

# FIH Judicial Commission

## Decision

11 June 2023

FIH JC 05/22

In the matter between

**Mr. Megat Shariman Bin Zaharudin**

**Claimant**

represented by Mr. Mohd Zhafri Bin Aminurashid of Law Chambers of Zhafri Aminurashid, 1-1, Perdana The Place, Jalan PJU 8/5G, Damansara Perdana, 47820 Petaling Jaya, Selangor, Malaysia ([zhafri@fzlaw.com.my](mailto:zhafri@fzlaw.com.my))

v.

**Malaysian Hockey Confederation (MHC),**

Level 2, National Hockey Stadium, 57000, Bukit Jalil, Kuala Lumpur, Malaysia ([ceo@hockeymalaysia.org](mailto:ceo@hockeymalaysia.org)).

**Appellee or MCH**

represented by Mr. Jadadish Chandra, chairman of the MHC Legal Committee, Mesrs. Arbain & Co. Suite C-5-1 Plaza Mont Kiara, No. 2 Jalan Kiara, Mont Kiara, 50480 Kuala Lumpur, Malaysia, ([arbainlaw@gmail.com](mailto:arbainlaw@gmail.com)).

### 1 The Parties

#### 1.1 The Claimant

The Claimant is the President of the Club Persatuan Pendidikan Sukan Hki Kuala Lumpur, also known as "Hockademy" ("the Club").

#### 1.2 The Appellee

The Appellee is the Malaysian Hockey Confederation (MHC), which is the national body governing hockey in Malaysia. The Appellee is affiliated to the Asian Hockey Federation (AHF) and a member association of the International Hockey Federation (FIH).

### 2 Summary of the Facts leading to the Appeal

1. On 19 September 2020, the Disciplinary Committee of the MHC ("MHC DC") found that the Claimant had violated Clause 6 (i) of the Tournament Code of Conduct because of inappropriate public statements. By order of 3 November 2020, the MHC Executive Board ("MHC EB") confirmed the finding of the MHC DC and banned the Claimant from all hockey related activities for 18 months with immediate effect under Article 46.2 /f) of the MHC Constitution ("the 1<sup>st</sup> Suspension Order").

**FIH Judicial Commission**

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2. The Claimant's public statement objected to by the MCH consisted of three press statements of 28 May 2020, 30 May 2020 and 4 June 2020 and a letter of the Claimant to the sponsors of the Club dated 1 June 2020, by which the Claimant complained that the MCH had failed to pay out prize monies for the results of the Club in the TNB Malaysia Hockey league 2020 for Men and Women. Undisputedly, the Club was a champion in the Women's category and the runner-up for the Vivian May Soars Cup which ended on 22 February 2020, and therefore entitled to prize money in the amount of RM65,000.00.
3. The Claimant filed an appeal against the 1<sup>st</sup> Suspension Order, which led to a hearing before the MHC Appeal Committee ("MHC AC") on 5 March 2021. By decision of 23 August 2021, MHC Appeal Committee dismissed the appeal ("1<sup>st</sup> Decision of the MHC AC"). The Claimant did not challenge the 1<sup>st</sup> Decision of the MHC AC.
4. By letter of 19 August 2021 the CEO of the MHC notified the Claimant to answer the following charges:
  - i. That you, on 3<sup>rd</sup> July 2021 via Skype interviewed one Shahbaz Ahmad, an ex-Pakistan international hockey player, and in doing the said interview you have breached the said suspension order in that said interview is tantamount to taking part in a hockey related activity.
  - ii. That by letter dated 25<sup>th</sup> June 2021, from Bremer Hockey Club, Germany to the Honorable Sports Minister, Malaysia you were described as President of Kuala Lumpur Hockey Association; a fact that is misleading and false, and that you did not rectify the said misleading and false description of your position and accordingly, you have breached the said suspension order in that you are continuing to carry out hockey related activities.
5. The Claimant provided his written explanation on 27 September 2021.
6. The MHC DC heard the complaint against the Claimant on 30 October 2021 and found that the Claimant had breached the 1<sup>st</sup> Suspension Order.
7. By order of 21 January 2022, the MHC EC suspended the Claimant for a further 12 months from participating in all hockey related activities, because of breach of the 1<sup>st</sup> Suspension Order ("the 2<sup>nd</sup> Suspension Order").
8. By letter dated 8 February 2022, the Claimant submitted an appeal against the 2<sup>nd</sup> Suspension Order to the MHC AC, which held a hearing on 28 April 2022. On 23 September 2022, the MHC AC dismissed the appeal ("the 2<sup>nd</sup> Decision of the MHC AC"). The 2<sup>nd</sup> Decision of the AC was notified to the Claimant by letter of 17 October 2022.
9. On 27 October 2022, the Claimant submitted its Notice of Appeal against the 2<sup>nd</sup> Decision of the MHC AC to the FIH Judicial Commission.

### 3 The Position of the Parties

#### 3.1 Claimant

10. Although the Claimant explicitly recognizes that the 1<sup>st</sup> Suspension Order and the 1<sup>st</sup> Decision of the AC are not subject to the Appeal to the FIH Judicial Committee, he nevertheless addresses the reasons upon which the 1<sup>st</sup> Suspension Order and the 1<sup>st</sup> Decision of the MHC AC had been issued.
11. The Claimant submits that the charge leading to the 1<sup>st</sup> Suspension Order was issued in violation of procedural fairness because the public statements which had been the subject of the 1<sup>st</sup> Suspension Order did not involve any personal attacks and there was no malice or bad intention to prejudice the interest of hockey and did not bring the game into disrepute. The charge was brought too late and not within the 14 days as provided by Clause 21.6.3 of the Tournament Rules and Regulations of the Malaysian Hockey Confederation TNB Hockey League 2020.
12. The public statements issued by the Claimant were not in breach of Clause 6(i) of the Tournament Code of Conduct, which reads as follows:

*"Public statements must be fair and reasonable and must not involve a personal attack on another player, umpire, appointed official or administrator."*
13. The Claimant had not only the right but also the duty to ensure that his players received the well-deserved prize-money. There was nothing wrong in reminding the MHC of its payment obligation.
14. Finally, the Claimant finds that the sanction imposed by the 1<sup>st</sup> Suspension Order was "unproportionate and grossly excessive".
15. With respect to the 2<sup>nd</sup> Suspension Order, the Claimant submits that the second proceeding before the MHC AC was made without proper procedures. The Claimant asserts that he was never called to the MSC DC hearing of 30. October 2021 and did not attend the Hearing of the MHC AC of 28 April 2022, which led to the decision of 23 September 2022, communicated to the Claimant on 17 October 2022.
16. The Claimant submits the following Prayers for Relief:
  - (a) *To allow this appeal;*
  - (b) *To order the Appellant's suspension order dated 3.11.2020 and 17.10.2022 to be set aside immediately; and*
  - (c) *To order the Respondent to assume the entirety of the FIH Judicial Commission administration and procedural fees;*
  - (d) *To order the Respondent to pay the Appellant costs of 20,000 Swiss Francs or any amount as it deems appropriate*

### 3.2 Appellee

17. The Appellee submits that the Claimant's appeal against the 1<sup>st</sup> Suspension Order was filed out of time. It should have been lodged within 10 working days from the date of decision, which was rendered on 3 November 2020. Therefore, there is no need to answer the matters pertaining to the 1<sup>st</sup> Suspension Order.
18. With regards to the 2<sup>nd</sup> Suspension Order, the Appellee submits that the Claimant must demonstrate procedural errors in the proceedings leading to the 2<sup>nd</sup> Suspension Order before the FIH Judicial Commission can hear the matter "all over again, from the beginning (Article 4.3.1 DRR). Without being bound in any way by the decision appealed." The Claimant has not demonstrated that there were substantive procedural errors in the MHC proceedings.
19. The Claimant's contention that MHC blatantly misused the MHC Judicial Bodies procedure to impose inappropriate and grossly excessive sanctions on the Claimant is unsubstantiated. The Claimant has not provided details of the alleged blatant misuse, nor provided particulars on incidents of the blatant misuse of the procedures of the MHC Judicial Bodies.
20. With respect to the 2<sup>nd</sup> Suspension Order, the Appellee carried out a correct appeals procedure: The MHC AC heard Claimant's complaint on 30 October 2021. The Claimant and his Counsel were absent despite proper invitation by email.
21. After the Claimant had filed an appeal against the 2<sup>nd</sup> Suspension Order, a hearing took place before the MHC AC on 28 April 2022. However, the Claimant did not appear in person, but his legal counsel Mr. Mohd Zhafri Aminurashid was present. The latter also confirmed by email dated 28 October 2022, that he had taken note of the reasoned 2<sup>nd</sup> Decision of the MHC AC and that the Claimant would lodge an immediate appeal to the FIH Judicial Committee pursuant to articles 45.3 and 48.1 of the MHC Constitution. However, such appeal had already been lodged on 27 October 2022.
22. The Claimant did not exhaust his legal remedies provided in the MHC Constitution. According to Article 8 MHC Constitution, a suspended member must first appeal to the Congress, as this was also indicated in MHCs letter to the Claimant dated 17 October 2022 by which the 2<sup>nd</sup> Suspension Order was notified to the Claimant.
23. The Appellee therefore requests the FIH Judicial Commission to dismiss the Claimant's appeal and not to set aside the two suspension orders. The costs and expenses of convening the JC Panel and the costs incurred by the MHC must be borne by the Claimant.

#### **4 The Procedure before the FIH Judicial Commission Panel**

24. By email of 27 October 2022, the Claimant filed the Notice of Appeal with the Judicial Commission (JC) (of the FIH) together with 15 Exhibits.
25. On 14 December 2022, the Deputy Chair of the FIH Judicial Commission appointed the Panel of Arbitrators ("Panel") consisting of Dr Stephan Netzle, Switzerland, as chairman of the Panel and Ms Urvashi Naidoo, United Kingdom and Mr. Eduardo Guelfand, Argentina, as members of the Panel.
26. On 17 January 2023, the chairman of the Panel confirmed receipt of a Notice of Appeal and invited the Appellee to file its Answer until 13 February 2023.
27. By email of 13 February 2023, the Appellee submitted its Answer together with 5 Exhibits.
28. On 17 March 2022, the Panel forwarded the Response to Claimant and invited the Parties for a Hearing by way of video conference, preferably on 30 March 2023.
29. It turned out to be difficult to find a suitable hearing date. Upon request of the Claimant and in agreement with the Appellee, the Panel ordered that no oral hearing shall be held. Instead, it invited the Claimant to comment on the Appellee's Answer in writing by no later than 12 April 2023. Upon receipt of the Claimant's comments, the Appellee was granted the opportunity for a rebuttal, which was submitted on 24 April 2024.

#### **5 Jurisdiction and Applicable Law**

30. The Claimant relies on Article 45(3) and Article 48 (1) of the Constitution of the MHC and Article 1.1.2.1.2 FIH Dispute Resolution Regulations (FIH DRR):

*Article 45 (3) MHC Constitution*

*"Decision pronounce by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Judicial Commission of the FIH and Court of Arbitration for Sport (CAS)"*

*Article 48 (1) MHC Constitution*

*"Appeals against final decisions passed by MHC's legal bodies and against decisions passed by Members shall first be lodged with the Judicial Commission of FIH within fourteen (14) days of notification of the decision in question"*

31. The Appellee does not dispute that the FIH Judicial Panel may hear appeals against final decisions pronounced by the MHC's judicial bodies. However, it submits that while the appeal against the 1<sup>st</sup> Suspension Order and the 1<sup>st</sup> Decision of the MHC AC was late, the Claimant should have appealed against the 2<sup>nd</sup> Suspension Order

and the 2<sup>nd</sup> Decision of the MHC AC to the MHC Congress, according to Article 8 of the Constitution of the MHC.

32. The JC and the Panels appointed by the JC are judicial bodies of a federation and not independent arbitral tribunals whose decisions are enforceable as judgments of ordinary courts, based on the New York Convention. The competence of JC Panels is defined by the rules and regulations of the FIH. JC Panels therefore must examine their competence *ex officio* and cannot simply rely on the understanding of the parties.
33. In this context, the JC Panel must not only examine the Constitution of the MHC but also (and primarily) the Rules and Regulations of the FIH.
34. Article 1.1.2.1.2 FIH DRR reads as follows:
  - 1.1.2. The Judicial Commission is vested with the full power and exclusive authority to hear and determine:*
  - 1.1.2.1. As an appeal body:*
  - 1.1.2.1.1. appeals properly brought against any decision of the Disciplinary Commissioner (save where the Statutes or Regulations alleged to have been breached provide otherwise, e.g., where they provide for an Appeal straight to the CAS);*
  - 1.1.2.1.2. appeals properly brought against decisions of other bodies or persons, where the Statutes or Regulations at issue provide for such Appeal to the Judicial Commission; or*
  - 1.1.2.1.3. appeals properly brought pursuant to rights of appeal to the Judicial Commission set out in the statutes or regulations of a Continental Federation;*
35. The JC Panel notes that according to the Definitions at the end of the FIH DRR, "Statutes or Regulations" (with capital initial letters) are meant to be "The Statutes of the FIH" and "[a]ny codes, rules or regulations made by or on behalf of the FIH in accordance with the Statutes, including all amendments thereto and re-enactments thereof." In addition, Article 1.1.2.1.3 DRR refers to the statutes and regulations of a *Continental* Federation. There is no reference to the statutes and regulations of National Member Federations.
36. However, as confirmed by the JC Legal Department, the JC has, in the past, accepted appeals against decisions of legal bodies of Member Federations, if their rules provided for such an appeal to the FIH JC. Thus, the JC Panel accepts, in principle, the competence to hear an appeal against a final decision of the judicial bodies of the MHC, as a matter of generally accepted custom.
37. The Appellee claims that the Claimant has not exhausted the available internal remedies and should have filed an appeal to the MHC Congress before submitting his

appeal to the FIH JC, since according to Article 8 (1) MHC Constitution, "[t]he Congress shall decide whether to admit, suspend or expel a Member."

38. The Appellee also points to the fact that on 21 May 2021, the Claimant had indeed filed a Notice of Appeal with regards to the 1<sup>st</sup> Suspension Order to Congress, but no Congress was held until 23 March 2023. By then, the 1<sup>st</sup> Suspension order had lapsed and rendered the appeal "academic".
39. The JC Panel does not follow the opinion that the MHC Congress was competent to hear any appeal in this case. According to Article 9 (1) MHC Constitution, "[t]he Members of MHC shall consist of Affiliates and Associates Members." In other words, the MHC members are hockey clubs and regional associations, not individuals. The Congress does not admit, suspend or expulse individuals. Individuals may still be subject to the jurisdiction of the MHC via their clubs or if they otherwise participate in the MHC's activities. Hence, an individual cannot appeal to the Congress if it has been suspended by a judicial body of the MHC. The 2<sup>nd</sup> Decision of the MCH AC is therefore a final decision and not subject to any other remedy of the MHC.
40. The JC Panel therefore rejects the objection to its jurisdiction based on the grounds of lack of exhaustion of internal remedies and finds that it has jurisdiction to hear the Claimant's appeal. The fact that the Claimant also filed an appeal against the 1<sup>st</sup> Suspension Order to the Congress following an instruction of the Appellee on the right of appeal, does not compromise this finding.
41. There is no question that the primary source of law shall be the rules and regulations of the MHC. However, when it comes to the question whether a decision subject to appeal violates mandatory law or how the rules and regulations of the MHC must be interpreted, the Panel must determine the applicable law.
42. The Parties did not make any submissions regarding the question which law should be applied if the rules and regulations of the MHC do not address the respective issue. The Panel finds that general principles of sports law as developed by the Court of Arbitration of Sport (CAS) cannot be disregarded. It also takes into account that the FIH offers to all its member federations a dispute resolution mechanism for appeals against their judicial bodies, which indicates that the disputes between constituents of the hockey family shall be resolved based on uniform rules and principles, namely those applicable to the FIH itself.
43. Article 1.2 of the FIH Statutes says:

*The official seat of the FIH is Lausanne, Switzerland, and these Statutes are governed by and shall be interpreted and applied in accordance with Swiss law, using the definitions and principles of interpretation set out in Article 15 of these Statutes. (Words and terms that are defined in Article 15 appear in italics). The*

*official languages of the FIH are English and French. Any communications to the FIH must be in one of these official languages.*

44. Therefore, the Panel will primarily apply the rules and regulations of the MHC and the FIH and, if necessary, take recourse to the generally accepted principles of sports law and subsidiarily Swiss law.

## **6 Other Procedural Matters**

### **6.1 Late filing of an Appeal regarding the 1<sup>st</sup> Suspension Order**

45. The Appellee submits that the Claimant's Appeal has been submitted late, as far as the 1<sup>st</sup> Suspension Order and the 1<sup>st</sup> Decision of the MHC AC are concerned.
46. According to Article 4.1.1 DRR, the time limit to lodge an appeal is 10 working days of receiving the decision being appealed. The 1<sup>st</sup> decision of the MHC AC was rendered on 23 August 2021 and received by the Claimant on 25 August 2021. Within the time limit of Article 4.1.1 DRR, no appeal has been filed with respect to the 1<sup>st</sup> Suspension Order and the decision of the MHC AC.
47. Hence, the Panel holds that the 1<sup>st</sup> Suspension Order and the 1<sup>st</sup> Decision of the MHC AC are not subject to the present appeal before the FIH JC. However, the Panel may refer to the circumstances, which led to the 1<sup>st</sup> Suspension Order when assessing whether the 2<sup>nd</sup> Suspension Order was justified.

### **6.2 "Too early filing" of the Appeal against the 2<sup>nd</sup> Suspension Order**

48. The Appellee submits that the Claimant's counsel notified the MHC by email of 28 October 2022 that the Claimant had received the 2<sup>nd</sup> Suspension Order and would lodge an immediate appeal directly to the FIH JC. However, the Appeal was lodged already on 27 October 2022, one day before.
49. Undisputedly, the Claimant has received the 2<sup>nd</sup> Decision of the MHC AC already by email of 17 October 2022 and was required to file an appeal within the deadline provided by Article 4.1.1 DRR. The wording of the email of Claimant's counsel of 28 October 2022 has no impact on the validity of the filing of the Notice of Appeal.

### **6.3 Incomplete Exhibits**

50. The Appellee further contends that "the Claimant did not file, together with the Notice of Appeal, a copy of the decision that is being appealed nor the transcript of the hearing in respect of the 2<sup>nd</sup> Suspension Order, nor identify the provision in the Regulations alleged to have been breached" which violates Article 4.1.1 DRR.
51. The Panel has received the Decision subject to Appeal dated 23 September 2022 as well as the respective cover letter of 17 October 2022. It may indeed be helpful



for the Panel to also receive the minutes of the hearing which led to the decision subject to appeal. However, this is not a *conditio sine qua non* for the validity of the Appeal but rather a reminder to the Claimant to submit all available documents to allow the Panel to follow the decision-making procedure of the prior instance. The Panel also notes that the Claimant referred to various provisions in the MHC regulations. Whether they apply in this case is a matter to decide when assessing the merits of the appeal, and not as a matter of the requirements under Article 4.1.1 DRR. The procedural objections of the Appellee are therefore dismissed.

#### **6.4 Incomplete delivery of the Appellee's Answer**

52. The Claimant submits that the Appellee served its Answer only to the Panel but not to the Claimant. It was the Panel, which sent the Answer to the Claimant. Therefore, the Appellee's Answer should be disregarded.
53. The Panel does not consider the Appellee's omission to be so serious that the Answer should be disregarded. The Claimant does not assert that his due process rights had been affected in any way. The Panel therefore accepts the Appellee's Answer in this procedure.

### **7 Scope of Review**

54. The Appellee refers to Article 4.3.1 DRR and claims that the JC Panel may review appeal *de novo* (i.e. without being bound by the facts of the previous instance) only if the Claimant may demonstrate procedural errors. No such procedural errors happened in the procedures leading to the 2<sup>nd</sup> Decision of the MHC AC. It is true that the Claimant did not attend the hearing of the AC on 28 April 2022, but he was validly represented by counsel.
55. The Panel does not share the Appellee's view that it can hear the case *de novo* only in case the Claimant may demonstrate procedural errors. Article 4.3.1 DRR reads as follows:

*4.3.1 Where required in order to do justice (for example, to cure procedural errors in the proceedings below), the Appeal shall take the form of a re-hearing de novo of the issues raised in those proceedings, i.e., the JC Panel shall hear the matter all over again, from the beginning, without being bound in any way by the decision being appealed.*

*4.3.2 In all other cases, the Appeal shall not take the form of a de novo hearing but instead shall be limited to a consideration of whether the decision being appealed was in error. The Appellant shall have the burden of establishing such error.*

*4.3.3 Unless on appeal the matter is being dealt with de novo then no evidence may be presented on any Appeal that was not presented in the first instance hearing unless it is established that such new evidence is relevant and*

*could not have been obtained, using reasonable diligence, prior to the first instance hearing.*

56. The Panel understands that a *de novo* hearing may be required to do justice. Procedural errors before the prior instance may require to repeat the procedure from the beginning, or to assess the factual evidence anew. However, in the present case, the facts leading to the suspension orders are actually not disputed and the Panel is not required to establish the factual background anew.
57. The questions for the Panel to answer are rather questions of law, namely
1. whether the Claimant breached the 1<sup>st</sup> Suspension Order, and
  2. whether the 2<sup>nd</sup> Decision of the MHC AC was rendered in a correct procedure respecting the procedural rights of the Claimant, and
  3. whether the additional sanction imposed on the Claimant was compliant with the applicable regulations of the MHC and general principles of proportionality.

## **8 To the Merits**

### **8.1 Legal interest, despite period of suspension has already expired**

58. The period of suspension of 18 months ordered by the 1<sup>st</sup> Suspension Order expired on 3 May 2022. The 12 months extension of the first suspension as ordered by the 2<sup>nd</sup> Suspension Order expired on 3 May 2023.
59. Although the Claimant is no longer subject to these orders and not restricted any longer from pursuing any hockey-related activity, he has still a sufficient interest worthy of legal protection in an assessment of the validity of the 2<sup>nd</sup> Suspension Order. It is important for the Claimant to know whether he actually committed a breach of the 1<sup>st</sup> Suspension Order and whether the sanction imposed on him was legitimate. The validity of the 2<sup>nd</sup> Suspension Order may also play a role when new allegations of inappropriate behaviour are raised. The Panel therefore accepts the general requirement of the Claimant's sufficient interest in a decision of the Panel worthy of legal protection.

### **8.2 Breach of 1<sup>st</sup> Suspension Order**

60. The Panel has already held that it has no competence to re-examine the 1<sup>st</sup> Suspension Order because the Claimant's Notice of Appeal was not filed in time for a challenge of the 1<sup>st</sup> Decision of the Appeal Committee.
61. However, the Panel is not barred from taking note of the (undisputed) facts which led to the 1<sup>st</sup> Suspension Order when it comes to the question of the proportionality of the 2<sup>nd</sup> Suspension Order.

### 8.3 Breach of 2<sup>nd</sup> Suspension Order

62. It remained undisputed that in principle, the MHC may impose another sanction if the person subject to a pending suspension order commits further acts in breach of the first suspension order, and extend the pending suspension order accordingly.
63. The MHC found that there were actually two incidents by which the Claimant breached the order to abstain from any hockey related activities. The Panel is entitled to review whether the two alleged incidents constitute a breach of that order which justifies a one year extension of the initial suspension of 18 months.

#### 8.3.1 Letter from Bremer Hockey Club e.V. (Germany) dated 25.06.2021

64. The first incident concerned a letter from the Bremer Hockey Club e.V. in Germany to the Malaysian Minister of Sport which reads as follows:

*Dear YB Dato'Sri Reezal Merican Naina Merican,*

*A Humble Request For An Exchange Hockey Player From Malaysia*

*I am writing this letter to you on behalf of Bremer Hockey-Club/ Germany, to express our keen interest to invite the Women's Hockey Player from Malaysia to play for the Bremer Women's Hockey team.*

- 1. Despite the great opportunity for the Malaysian and Bremer Women's Hockey Team, my request has been long delayed for the past 4 months without any response from the association regarding this issue. I look at this as a great loss since collaboration between countries is definitely an opportunity that should not be taken lightly. It saddened me as I kept waiting and was hoping for courteous feedback from the association.*
- 2. For your information, I have been communicating with Dato Sri' Megat D. Shahriman (President of Kuala Lumpur Hockey Association) for years and he has been helping me to organize regular exchanges of top players. We have had very good experiences with players from Malaysia and I am personally very interested in intensifying the exchange and in the medium term also establishing international meetings and exchanges between German and Malaysian hockey players. I was also informed many Asians tournaments have been postponed due to the pandemic Covid-19. Thus, this is the perfect time for the players to create another opportunity for them to attend the training here in Germany.*
- 3. The upcoming training session will start this coming August 2021, and we are expecting 3 women's hockey players from Malaysia to join our team. Dato' Sri Megat and I are seeing this as a good exposure not only for the country, but also good for the player's profile and will benefit them a lot from this experience. Also, Dato' Sri Megat D. Shahriman and I are willing to offer any help for any future sports collaboration or program with the Malaysian government.*
- 4. We would like to request the Release Letter from YB, and hope to receive good cooperation from the Malaysian Hockey Confederation. I hope this matter will be taken into consideration, and hope for our request to be granted. I have attached the invitation letter for the players for your reference.*

*Thank you and I am hoping to hear from you soon.*

*Yours truly, Martin Schultze*

65. The Panel finds it very difficult in three respects to accept that the Bremen Letter may be considered as a "hockey related activity" of the Claimant.
- a. The Bremen Letter originates from a third party and there is no evidence that the Claimant somehow contributed to the content of the Bremen Letter. The Appellee does not even assert that the Claimant caused the incorrect description of his title or knew about that letter and the erroneous title.
  - b. The justification of the MHC that "you did not rectify the said misleading and false description of your position" and that, therefore, the Claimant breached the said suspension order is simply not sufficient: A hockey related *activity* requires an active behaviour of the person subject to the order. By definition, remaining passive cannot constitute an activity, especially if the person subject to the order has no knowledge of the error and no legal duty or even factual possibility to intervene in an activity which is entirely in the hands of a third person.
  - c. Even if the Claimant was aware of the content of the Bremen Letter, it hardly meets any test of relevance and proportionality and cannot serve as breach of the 1<sup>st</sup> Suspension Order. If at all, it would have been the MHC's duty to notify the Claimant and ask for a correction towards the author of the letter first and impose a sanction only in case the Claimant had refused to comply with the MHC's request.
66. The Panel therefore finds that the Bremen Letter cannot, by any means, be considered as a breach of the 1<sup>st</sup> Suspension Order by the Claimant.

#### **8.3.2 Interview with Hockey Celebrity dated 3 July 2021**

67. The Panel finds that participating in the skype '*sharing session with the Maradona of Hockey: The legendary Shabaz Ahmed*' as a panellist former Hockey on 3 July 2021 was, technically speaking, indeed a hockey related activity of the Claimant.

#### **8.3.3 Breach of the 1st Suspension Order?**

68. The Panel notes that neither the appealed decision of the MHC AC nor the submissions of the Appellee refer to any provision according to which any breach of a suspension order shall be subject to a new sanction. The Appellee also failed to demonstrate any corresponding practice of the MHC AC or other judicial bodies of the MHC.
69. The FIH Integrity Code does not stipulate that the breach of a pending suspension constitutes a separate rule violation by itself. The FIH Integrity Code rather considers a prior breach an aggravating factor when determining the sanction for the new breach (see Article 27.2 (b) FIH Integrity Code).

70. According to Article 46 (2)(f) of the MHC Statutes, a natural person may be sanctioned by "a ban on taking part in any hockey – related activity." It does however not say that any breach of such a ban constitutes a separate breach irrespective of the seriousness of the new breach, or just an aggravating factor when assessing the new breach. The Panel is however barred from reviewing the legality of 1<sup>st</sup> Suspension Order because this order has become enforceable and is not subject to the present proceeding.
71. The Panel therefore concludes, albeit reluctantly, that the Claimant's participation in the interview with Mr. Shabaz Ahmed can be considered a breach of the "ban on taking part in any hockey-related activity" according to the MHC Constitution, while the incorrect reference to the Claimant's professional function in the Bremen letter cannot be blamed on him.

## 9 The Sanction

72. The main issue for the Panel to examine is the sanction of a ban of 12 months on taking part in any hockey-related activity. There is no guidance in the MHC Rules and Regulations, the FIH Rules or the jurisprudence of the MHC or FIH legal bodies. This does however not mean that the sanction can be determined at the free and absolute discretion of the MHC AC.
73. The Panel has reviewed the sanction under the criteria established by the FIH Integrity Code and the general principle of proportionality.
74. The Panel also notes that the sanction at stake is actually a consequence of the Claimant's 1<sup>st</sup> breach of the MHC Rules but the 2<sup>nd</sup> breach (i.e. taking part in an interview with Mr. Shabaz Ahmed) does not constitute by itself a prohibited or sanctionable conduct. The Panel therefore cannot dispense itself from taking a closer look also at the seriousness of the Claimant's 1<sup>st</sup> breach.
75. When applying those criteria, the Panel notes the following:
  - a. The Panel fails to understand why the Claimant was issued a very tough sanction of a "ban on taking part in any hockey related activity" of 18 months because he complained that the MHC had not paid the prize money which was undoubtedly due. It may not have been necessary to bring the payment delay to public attention or to contact the sponsors but even the Appellee has not asserted that the Claimant's complaints had been wrong, abusive or offending.
  - b. In addition, there is no information about the considerations which led the MCH AC to come up with "a ban on taking part in any hockey related activity" of 18 months and whether it has considered any aggravating or mitigating fac-

tors. The Panel finds in any event that the sanction was disproportionate, considering the minor seriousness of the 1<sup>st</sup> offence, the lack of any impact on sporting events and the range of other options of the MHC AC to enforce compliance with the MHC Code of Conduct.

- c. When it comes to the 2<sup>nd</sup> Suspension Order, the Panel held that if at all, only the second allegation (i.e. the participation in the online interview with Mr. Shabaz Ahmed can be considered a "hockey related activity" at all.
  - d. The Panel already noted that the alleged behaviour is not a behaviour, which may trigger any sanction, if considered in isolation. The Panel therefore finds that only a behaviour with a certain impact on the sport or on hockey events may be considered as serious enough to justify an additional sanction because of a breach of the 1<sup>st</sup> suspension order. The participation in an online interview with a famous hockey player does, in the view of the Panel, not reach the necessary threshold of relevance and seriousness.
  - e. Again, there is no information about the considerations of the MHC AC to apply a rather harsh sanction for a behaviour which can hardly be considered as serious under the circumstances, and which was completely unrelated to sport competitions or the MHC. In particular, the MHC does not seem to have considered any mitigating factors as listed in Article 27.2.2 FIH Integrity Code, such as the fact that the alleged breach did not have the potential to affect the course or outcome to a (hockey) event (see lit. d) and that the Claimant did not dispute the alleged breach when confronted with it (see lit. e).
  - f. The Panel also finds that the MHC AC was not required to simply extend the period of suspension by 12 months as a consequence of any behaviour somehow related to hockey without any further considerations relating to the seriousness of such behaviour, the impact to the sport, the proportionality and the availability of any other consequences
76. Under the circumstances, the Panel concludes that the participation of the Claimant in an online interview with hockey celebrity Shabaz Ahmed does not justify the imposition of a "ban from all hockey related activities" for another 12 months or any further sanction at all.
77. The Panel therefore decides unanimously to allow the Appeal and lifts the 2<sup>nd</sup> Suspension Order and the decision of the MHC AC.

## 10 Costs

78. According to Article 4.7.2.4 FIH DRR, the Panel shall order a party to pay some or all of (1) the costs and expenses convening the Panel and (2) the costs incurred by the other party or parties to the matter, as it deems appropriate.

79. The Panel determines its own costs to CHF 7,500.00. Considering the outcome of the procedure, the procedural and administrative costs of this procedure shall be paid by the MHC to the FIH. While the appeal against the 1<sup>st</sup> Suspension Order was late, the underlying facts had nevertheless been taken into account by the Panel when setting the 2<sup>nd</sup> Suspension Order aside, which justifies this order regarding the procedural costs.
80. The Claimant also claims a cost contribution of CHF 20,000.00 or any amount as it deems appropriate. The Appellee claims that the Claimant's appeal shall be dismissed "with costs". No party has made any specified submissions regarding their cost claim. Again, considering the outcome of the procedure, the Panel determines the compensation payable by the Appellee to the Claimant shall be CHF 6,000 (including the reimbursement of the court fee of CHF 2,000 paid by the Claimant to the FIH) (Article 4.1.3 DRR). The amount of the contribution also takes into account that the Claimant's prayer for relief also includes the lifting of the 1<sup>st</sup> Suspension Order, which was however late.
81. This decision may be submitted by way of appeal to the Court of Arbitration for Sport (CAS). The time limit for appeal is twenty-one (21) days after the reception of this decision by courier.

## 11 Decision

1. The FIH JC accepts jurisdiction to hear the Appeal against the Decision of the Appeals Commission of Malaysian Hockey Confederation dated 23 September 2022, as communicated to Megat Shariman Bin Zaharudin on 17 October 2022.
2. The FIH JC upholds the Appeal of Megat Shariman Bin Zaharudin as far as it is admissible and sets aside the sanction of 12 month suspension from all hockey-related activities starting on 4 May 2021 because of "breach of the 1<sup>st</sup> Suspension Order."
3. The costs of this procedure before the FIH JC until the present Decision in the amount of CHF 7,500.00 shall be borne by the Malaysian Hockey Confederation alone.
4. The Malaysian Hockey Confederation shall pay CHF 6,000.00 to Megat Shariman Bin Zaharudin as a contribution to his legal fees and expenses (including the court fee of CHF 2,000.00 paid by Megat Shariman Bin Zaharudin to the FIH).
5. All other or further-reaching requests for relief are dismissed.

Zürich, 11 June 2023

FIH Judicial Commission



Dr. Stephan Netze, JC Panel Chair



Ms Urvasi Naidoo, Member of the JC Panel



Mr Eduardo Guelfand, Member of the JC Panel