

Dutee Chand appeals against Hyperandrogenism Regs

Fundamental questions raised about the IAAF's Regulations

On 1 April 2015, 19 year old Indian sprinter Dutee Chand earned a temporary reprieve from the Court of Arbitration for Sport ('CAS'), which has permitted her to take part in the forthcoming Asian Athletics Championships, pending a final decision on her appeal against the International Association of Athletics Federations ('IAAF') Regulations Governing Eligibility of Females with Hyperandrogenism to Compete in Women's Competition ('HA Regulations'). Dutee was disqualified last year by the Athletic Federation of India ('AFI'), citing the HA Regulations, from participating in the Commonwealth Games, after tests revealed that her body produced natural levels of testosterone above the permissible limit.

As per the HA Regulations, female athletes who are affected by hyperandrogenism often display masculine traits and tend to have an uncommon athletic advantage over their fellow female competitors. In order to guarantee fairness for all female athletes, IAAF has sought to regulate the eligibility of those athletes with hyperandrogenism by laying down the HA Regulations with effect from 1 May 2011.

Under the HA Regulations, when a potential case of hyperandrogenism is reported to the IAAF Medical Manager (see Regulation 2.2), an athlete will be subjected to medical assessment tests at different levels i.e., an initial clinical assessment, preliminary endocrine assessment or full examination at a specialist reference centre depending on the circumstances of the case (see Regulation 5.1). The purpose of this assessment is to ensure that an athlete's information is recorded and can be used for further reference in order to determine her eligibility to compete in future competitions.

This information is then referred in confidence and on an anonymous basis to an Expert Medical Panel who will make a recommendation to the IAAF as regards to the eligibility of the concerned athlete. The final decision with regards to the athlete's eligibility will lie with the IAAF, which takes into account the recommendations that have been made by the medical panel. In the event that an athlete tests positive, she will be allowed to seek hormonal or surgical treatment to bring down her testosterone level within the permissible limit i.e., less than or equal to 10 Nanomole/Lt.

In Dutee's case, she has refused to seek any hormonal or surgical treatment to lower her natural testosterone level. She expressed her dismay at the HA Regulations stating "I feel that it is wrong to change your body for sport participation. I'm not changing for anyone."¹ Reluctant to seek any treatment, Dutee filed an appeal before the CAS, wherein she has challenged her ban, and also the HA Regulations.

Dr. Payoshni Mitra, a researcher, activist and writer working on gender issues in sport in India has been advising Dutee Chand on this particular case. It is her view that "the current guidelines, that require women athletes with hyperandrogenism to undergo therapy or surgery if they want

to compete again, is encouraging genital mutilation in an institutionalised way."² Also, another fear that is being voiced is that female athletes may be singled out for failing to conform to certain standards of "what a woman should look like", even though many signs of masculinity (no menstrual period, flat chests, low body fat and increased muscularity) are also consequences of rigorous physical training.

This case raises several fundamental questions about the HA Regulations and how they practically impact women athletes. One of the most fundamental questions to be considered is whether it is necessary to root out any genetic advantage resulting from a genetically caused androgen imbalance. Nancy Hogshead-Makar, Senior Director of Advocacy at the Women's Sports Foundation and a three-time Olympic gold medallist in swimming, is of the view that "All Olympians have a genetic advantage over other people. If someone is born that way, it shouldn't be counted against them. Even if they have extraordinary natural levels of male hormones, that's akin to having a large lung capacity or extraordinary height or flexibility."³ In the words of Rebecca Jordan-Young, a Professor at Columbia, and Katrina Karkazis, a Professor at Stanford, "Scientifically, there is no clear or objective way to draw a bright line between male and female."⁴ Further, to date there has been no concrete evidence to suggest that higher natural testosterone levels impact an athlete's success more than any other genetic variable. The only likely solution is to let all legally recognised women compete without persecution.

While the CAS has permitted Dutee Chand to compete in the Asian Athletics Championships, it will be interesting to examine the evidence that will be examined by the CAS Panel, the legal and medical principles that will be reiterated or formulated afresh, and the rationale that will underpin the final award of the CAS Panel. The award could have final ramifications, not just for Dutee's future as a professional athlete, but also for the broader issue of whether the HA Regulations conform to generally accepted principles of human rights.

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