In the Supreme Court of Judicature of Jamaica

Before : Mr. Justice Henry
Mr. Justice Rowe
Mr. Justice Willkie

Suit No. M. 43 of 1975

IN THE MATTER of an Application of ZIMROY S. GREEN for leave to apply for Order of Prohibition.

Zimroy S. Green — Applicant

vs.

Commissioner of Police
Asst. Supt. Vassell — Respondents

Mr. Hugh Small and Dr. Adolph Edwards for Applicant
Mr. Lloyd Ellis for Respondents

HENRY J — June 30, 1976

This is the judgment of the Court.

On 21st May, 1974, an accident occurred on the Windward Road between a police service vehicle driven by the applicant, Zimroy Green, and a motor vehicle driven by one Claribelle Rose. The applicant was at the time a constable in the Jamaica Constabulary Force and on the 11th August, 1975, the Commissioner of Police, pursuant to regulation 46 of the Police Service Regulations, appointed a Court of Enquiry to be presided over by Assistant Superintendent I. M. Vassell, to investigate charges laid against the applicant as a result of this accident. Pursuant to a summons dated 1st October, 1975, the applicant attended the Court of Enquiry on 15th October, 1975. He was accompanied by Sergeant (then Corporal) W. H. Edman, the Secretary of the Police Federation, who appeared on his behalf. Sergeant Edman having made certain submissions to the Court of Enquiry, the hearing was adjourned to 22nd October, 1975.

On 21st October, 1975, the applicant sought and obtained an order of a single judge prohibiting the continuation of the proceedings before the Court of Enquiry on 22nd October, 1975, and granting him leave to apply to a Full Court for an order of prohibition to restrain Assistant Superintendent Vassell from hearing the charges preferred against the applicant. That application was heard on the 18th October, 1975, and when, during the course of Mr. Ellis' reply it emerged that there was an apparent dispute as to whether the

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envelope containing the antecedent report of the applicant was sealed or not when it was in the file before the Court of Enquiry, the matter was adjourned to enable the parties to file affidavits in this regard. The hearing was finally concluded on 14th June, 1976, when we reserved our decisions.

The statement in support of the application disclosed two grounds of complaint but in the light of the Court's decision in Regina v. Commissioner of Police ex parte Brandel Reid, a third point was argued by Dr. Edwards. His submission in this regard was that the Police Service Regulations 1961 set out the procedure to be followed in matters of this sort and that procedure required the Court of Enquiry to report to the Commissioner of Police who would then determine the punishment, if any, to be meted out to the offender. However, the court in Brandel Reid's case having decided that the Commissioner of Police could only act in this regard if he were an authorised officer, it was argued that, notwithstanding the fact that at the date of hearing of this application the Commissioner of Police was an authorised officer, he had no power to receive and act on the findings of the Court of Enquiry in the instant case since that Court was appointed and its proceedings commenced at a time when the Commissioner of Police was not an authorised officer. We rejected that submission on the ground that there was no vested right in procedural matters and the amendment to the Regulations by L.N. 379/75 on 26th November, 1975, to include the Commissioner of Police in the definition of authorised officer would enable him to exercise disciplinary powers in consequence of any report of a Court of Enquiry submitted to him on or after that date although at the date the Court of Enquiry was appointed he may not have been empowered to exercise those powers.

The other two grounds were argued by Mr. Small. They are:

(1) That Assistant Superintendent of Police I. M. Vassell, in the course of the first day's hearing of the said charges, namely on the 15th day of October, 1975, breached the rules of natural justice by having on that

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day and prior thereto, had access to and read the entire file of the prosecution in the charges against the applicant.

(2) That Assistant Superintendent of Police I. M. Vassell, in the course of the first day's hearing of the said charges, namely on the 15th day of October, 1975, breached the rules of natural justice in declining to uphold the submissions made on behalf of the applicant that she disqualify herself from proceeding with the hearing of the said charges while at the same time presenting the said evidence against the applicant.

The second ground is the one in relation to which Mr. Small addressed the greater part of his argument and we shall deal with it first.

Mr. Small's argument was that, viewing the regulations as a whole and in particular, regulations 50 (which refers to "the complainant"), 52 (which refers to the "person or authority preferring the charges"), 55 (which requires the President to decide upon the admissibility of evidence and the propriety of questions asked), 58 (which prohibits a member of the Court from communicating with "either party") and 59 (now repealed) which requires the proceedings to be conducted as if they were proceedings before a court of justice, it would appear that they contemplate the Court and the prosecutor or complainant as separate entities so that the Court could not prosecute in what are essentially adversary proceedings. It would, he submitted, be a breach of the principles of natural justice for the same person to be judge and prosecutor as he would then be acting as a judge in his own cause. In support he cited the cases of Hannam v. Bradford City Council 1970 2 AER 690 re Cayman Islands Public Services Co. Ltd. 1967 11 W.I.R. 262 and Taylor v. National Union of Seamen 1967 1 AER 767.

Mr. Ellis, in reply, submitted that a Court of Enquiry under the regulations is, as its name implies, an investigating body whose function is the finding of facts to be sent to another body for adjudication. In the performance of that function there is no

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impropriety or inconsistency in the Court itself eliciting facts by examining the witnesses and the regulations themselves seem to contemplate this since regulation 46(2)(e) provides for the procedure to be followed "if witnesses are examined by the Court." He further submitted that the mere leading of evidence could not make the President of the Court of Enquiry a judge in his own cause unless it could be shown that he was personally involved in the subject matter of the enquiry or was the person who actually preferred the charges.

We accept the submissions of Mr. Ellis.

It seems to us, that the Police Service Regulations contemplate the appointment of a Court of Enquiry in various circumstances some of which would arise within the Jamaica Constabulary Force itself (e.g. charges of insubordination) but some of which, as in the instant case, would arise as a result of some incident involving a member of the Force and a civilian. It may well be that in some cases there would be a complainant or prosecutor who would lead the evidence while in others it would be left to the Court of Enquiry itself to elicit the evidence by examining the witness and where the Court itself examines witnesses regulation 46(2)(e) provides for the necessary safeguards to be adopted. There is no allegation in this case that Assistant Superintendent Vassell has any personal involvement or interest in the subject matter of the charge which she is required to investigate. That charge arises out of an incident involving the applicant and a civilian. In the circumstances, provided that the requirements of regulation 46(2)(e) are met we can see no breach of the principles of natural justice in the Assistant Superintendent leading the evidence particularly when the regulations themselves seem to sanction this course. We adopt, with respect, the observation of Tucker L.J. in Russell vs. Duke or Norfolk 1949 65 T.L. at p. 231:

> " There are in my view, no words which are of universal application to every kind of enquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter under consideration and so forth. "

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We turn now to the other ground on which the application is based. For the purpose of the enquiry which she was required to conduct, Assistant Superintendent Vassell had in her possession a file containing the statements of the witnesses. In that file there was also an envelope containing the antecedent report of the applicant. There was evidence that antecedent reports usually contain both good and bad reports, if any, but there was no evidence as to the nature and content of the applicant's antecedent report. There was a conflict of evidence as to whether that envelope was opened or sealed. Assistant Superintendent Vassell in her affidavit of the 19th January, 1976, stated that it was sealed while the applicant and Sergeant Edman by affidavits and in the course of cross-examination stated that it was opened. However, on the view we take of this matter, it is immaterial whether the envelope was opened or sealed. If it was sealed Assistant Superintendent Vassell cannot be said to have had access to its contents. If it was opened, in the absence of positive evidence that its contents were prejudicial and that Assistant Superintendent Vassell intended to make use of those contents for the purpose of arriving at a decision in relation to the charge she was investigating without disclosing those contents to the applicant, it does not seem to us that it can be said there was a breach of the principle of natural justice. It is true that there is evidence from the applicant and from Sergeant Edman that upon enquiry from Assistant Superintendent Vassell as to whether she had the applicant's antecedent report she replied: "See it there in the envelope. That is the property of the Court and not for you." This conversation was denied by Assistant Superintendent Vassell, but even if it did take place, as we find that it did, Assistant Superintendent Vassell's reply is ambiguous. It may indicate an intention on her part to make use of the report without disclosing its contents to the applicant; but it should be borne in mind that regulation 48 provides that in the event of the applicant admitting the charge the President of the Court may hear evidence as to his character.

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We are of the view that in the event of the applicant admitting the charge the President would be entitled to look at his antecedent report for the purpose of deciding whether to hear evidence of character as contemplated by the regulations.

On the other hand, Assistant Superintendent Vassell's reply may indicate merely that the report is for transmission by the Court to the Commissioner and not for the applicant. We cannot therefore regard the reply as positive evidence of an intention on the part of Assistant Superintendent Vassell to use the report in coming to a decision in relation to the charge before her without disclosing the contents of the report to the applicant.

There is clear authority that in a criminal case the convictions or bad character of an accused person must not be disclosed to the tribunal deciding his guilt or innocence as a matter of fact before that decision is reached, unless that disclosure is authorised by statute or the accused puts his character in issue. That rule would, we think, apply in the instant case, but there is no evidence that the applicant's antecedent report contains a record of bad character or of other matters prejudicial to him in relation to the charge against him. We think it must also be borne in mind that Assistant Superintendent Vassell in her affidavit specifically denied having seen the antecedent report and this has not been contradicted. We do not think, in the face of this positive evidence, an inference to the contrary could be drawn merely on the evidence that the envelope containing the report was unsealed. It seems to us that regulation 48 would permit the presence on the file of the applicant's antecedent report, for the limited purpose of assisting the President in deciding whether to call evidence of character in the event of the applicant admitting the charges. We think it ought to be assumed, in the absence of evidence to the contrary, that the President would not look at that report unless the necessity arose by virtue of regulation 48. We are not unmindful of the evidence of Sergeant Edman to the effect that on previous occasions other Presidents had indicated to him that they had looked beforehand at the antecedent report of persons charged but Sergeant Edman did not

indicate that Assistant Superintendent Vassell was one of those Presidents and we do not think it can be assumed that she would necessarily act as others may have done.

Finally, we think it is fair to say that a Court of Enquiry considering the charge with a view to the dismissal of a police officer has to take into account not only the interest of the individual officer but that of the Force as a whole and indirectly, that of the public served by the Force. In our view, regard must be had to that consideration also in applying rules designed for the protection of accused persons or for the fair and impartial hearing of issues between two parties.

For these reasons we are of the view that the application for an order of prohibition ought to be refused.