

COURT OF ARBITRATION FOR SPORT (CAS)

Ad hoc Division – XVIII Asian Games in Jakarta Palembang 2018

**CAS AG18/07 Bahrain Olympic Committee v Ju-Jitsu International Federation
CAS AG18/08 Mr Ali Seena Munfaredi v Ju-Jitsu International Federation**

AWARD

in the arbitration between

Bahrain Olympic Committee

Mr Ali Seena Munfaredi

Applicants

and

Ju-Jitsu International Federation

Respondent

and

Olympic Council of Asia (OCA)

Interested Party

I. PARTIES

1. The First Applicant is the Bahrain Olympic Committee (the “BOC”).
2. The Second Applicant is Mr Ali Seena Munfaredi (the “Athlete”).
3. The Respondent is the Ju-Jitsu International Federation (the “JJIF”).
4. The Interested Party is the Olympic Council of Asia (the “OCA”).

II. FACTS

5. The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
6. On 25 July 2017, the Bahrain Martial Arts Federation (the “BMAF”) informed the JJIF that the Athlete was injured and, therefore, unable to attend the 2017 World Games which took place in Poland between 27 and 30 July 2017. The Athlete was supposed to be the sole fighter representing Bahrain in that competition.
7. On 21 November 2017, the BMAF informed the JJIF that its team was unable to participate in the World Beach Ju-Jitsu Tournament to be held in Colombia from 23 November to 1 December 2017 due to logistical issues.
8. On 30 April 2018, the Board of the JJIF decided to suspend the BMAF until 31 December 2018 on the grounds that, contrary to its membership obligations as a National Federation, the BMAF did not participate in the previous competitions organized by the JJIF. Furthermore, the JJIF informed the BMAF that its athletes would be able to participate in competitions during the suspension period albeit under the flag of the JJIF or the Ju-Jitsu Asian Union (JJAU).
9. On 24 May 2018, the BMAF objected in writing its suspension arguing that the BMAF had participated in 8 competitions organized by the JJIF from 2015 to 2018. The BMAF reiterated that the Athlete was not able to attend the 2017 World Games due to an injury. Finally, the BMAF requested the JJIF to reconsider its decision and allow its athletes to participate under the flag of Bahrain.
10. On 1 July 2018, the JJIF sent a letter to the BMAF which relevant part reads as follows:

- 1) *The next JJIF Board Meeting is scheduled to be held only in September 2018 and any prior resolution would only be possible if we were to convene an extraordinary Board Meeting just to consider your case. However, if you do require an earlier board resolution, the entire costs of convening such an Extra Ordinary Board Meeting, would need to be covered in full by you.*
 - 2) *You are reminded that your annual JJIF membership fees for the year 2016/2017/2018 are still outstanding and need to be settled in full prior to any meeting of our Board.*
 - 3) *As per our records Bahrain has not participated in any JJIF/JJAU events 2017/2018 [...]*
 - 4) *The reasons cited by you for the arbitrary cancellation and withdrawal of your selected Athlete from the World Games stands unsubstantiated. Regrettably to your claim that [the Athlete] could not participate in the World Games is rendered baseless by the very fact that we have evidence that he did conduct a seminar on that same weekend in Dubai [...].*
11. Subsequently, the BMAF replied to the above-mentioned letter stating *inter alia* that (i) it will pay the JJIF membership fees for 2016, 2017 and 2018 on short notice, (ii) it participated in competitions organized by the JJIF and (iii) the Athlete was unable to attend the 2017 World Games due to an injury.
 12. On 6 July 2018, the BMAF paid its membership fees for 2016, 2017 and 2018.
 13. On 8 July 2018, the JJIF informed the BMAF that following its request for reconsideration of the JJIF Board Decision dated 30 April 2018, the President of the JJIF was willing to call the Extraordinary Board Meeting provided that the BMAF requested so and covered the costs of such Meeting. Furthermore, the JJIF reiterated that the team of Bahrain would be allowed to participate in the Asian Games under the JJIF or JJAU flag.
 14. On 10 July 2018, the BMAF requested the President of the JJIF to call an Extraordinary Board Meeting to lift its suspension.
 15. On 23 July 2018, the Extraordinary Board Meeting of the JJIF took place.
 16. On 24 July 2018, the JJIF informed the BMAF that its Board has taken the following decision unanimously:
 1. *The suspension of the BMAF had solid ground and was justified pursuant to Article 8.3 of the JJIF Statutes.*

2. *The JJIF holds the BMAF responsible and accountable for their athlete's and referee's inappropriate behaviour and has resolved to give the BMAF time bound opportunity to take remedial and disciplinary action against [the Athlete] and referee in accordance to the BMAF internal rules and regulations. The JJIF here directs that [the Athlete] and referee should not be a part of the national team participating at the 18th Asian Games in Jakarta [emphasis added by the Panel].*
 3. *Further resolved that subject to the BMAF settling all current outstanding financial obligations due to the JJIF and submitting their written undertaking to participate regularly at JJIF/JJAU events, and evidencing disciplinary actions taken as cited in resolution number 2, the suspension so imposed by the JJIF shall temporarily be lifted and the BMAF shall therefore be permitted to participate in the 18th Asian Games under the Bahrain flag/banner.*
 4. *Subject to BMAF fulfilling resolution number 2 and 3 as stated above, to the satisfaction of the JJIF Board, the temporary suspension shall be permanently lifted.*
 5. *However, in case of non-compliance or violation of the resolutions herein, the suspension of the BMAF shall remain in force.*
 6. *The actions of the JJIF Board should be understood as final warning to all concerned in regard to the compliance to the JJIF Statutes and Financial Rules.*
17. Subsequently, the BMAF sent a letter to the JJIF which relevant part reads as follows:
- We agree to abide by the conditions stipulated at resolutions 2 and 3 therein. In respect of resolution number 2, we would like to state that BMAF will be taking disciplinary actions against the Athlete and the referee in accordance with the rules and regulations of BMAF. In respect of resolution number 3, please provide us details of the current outstanding dues of BMAF so that we can arrange to clear the same.*
18. On 8 August 2018, the BMAF requested the JJIF to reconsider its decision to suspend the Athlete and allow him participate at the Asian Games.
19. On 19 August 2018, the Organizing Committee of the XVIII Asian Games informed the BMAF via email that the Athlete was not eligible to compete at the Games.

20. By letter dated 20 August 2018, the JJIF reiterated to the BMAF that the decision rendered on 24 July 2018 was final and therefore, the Athlete was not eligible to participate in the XVIII Asian Games.

III. CAS PROCEEDINGS

21. On 21 August 2018 at 15h00 (Jakarta time), the First Applicant lodged its application, which was registered as CAS AG 18/07.
22. Pursuant to Article 11 of the CAS Arbitration Rules, the President of the Ad hoc Division, Mr Michael Lenard, appointed Mr Mohamad Idwan Ganie (Indonesia) (President of the Panel), Mr Xianyue (Simon) Bai (China) and Ms Yuri Yagi (Japan) as arbitrators to hear the present dispute. No party has raised any objection to the constitution of the Panel.
23. On 22 August 2018, the Panel made procedural directions and issued a summons requiring each of the parties and interested parties to attend a hearing on 23 August 2018. However, upon request of the Applicant and with the consent of the Respondent, the hearing was rescheduled to 22 August 2018 at 21h00.
24. On 22 August 2018 at 18h.00 (Jakarta time), the Respondent lodged its answer.
25. On 22 August 2018 at 18h.45 (Jakarta time), the Second Applicant lodged his application, which was registered as CAS AG/08. Thereafter, the President of the CAS ad hoc Division decided to consolidate the two procedures.
26. On 22 August 2018 at 21.00 hrs, the parties assembled at the CAS Ad hoc Division hearing room for a hearing. The Panel was assisted at the hearing by Mr Antonio de Quesada, counsel to the CAS. At the beginning of the hearing, the parties were invited to state whether they had any objection to the composition of the Panel. The parties did not object.
27. Following the hearing, which concluded at 23h.30, the representatives for each of the parties confirmed that their respective rights to be heard had been fully respected by the Panel and that they had no issue with respect to the way the CAS procedure or hearing was conducted.

IV. PARTIES' REQUESTS FOR RELIEF

a. *Applicants' Requests for Relief*

28. The Applicants' requests for relief are as follows:

1. The Athlete, Mr Munfarede shall be allowed to participate in the 2018 Asian Games and any possible suspension on him shall immediately be lifted.

2. Alternatively, the Athlete shall be allowed to participate in the 2018 Asian Games on a provisional basis [...].

29. The Applicants' arguments shall be summarised as follows:

- *All outstanding payment obligations of the Bahrain Martial Arts Federation (BAMF) towards the International Jiu Jitsu Federation (IJFF) have been fulfilled, as already confirmed by means of the BAMF letter of 8 August 2018 (already submitted to the CAS Ad Hoc Division);*
- *From the e-mail dated 19 August 2018, it can be noted the following:*
 - *It appears that already previously, the IJFF had instructed the Organising Committee of the Asian Games to list Mr. Ali Munfarede as a suspended Athlete (the earlier email of 7 August 2018 mentions "suspended as per IF/AF instructions").*
 - *However, no such information was at that point provided, neither to BAMF nor the Athlete, nor the National Olympic Committee of Bahrain (BOC).*
 - *Once the BAMF learned about this obviously unjustified suspension of its Athlete, it immediately reacted: By letter dated 19 August 2018, the BAMF requested a justification of this surprising and sudden suspension of the Athlete.*
 - *This suspension was extremely surprising, because already by its letter of 8 August 2018 (already submitted to the CAS Ad Hoc Division), the BAMF had requested the IJFF to reconsider the IJFF's earlier instruction to BAMF, i.e. the instruction of IJFF to BAMF, according to which BAMF was instructed to initiate disciplinary proceedings against the Athlete and, based on these proceedings, to suspend him (i.e. the IJFF's letter of 24 July 2018).*
 - *More precisely, by this letter dated 8 August 2018, the BAMF had informed the IJFF that it did duly start disciplinary proceedings against the Athlete and investigate the matter, but that no disciplinary infringement was found. Therefore, this matter was closed for BAMF, in full compliance with the instruction no. 2 in the IJFF's decision of 24 July 2018.*
 - *Only by means of its letter of 20 August 2018 (already submitted to the CAS Ad Hoc Division), the IJFF then informed the BAMF that apparently, the IJFF had itself directly suspended the Athlete.*

- *It appears also, as mentioned, from the email dated 19 August 2018 and the earlier email of 7 August 2018, that the IJFF had apparently given a respective instruction to the Organising Committee of the Asian Games, without however informing any of the concerned parties, i.e. neither the Athlete, BMAF or BOC.*
- *This letter and apparent decision, communicated to BMAF on 20 August 2018, ultimately gave rise to this dispute: It takes away from Bahrain's most famous and successful Jiu Jitsu Athlete the chance to participate in these Asian Games, without any justification whatsoever. It also takes away the chance from the Bahrain Olympic Committee to successfully participate, with its Athlete, in these Jiu Jitsu competitions.*

b. Respondent's position

30. *It is also untenable to say the athlete was removed from the registration list without notice by e-mail dated 19 August 2018: there was already an agreement on same; the athlete should not have been on the list on the first place. Further, the JJIF President sent a follow up letter on 20th August 2018.*

V. JURISDICTION AND ADMISSIBILITY

31. Article 7 of the CAS Arbitration Rules for the XVIII Asian Games (hereinafter referred to as the "CAS Ad Hoc Rules") provides that Chapter 12 of the Swiss Act on Private International Law ("PILA") shall apply. In accordance to Article 186 of the PILA, the Panel shall rule on its own jurisdiction.
32. The jurisdiction of the Ad Hoc Division arises out of Article 34 of the Constitution of the Olympic Council of Asia.
33. Article 1 of the CAS Ad Hoc Rules provides as follows:
"Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of these Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Article 34 of the Constitution of the Olympic Council of Asia, insofar as any such dispute may arise in the host country of any of the Asian Games (Summer Games, Winter Games, Beach Games and Indoor & Martial Arts Games; hereafter "the Asian Games") within a period commencing 2 days prior to the Opening Ceremony (4 days for the Asian Summer Games) and ending at the beginning of the Closing Ceremony of such Games.
34. The Parties disagree on when the dispute arose, to wit which decision can be challenged. On the one hand, the Applicants argue that it is the email of the Organising Committee dated 19 August 2018 as well as the subsequent letter

dated 20 August 2018 in which the JJIF reiterated the Athlete's suspension to participate in the XVIII Asian Games. On the other hand, the Respondent contends that it is the letter dated 24 July 2018 in accordance to which the Athlete was suspended to participate in the XVIII Asian Games.

35. In the Panel's opinion, neither the e-mail dated 19 August 2018 from the Organising Committee nor the JJIF's response dated 20 August 2018 to the request for reconsideration dated 8 August 2018 are not decisions capable of appeal. In this respect, the Panel considers that the Applicants cannot artificially extend the scope of jurisdiction of the CAS Ad Hoc Division foreseen in Article 1 of the Ad hoc rules by asking for reconsideration of a decision which was taken well before the *period commencing 4 days prior to the Opening Ceremony* of the XVIII Asian Games. To the contrary, the Panel considers that the challenged decision in this dispute is the one rendered by the JJIF Board on 24 July 2018 for the following reasons:
- Point 2 of the operative part clearly establishes that the Athlete cannot be a part of the national team participating at the XVIII Asian Games in Jakarta. Therefore, it is clear that the Athlete was not allowed to participate in the XVIII Asian Games as of 24 July 2018.
 - The Panel notes that the Applicants contend that neither the BMAF nor the Applicants received the JJIF's letter dated 24 July 2018. However, by letter dated 8 August 2018, the BMAF expressly recognized that the JJIF decision to suspend the Athlete was in force by requesting the JJIF "*to reconsider the decision of your esteemed Federation to suspend the participation of the [the Athlete].*" In accordance with the evidence filed by the Applicants and specifically the exchange of communications between the BMAF and the JJIF, the Panel's view, it is clear that the BMAF was representing the interests of the Applicants and therefore, it cannot be argued that they were not aware about the Athlete's suspension.
 - The prayers for relief of the Applicants were directed to lift the suspension imposed on the Athlete on 24 July 2018 in order to allow him to participate in the XVIII Asian Games.
36. In view of the foregoing, it is clear that the Applicants are challenging the JJIF's decision to suspend the Athlete rendered on 24 July 2018, i.e. outside the period in which the CAS Ad hoc Division would be competent to solve disputes related to the XVIII Asian Games, pursuant to Article 1 of the CAS Ad-hoc rules.

VI. CONCLUSION

37. Therefore, the CAS Ad hoc Division has no jurisdiction to hear the Applications filed by the Bahrain Olympic Committee and Mr Ali Seena Munfaredi on 21 and 22 August 2018 respectively.

DECISION

The Ad hoc Division of the XVIII Asian Games in Jakarta Palembang 2018 of the Court of Arbitration for Sport renders the following decision:

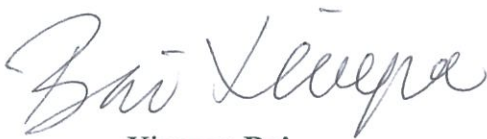
1. It has no jurisdiction to hear the Application filed by the Bahrain Olympic Committee on 21 August 2018.
2. It has no jurisdiction to hear the Application filed by Mr Ali Seena Munfaredi on 22 August 2018.

Jakarta, 23 August 2018

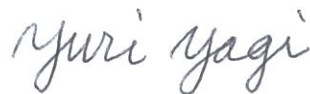
THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT



Mohamad Idwan **Ganie**
President of the Panel



Xianyue **Bai**
Arbitrator



Yuri **Yagi**
Arbitrator