") pursuant to Articles 2.1 and/or 2.2 of the ADR with all applicable consequences, in particular the imposition of a period of ineligibility of four years.

36. In its Appeal Brief, WADA requests that the Sole Arbitrator rule as follows:

“i. The appeal of WADA is admissible.

ii. The decision dated 15 May 2024 by NADA India in the matter of Ms Radhika is set aside.

iii. The matter of Ms Radhika is referred back to NADA India for further investigation, in particular pursuant to the Stakeholder Notice regarding potential meat contamination cases to determine whether the ATF should be progressed as an adverse analytical finding.

In the alternative

iv. Ms Radhika is found to have committed an ADRV pursuant to Articles 2.1 and/or 2.2 of the ADR.

v. Ms Radhika is imposed a period of Ineligibility of four years starting on the date of the CAS Award.

vi. All competitive results obtained by Ms Radhika from and including 1 October 2022 (i.e. the date of the anti-doping rule violation) are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

In any event

vii. The arbitration costs shall be borne by NADA India or, in the alternative, by the Respondents jointly and severally.

viii. WADA is granted a significant contribution to its legal and other costs.”

B. NADA India’s submissions and requests for relief

37. The Steps cannot be considered minimum requirements. This follows, in particular, from the Stakeholder Notice providing that the Steps are “*not intended to be an exhaustive list of possibly relevant investigative steps*”. Rather, the RMA is provided flexibility to devise its own investigation, subject of course to the overarching process provided by the Stakeholder Notice, which is meant to avoid “*unfairness to innocent athletes*”.

38. Contrary to WADA’s assertions, NADA India diligently investigated the possibility of meat contamination:

- In line with Step 2, NADA India conducted a no-advance notice test after the initial ATF was recorded. This produced a negative finding, as did all seven tests conducted on the Athlete after 1 October 2022.

- Thereafter, NADA India interviewed the Athlete, who provided information on her diet and confirmed she had not travelled to China, Guatemala, or Mexico prior to October 2022.
 - Subsequently, NADA India issued the Investigation Report, which recommended that no further investigation be carried out as all further tests (seven after the ATF) had come back negative. For clarity, the two tests conducted by United World Wrestling, whose results had not been available in ADAMS at the time the Investigation Report was drafted, have also been reported negative in the meantime.
39. The above, and the fact that the consideration of clenbuterol in the First Sample was 0.01 ng/mL, clearly shows that the ATF may have been due to consumption of contaminated meat. The present case falls in a “grey zone”, being a case in which the evidence leads to a reasonable doubt, which should be resolved to the benefit of the Athlete.
40. NADA India requests that:
- “i. The decision dated 15 May 2024 by the First Respondent is upheld.*
 - ii. The present appeal is dismissed.”*

C. The Athlete’s submissions and requests for relief

41. The Athlete did not make any submissions in this arbitration. However, the Sole Arbitrator is satisfied that she was duly informed of the existence of the arbitration and that she was provided with sufficient opportunity to respond to the appeal. Apart from the fact that there is no indication that the emails sent to her by the CAS Court Office were not successfully delivered, she explicitly confirmed on 13 November 2024 that she had received all CAS correspondence up to that date, which included the Statement of Appeal, the Appeal Brief and the invitation to file her Answer.

V. JURISDICTION

42. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body [...]”. (emphasis added)

43. As the Appealed Decision was issued by NADA India, the “*regulations of the said body*” within the meaning of Article R47 of the CAS Code are the ADR.

44. Article 13.2 of the ADR reads as follows, in its relevant part:

“[...] a decision by NADA not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation [...] may be appealed exclusively as provided in this Article 13.2.

13.2.1 Appeals Involving International-Level Athletes or International Events

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.
[footnote omitted]

13.2.2 Appeals Involving Other Athletes or Other Persons

In cases where Article 13.2.1 is not applicable, the decision may be appealed to the National Anti-Doping Appeal Panel. [...]” (emphasis from the original omitted)

45. Moreover, Article 13.1.3 of the ADR provides as follows:

“Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within NADA’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in NADA’s process.
[footnote omitted]“

46. The Appealed Decision is a decision not to bring forward an ATF as an ADRV. Accordingly, pursuant to the first sentence of Article 13.2 of the ADR, the Appealed Decision is appealable exclusively as provided in Article 13.2 of the ADR. If the Athlete is to be qualified as an International-Level Athlete (at the relevant point(s) in time), CAS jurisdiction follows directly from Article 13.2.1 of the ADR. Conversely, if the Athlete did not have this status, CAS jurisdiction would follow from Article 13.1.3 of the ADR, given that the Appealed Decision has not been appealed to the National Anti-Doping Appeal Panel by any party. Accordingly, it does not fall to be decided whether the Athlete qualifies as an International-Level Athlete because, in either case, CAS has jurisdiction.
47. For completeness, the Sole Arbitrator notes that the Appellant and the First Respondent have both expressly confirmed CAS jurisdiction by signing the Order of Procedure.
48. In view of the above, the Sole Arbitrator finds that he has jurisdiction to adjudicate the present case.

VI. ADMISSIBILITY

49. Article R49 of the CAS Code reads as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time

limit for appeal shall be twenty-one days from the receipt of the decision appealed against [...]”.

50. Accordingly, Article R49 of the CAS Code accords priority to any time limit for appeal provided for in the regulations governing the body that issued the decision appealed against. In that regard, Article 13.6.1 of the ADR relevantly provides as follows:

“[...] the filing deadline for an appeal filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or

(b) Twenty-one (21) days after WADA’s receipt of the complete file relating to the decision.”

51. WADA received elements of the case file on 23 August 2024. Consequently, WADA’s deadline to appeal could not have expired any earlier than 21 days after 23 August 2024, i.e. on 13 September 2024. As WADA filed its Statement of Appeal on that very date, its appeal was filed in time.
52. Moreover, WADA’s right to appeal follows from Article 13.2.3.1 of the ADR or from Article 13.2.3.2 *juncto* Article 13.1.3 of the ADR, depending on whether the Athlete qualifies as an International-Level Athlete.
53. As there are no indications in the file that the appeal could be inadmissible for any other reasons and noting that no Party has raised any objections as to the admissibility of the appeal, the Sole Arbitrator determines that the appeal is admissible.

VII. MERITS

54. The Sole Arbitrator finds that two questions need to be answered in this case: First, did NADA India fulfil the applicable requirements for investigating the Athlete’s ATF? Secondly, what are the consequences of the answer to the first question for the present arbitral procedure? The Sole Arbitrator will address each of those questions in turn.

A. Did NADA India fulfil the applicable investigation requirements?

55. Clenbuterol is a Prohibited Substance and the Sole Arbitrator is satisfied that it was present in the First Sample. The presence of a Prohibited Substance is generally sufficient proof of an ADRV under Article 2.1 of the ADR. However, Article 2.1.4 of the ADR provides that, as an exception to that general rule, Technical Documents may establish special criteria for reporting certain Prohibited Substances.
56. In this regard, the Sole Arbitrator has been referred to T23. In essence, TL23 provides that if the concentration of clenbuterol (and certain other Prohibited Substances) found in a sample does not exceed 5 ng/mL (as is the case for the First Sample), an ATF shall be reported and a “*mandatory investigation*” shall be conducted by the RMA. If the RMA identifies evidence establishing that it is more likely than not that the ATF was

caused by contaminated meat, the ATF shall not be pursued further; otherwise, the ATF shall be progressed as an AAF.

57. The Sole Arbitrator notes that Articles 1.2.1 and 1.2.2 of the International Standard for Laboratories (“ISL”) differentiate between Technical Documents and Technical Letters. This suggests that they are not one and the same thing. Nonetheless, the Sole Arbitrator accepts that T23 (which is a Technical *Letter*), triggers the exception mentioned in Article 2.1.4 of the ADR (which refers to a Technical *Document*), mainly for three reasons.
58. First, both WADA and NADA India consider T23 to be applicable and that it required NADA India to investigate before making a finding on whether to progress this case as an AAF. This position is tantamount to WADA and NADA India agreeing that T23 triggers the exception mention in Article 2.1.4 of the ADR.
59. Secondly, Technical Documents and Technical Letters are both issued by the WADA Executive Committee and they both supersede “*any previous publication on a similar topic*” (Article 1.2.1, second bullet-point and Article 1.2.2, third bullet point of the ISL). This suggests that there is no hierarchy between those two categories of documents. Indeed, based on the description of the function of Technical Documents and Technical Letters in Articles 1.2.1 and 1.2.2. of the ISL, it rather seems that Technical Letters are merely a special form of Technical Documents that can be issued instead of Technical Documents in certain situations:

“1.2.1. Technical Documents

- *Technical Documents are issued to provide direction to the Laboratories, WADA-Approved Laboratories for the ABP and other stakeholders on specific technical or procedural issues. [...]*

1.2.2 Technical Letters

- *Technical Letters are issued in letter format on an ad-hoc basis in order to provide direction to the Laboratories, WADA-Approved Laboratories for the ABP and other stakeholders on particular issues on the analysis, interpretation and reporting of results for specific Prohibited Substance(s) and/or Prohibited Method(s) or on the application of specific Laboratory procedures”. (emphasis added to highlight the differences between the description of Technical Letters and Technical Documents)*

60. Thirdly, the Stakeholder Notice, which both WADA and NADA India accept as being applicable to this case, expressly states in its footnote 3 that “[a]s an interim measure while the TD2021MRPL is under review”, the (then) new requirements applicable to the reporting of the presence of clenbuterol, as approved by the WADA Executive Committee, are reflected in TL23. In other words, the WADA Executive Committee, which is the competent body to issue both Technical Documents and Technical Letters, decided to (temporarily) replace the relevant Technical Document (TD2021MRPL) with a Technical Letter.

61. For those reasons, the Sole Arbitrator finds it appropriate to treat TL23 as a Technical Document within the meaning of Article 2.1.4 of the ADR. The Sole Arbitrator notes for completeness that according to the respective second bullet point of Articles 1.2.1 and 1.2.2 of the ISL, both Technical Documents and Technical Letters are integral parts of the ISL and, as such, binding on NADA India as a signatory to the WADC.
62. The Sole Arbitrator now turns to the question of whether NADA India did what it had to do under TL23 before it decided not to bring the case forward as an ADRV. WADA and NADA India agree that NADA India was under a duty to investigate the ATF. Indeed, this is confirmed by the plain language of TL23, whose section 2.0 reads as follows, in its relevant parts:

“The presence in urine of clenbuterol [...] at an estimated concentration at or below (\leq) 5 ng/mL shall be reported as an Atypical Finding (ATF), triggering a mandatory investigation by the RMA to determine whether evidence exists that establishes that meat contamination is more likely than not the explanation for the ATF. If such evidence exists, the RMA will take no further action in respect of the ATF. If such evidence does not exist, the RMA will progress the finding as an AAF.

[Comment: Depending on the circumstances, the consumption of meat containing clenbuterol [...] may lead to very low concentrations of that substance in the urine of the consumer of the meat. Therefore, the presence in urine of clenbuterol [...], at a concentration of 5 ng/mL or less shall be reported as an ATF, even though the likelihood of meat contamination as the cause decreases materially the closer the urinary concentration gets to that limit. Upon receipt of the ATF, the RMA shall conduct a mandatory investigation to determine whether or not there is sufficient evidence to support meat contamination as the more likely than not explanation.]”
(emphasis added, footnote omitted)

63. While WADA seems to agree that NADA India did investigate the ATF to some extent, it disagrees with NADA India on whether the actions taken by NADA India were sufficient to discharge its duty to investigate. WADA submits that NADA India should have completed, but did not complete, all nine Steps set out in the Stakeholder Notice. By contrast, NADA India argues that it was not required to take any further action in view of the flexibility that NADA India allegedly enjoys under the Stakeholder Notice to devise its own investigation.
64. As a preliminary matter, the Sole Arbitrator notes that the legal nature of the Stakeholder Notice and, thus, its binding effect on WADC signatories such as NADA India, is not entirely clear from the WADC, the International Standards or the Stakeholder Notice itself. The comment to Article 5.2.1 of the ISRM, which was invoked by WADA, refers to a “*specific notice*” in which WADA may provide for “*investigative steps*”. Indeed, the Stakeholder Notice arguably is such a “*specific notice*”. However, apart from the fact that a comment is not the same as a rule, the previous sentence of the same comment says that such investigative steps “*should*” be undertaken – read in isolation, this wording would raise doubts as to the binding nature of the Stakeholder Notice as such. Nonetheless, the Sole Arbitrator considers that the Stakeholder Notice is binding on NADA India at least by virtue of TL23, which is itself a binding document (see para. 61

supra) and which states in its footnote 1 that “[a] *Stakeholder Notice will be published, detailing the mandatory investigative process*”. This essentially incorporates the Stakeholder Notice into TL23 by reference, as a result of which the Stakeholder Notice enjoys the same binding nature as TL23 itself. In addition, the Sole Arbitrator notes that NADA India itself implicitly accepts that it is bound to the Stakeholder Notice (even though it disagrees with WADA on what the Stakeholder Notice says), given that it argues in this arbitration that its investigation was compliant with the Stakeholder Notice. In summary, the Sole Arbitrator finds that NADA India was obliged to abide by the Stakeholder Notice.

65. The Stakeholder Notice reads as follows, in its relevant part:

“B. The investigation of an Atypical Finding

When a Results Management Authority receives an Atypical Finding from a WADA-accredited laboratory for clenbuterol [...] at a concentration at or below (\leq) 5 ng/mL, it shall take the following investigative steps:

- 1. Conduct a review in accordance with Article 5.2 of the International Standard for Results Management to determine (a) whether an applicable TUE has been granted or will be granted for the substance in question; or (b) whether there is any apparent departure from the International Standard for Testing and Investigations or the International Standard for Laboratories that caused the Atypical Finding. If so, no further action shall be taken in respect of the Atypical Finding. If not, the further investigative steps set out below shall be followed.*
- 2. As soon as possible, and in any event before notifying the Athlete of the Atypical Finding, collect another urine Sample from the Athlete in a No Advance Notice test.*
- 3. Review the Athlete’s steroid Athlete Biological Passport as well as the Athlete’s prior Testing history for any potential abnormalities. Consider whether analytical results from the testing of other Samples tend to corroborate or rule out either the doping hypothesis or the meat contamination hypothesis.*
- 4. Determine (e.g., from the Athlete’s recent whereabouts filings) in which country or countries the Athlete was located in the days leading up to collection of the Sample that returned the Atypical Finding.*
- 5. Contact and interview the Athlete about the circumstances of the Atypical Finding, including finding out: (A) the country or countries where they were located in the days leading up to collection of the Sample that returned the Atypical Finding (see para 4, above); (B) where they travelled in that country/those countries; and (C) whether they ate any meat products in the 72 hours prior to collection of the Sample.*
- 6. Where the Athlete says that they ate meat products in the 72 hours prior to the collection of the Sample, determine whether there is evidence of use of the*

substance in question as a livestock growth promoter in the country where the meat was bought (or the country from which the meat was imported, if different). This may resolve the inquiry: for example, if the Atypical Finding is for clenbuterol, clenbuterol is not used as a growth promoter outside of China, Mexico, and Guatemala.

7. If step 6 does not resolve the inquiry (i.e., if the Prohibited Substance in question is used as a livestock growth promoter in the country where the meat came from), gather as much evidence and information as possible about the source of the meat product, including purchase details and (if available) where the livestock was reared and slaughtered, and what exactly was eaten, including the type and cut of meat (i.e., flesh and/or organs - as these growth promoters are known to accumulate in liver and offal), when and where it was eaten, and the quantity consumed. The Athlete's explanation and any evidence tendered as corroboration (e.g. food diaries, food menus, restaurant or grocery store purchase receipts, credit card statements, dining partners, social media, etc.) should be carefully evaluated.

8. Determine the regulations, guidelines, and/or best practices followed in the administration of the substance to livestock, and the monitoring and enforcement thereof, in the country of origin of the meat consumed. WADA may also be able to provide guidance regarding current governmental regulations and/or past case history related to the specific substance in that country.

9. Evaluate whether the estimated urinary concentration of the Atypical Finding is consistent with the consumption of meat described by the Athlete, by evaluating the timing of ingestion relative to Sample collection, and by considering the excretion properties of the substance as described in the scientific literature, always bearing in mind that meat contamination becomes materially less likely to be the cause of the Atypical Finding the closer the urinary concentration gets to the 5 ng/mL limit. [footnote omitted]

10. The above is not intended to be an exhaustive list of possibly relevant investigative steps. The Results Management Authority should pursue all potentially relevant lines of inquiry and take into account all of the relevant facts and circumstances.” (emphasis added, emphasis from the original removed)

66. Considering the wording, context and rationale of the Stakeholder Notice, the Sole Arbitrator agrees with WADA that NADA India was in fact obliged to conduct all Steps as set out in paragraph 1 to 9 of the Stakeholder Notice.
67. First, this follows from the plain wording of the Stakeholder Notice itself. Both the introductory phrase and paragraph 1 of section B use the term “*shall*” when referring to the RMA conducting the Steps. The term “*shall*” ordinarily denotes the creation of a legal obligation (cf. also CAS 2015/A/4279, para. 99; CAS 2018/A/5746, para. 186).
68. Secondly, in the context of “*potentially relevant lines of inquiry*” (emphasis added) going beyond the Steps, paragraph 10 of section B instead employs the less rigid term “*should*”. This goes to confirm that the drafters of the Stakeholder Notice were careful

in their choice of words in terms of avoiding the impression of imposing strict legal obligations where none were meant to be created.

69. Thirdly, while the body of TL23 refers generically to the “*investigation*” as being “*mandatory*”, the reference to the Stakeholder Notice in footnote 1 of TL23 states more specifically that the “*investigative process*” (emphasis added) as detailed in the Stakeholder Notice is a “*mandatory*” one. This suggests that not only the investigation as such is mandatory, but also the investigatory Steps detailed in the Stakeholder Notice.
70. Finally, one of the core purposes of the World Anti-Doping Program is to promote harmonization (cf. the references to harmonization in the Introduction/Preface section of the ADR and the section “*Purpose, Scope and Organization of the World Anti-Doping Program and the Code*” of the WADC). Against this background, it would be rather surprising if, despite the use of the terms “*shall*” (in the Stakeholder Notice) and “*mandatory investigative process*” (in TL23), WADA intended to provide RMAs with discretion whether or not to follow the Steps.
71. The Sole Arbitrator is not persuaded by NADA India’s argument that such discretion, or flexibility, follows from paragraph 10 of the Stakeholder Notice. While it is true that the first sentence of that paragraph emphasizes that the Steps are not intended to be an exhaustive list of possibly relevant investigative steps, this merely means that additional measures may be relevant, as described in the second sentence of the very same paragraph. By contrast, the Sole Arbitrator fails to see how the non-*exhaustive* nature of the Steps could allow for the conclusion that the Steps are non-*mandatory*.
72. In view of the above, what remains to be analysed is whether NADA India completed all of the Steps required by the Stakeholder Notice. For the following reasons, the Sole Arbitrator finds that this is plainly not the case.
73. First of all, it has remained undisputed that NADA India did not review the Athlete’s ABP for any potential abnormalities, and it is at least not established that NADA India considered the Athlete’s complete prior testing history (Step 3). While the Appealed Decision does not mention any tests prior to the one that resulted in the Athlete’s ATF, the Investigative Report only mentions prior tests from the year 2022.
74. Secondly, while NADA India interviewed the Athlete about her whereabouts and diet, the Investigative Report suggests that contrary to NADA India’s submission in this arbitration, the Athlete was only asked about any foreign travel in October 2022, which would have been *on or after* the date on which the First Sample was collected (1 October 2022). Instead, NADA India should have ascertained the Athlete’s whereabouts on the days *prior to* the sample collection (as required by Steps 4 and 5). Similarly, as rightly noted by WADA, there is no indication that NADA India asked the Athlete about her specific diet in the 72 hours prior to the collection of the First Sample (as required by Steps 5 and 6).
75. Thirdly, as to Steps 7-9, it suffices to note that they would have had to be conducted based on the information gathered through Step 6. This, however, was impossible because NADA India had failed to properly conduct Step 6. Also, there is no indication

on record showing that NADA India attempted to conduct Step 9 even on the basis of the limited dietary information it had acquired from the Athlete.

76. In light of the above, the Sole Arbitrator has no hesitation to find that NADA India did not fully discharge its duty to investigate, pursuant to the Stakeholder Notice, before deciding whether to progress the ATF as an AAF.

B. What are the consequences?

77. In light of the above, the Sole Arbitrator finds that the Appealed Decision violates the applicable rules because NADA India did not, before deciding to close the matter, investigate the ATF as required by TL23, the Stakeholder Notice and Article 5.2.1 of the ISRM. Therefore, the Appealed Decision must be set aside.
78. In addition, in accordance with the second alternative foreseen in the second sentence of Article R57 of the CAS Code, the Sole Arbitrator accepts WADA's primary request that the case be referred back to NADA India for further investigation pursuant to the Stakeholder Notice. The Sole Arbitrator agrees that this is the appropriate course of action, as opposed to the Sole Arbitrator taking a decision at this time on whether the Athlete committed an ADRV. The Athlete must not be prejudiced in this arbitration by shortcomings in NADA India's investigation. In particular, this arbitration is not the right place to conduct investigative steps that should, according to the applicable rules, take place before an ADRV is even asserted against the Athlete, and whose results would allow the Athlete to take informed decisions during the results management procedure that ought to be conducted before any first-instance decision is taken.

VIII. Costs

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of the World Anti-Doping Agency (WADA) against the decision of the National Anti-Doping Agency of India dated 14 May 2024 in the matter of Radhika Radhika is upheld.
2. The decision of the National Anti-Doping Agency of India dated 14 May 2024 in the matter of Radhika Radhika is set aside and the matter is referred back to the National Anti-Doping Agency of India for further investigation pursuant to the Stakeholder Notice regarding potential meat contamination cases, to determine whether the atypical findings should be progressed as adverse analytical findings.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Date: 30 April 2025

Seat of the arbitration: Lausanne (Switzerland)

THE COURT OF ARBITRATION FOR SPORT

Heiner Kahlert
Sole Arbitrator