

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M. 53 OF 1986

CORAM: The Hon. Mr. Justice Orr, J.  
The Hon. Mr. Justice Gordon, J.  
The Hon. Mr. Justice Ellis, J.

IN THE MATTER of an Application by  
Anthony Subratie for leave to apply  
for an Order of Prohibition

A N D

IN THE MATTER of an Investigation by  
the Jamaica Racing Commission in  
respect of the performance of the  
horse LAMPLIGHTER trained by Anthony  
Subratie on diverse racing days

A N D

IN THE MATTER of Section 25 of the  
Jamaica Racing Commission Act and  
Rule 15 and Rule 200 of the Jamaica  
Racing Commission Racing Rules, 1977.

R. C. Rattray Q.C., and Miss A. Rattray instructed by Rattray, Patterson  
and Rattray for the Applicant.

Dr. L. G. Barnett instructed by Milholland, Ashenheim and Stone for  
Respondent.

February 25, 26, 1987 and May 10, 1989

ELLIS, J:

The applicant Anthony Subratie makes application for an Order of  
Prohibition to prevent an investigation of the applicant with respect to the  
running of a race horse trained by him.

HISTORY

The applicant has given a history of being summoned before the  
Jamaica Racing Commission on several occasions.

He says that on the first occasion his conduct as a trainer was  
investigated and adverse findings relative thereto were recorded against  
him. He successfully challenged those findings when a Full Court granted  
an Order for Certiorari to quash those adverse findings.

The Commission sought on the second occasion to conduct another  
investigation into the circumstances which were the basis of the first  
investigation. The applicant said he unsuccessfully challenged the

Commission's competence so to do.

Undaunted by that lack of success, he persuaded the Commission that it would not be proper for the investigation to be conducted by persons who sat previously as investigators into his conduct.

The Commission delegated the functions of investigation to five (5) persons who were strangers to the previous investigation.

At this investigation, the applicant was represented by his attorney who appears for him in these proceedings. At the completion of this latter investigation the investigators concluded that there was no evidence of conspiracy on the part of the applicant and "no satisfactory basis has been established on which we would be entitled to find Mr. Subratie guilty of a breach of Rule 200".

However, if the applicant thought that that finding of the investigators was the end of the matter, he was mistaken. The Chairman continued:

" One consequential matter arises from the finding, and it is this: under Rule 15 the Commission has the power, inter alia, to suspend, revoke and withdraw licences to trainers, etc, I have paraphrased Rule 15(i), and we would wish to invite Mr. Rattray either now or at some future date as we may fix to deal with the question of why we should not see fit to exercise our power under 15(i) in relation to Mr. Subratie given how he has described his role, attitude and reaction to the performance of LAMPLIGHTER over the period under review. In short, we feel that there is a prima facie case of competence based on Mr. Subratie's own evidence and conduct, and it is in that context that the invitation is being issued ".

The applicant's attorney questioned the investigators' right to proceed to such an investigation and said even if there was going to be an investigation he would ask that it be set for another date.

It is against this proposed investigation that the applicant seeks an Order of Prohibition.

GROUNDS OF APPLICATION:

The applicant has founded his application on the following grounds:

- (a) That the Jamaica Racing Commission has no jurisdiction to enter upon the investigation against the applicant for the reason that a previous investigation was held by the Jamaica Racing Commission as a result of which the Jamaica Racing Commission made a specific finding that the applicant was innocent of the charge and that certain other persons were guilty of having conspired not to race the horse LAMPLIGHTER on its merits on diverse racing days;
- (b) That implicit in that latter findings is a finding that the applicant was not responsible for the inconsistent performance of horse on the said racing days;
- (c) That the Jamaica Racing Commission has exhausted its powers under section 25 of the Jamaica Racing Commission Act and its estopped from entering upon another investigation of the same matter;
- (d) That the attempt by the Jamaica Racing Commission to conduct an investigation into the applicant's position as a trainer constitutes a breach of the constitutional rights of the applicant to have a fair trial within a reasonable time since the incidents upon which the investigation is based took place between the 23rd of March 1983, and the 13th of July 1983;

(e) That the investigation upon which the Jamaica Racing Commission now desires to embark, in view of the history of the whole matter, is oppressive and to embark thereupon is contrary to the principles of natural justice.

Mr. Rattray says that the investigation into the conduct of the applicant was held pursuant to section 25 of the Racing Commission Act. He argues that since Part III of the Act deals with licences with respect to Race Courses and Race Meetings, there is no competence in the Commission to investigate any circumstance referable to a trainer's permit. He seeks to support this by drawing a distinction between a "licence" and a "permit" which ought to attract different methods of investigation.

Moreover Rule 15(1) of the Jamaica Racing Commission Rules 1977, speaks of "licences" for trainers and that is absent from the provisions of the Act. It is the understanding that, in that case, Rule 15(1) is ultra vires the Act and does not avail the Commission any power to investigate that "permit" of a trainer. Any investigation in the circumstances, would be oppressive and contrary to Natural Justice.

Secondly, Mr. Rattray argues that the applicant should not from his own evidence be required to show cause why his trainer's permit should not be revoked.

Thirdly, he contends for the applicant that any attempt to investigate his conduct after the delay would infringe his constitutional right under section 20 subsection (2) of the Constitution.

Dr. Barnett for the respondent submits that there ought not to be any distinction between "licences" and "permits" and supports that by referring to the English Oxford Dictionary Volume 7 at page 711 where the words are used interchangeably. He argues therefore, that a power to investigate a trainer's "permit" or "licence" pursuant to section 25 is resident in the Commission. He contends that the power to investigate goes beyond merely investigating whether or not a trainer has been guilty of fraud or mis conduct but includes the power to investigate the competence

of a trainer. He says the Racing Commission's statutory duty is not merely to satisfy itself as to the honesty of a trainer but also to his competence as a trainer.

In dealing with the submission that the applicant's constitutional right will be infringed if he is called upon to answer charges after the delay, Dr. Barnett says that there has been no period of protracted delay in this case. He says the matter was adjourned for the hearing of Court proceedings and with the agreement of the parties so that legal problems raised could be considered.

In conclusion, he submits that there is nothing unfair or oppressive in the bringing of charges against the applicant since the scheme of the Act suggests that the Racing Commission should exercise a continuing control over "licensees" and "permit" holders within the Racing Industry.

The Racing Industry in Jamaica, of necessity, is operated by breeders, trainers, jockeys, grooms and others. The Jamaica Racing Commission Act and The Jamaica Racing Commission Racing Rules, 1977, require that the operation of the Racing Industry be conducted by persons "licensed" or "permitted" so to do. This is obviously to make for ease of control and supervision of the persons "licensed" and "permitted" by the Jamaica Racing Commission. Whether it is a "licene" or a "permit" which enables a person to operate within the Racing Industry he is controllable by the Jamaica Racing Commission and is liable to be investigated.

In that case, there is no reason why a licence and a permit should not be treated as being interchangeable.

It is the conclusion therefore, that there is no merit in Mr. Rattray's submission that Regulation 15 of The Jamaica Racing Commission Racing Rules is ultra vires the Jamaica Racing Commission Act.

Where a body is required to make investigation and to form an opinion, that body is under a duty to act fairly. The duty to act fairly is particularly important where a person may be subjected to penalties or

in other ways adversely affected by the investigation. In such a case, the duty to act fairly includes an obligation to inform the person to be investigated of the charge and to afford him an opportunity of answering it.

Has the investigating body in this case acted fairly?

The investigating body on the conclusion of an investigation into the inconsistent running of a horse trained by the applicant, found nothing adverse to him relative to a charge of his conspiring with others to achieve that inconsistent running.

The investigating body however, felt that the circumstances of the horse's running placed the applicant's competence as a trainer in question.

The scheme of the Jamaica Racing Commission Act and the Rules made thereunder are regulatory of the Racing Industry in Jamaica. If that regulatory function is not to be illusory there competence of any operator within the Racing Industry must be investigable by the Racing Commission or its delegate. That being the case the investigating body was quite correct in embarking on an investigation of the applicant's competence as a trainer of race horses.

The proposed investigation was brought to the applicant's attention and his legal representative, who was present, sought and obtained an adjournment. It is the conclusion therefore, that the applicant cannot be heard to complain against the action of the investigating body.

The applicant's case was fairly treated and no infringement or possible infringement of the Rules of Natural Justice is shown.

The history of this matter shows that the delay in its conclusion was to facilitate the applicant's request.

That delay can in no way be described as inordinate and cannot result in any infringement of the applicant's Constitutional Right to have the case against him brought within a reasonable time.

In all the circumstances of this case there is nothing to indicate that Prohibition should go.

The application is therefore refused with costs to the respondent to be agreed or taxed.

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ORR, J:

I have had the opportunity of reading the judgment of my brother Ellis J, and I am in agreement with it.

GORDON, J:

I also have read the judgment of Ellis J, and I agree.