FULL COURT – Application for Order of Certiorari – Evidence – Findings of Tribunal – whether sufficient evidence – whether evidence erroneously admitted – Rule 207(2) Racing Rules – whether ultra vires Racing Commission Act

Cases referred to p.2 (end)

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M 33 OF 1988

CORAM: THE HON. MR. JUSTICE THEOBALDS
THE HON. MR. JUSTICE HARRISON
THE HON. MR. JUSTICE PANTON.

Regina

vs.

The Jamaica Racing Commission

Ex Parte Peter John Scully

APPLICATION FOR ORDER OF CERTIORARI.

Clark Cousins, instructed by Rattray Patterson and Rattray, for Applicant.

Emile George, Q.C., and Richard Ashenheim for Respondent.

HEARD: May 8 and 9, 1989.

This is the judgment of the Court.

The applicant is the trainer of the horse "Phenomenal" which placed second in a race at Caymanas Park on November 14, 1987. A urine sample taken from the horse shortly after the race revealed the presence of a prohibited substance. As a result of that, the applicant was summoned to an investigation by a Tribunal of the Jamaica Racing Commission. At the end of this investigation, the Tribunal indicated that it did not consider that the arrangements that the applicant had in force were appropriate and found that he had not discharged the onus imposed on him by the Racing Rules.

The applicant challenges this finding on the grounds that -

(1) there was no admissible evidence, or any evidence at all, upon which the finding could have been based

(2) the Racing Chemist's report was erroneously admitted in evidence as rule 207 (2) of the 1977 Racing Rules, as amended, is ultra vires the Jamaica Racing Commission Act; and

(3) a finding of negligence, if based upon the condition

of the stables, is not a finding against the applicant as under the Racing Rules he has no responsibility for the condition of the premises.

In view of the fact that the judgment in Regina v. The Jamaica Racing Commission, Ex Parte Clive Green, Suit No. M.64, 1988, an unreported decision of this Court, has been cited to us, it is appropriate to mention that in that case Rules 161 and 207 (3) of the Racing Rules were considered and the Court said then:

> "Rule 161 clearly places an obligation on a trainer, groom or other person having charge, custody or care of a horse to protect it and guard it against interference by persons who may wish to administer Prohibited Substances aimed at affecting its performance in a race. There is a burden on the trainer, groom or other person having charge, custody or care of a horse to show the Tribunal that reasonable measures were taken to protect and guard the horse. A failure to demonstrate this to the Tribunal makes the trainer, groom or other person having care of the horse liable to a penalty."

The Court went on,

> "The finding of a Prohibited Substance in a sample from a horse raises the following presumptions -
>
> (1) that it was administered to the horse;
>
> (2) that it was administered to the horse with a view to affecting the performance of the horse; and
>
> (3) that the trainer, groom or other person having the charge, custody or care of the horse had been negligent in his care of the horse.
>
> Whereas Rule 161 states the obligation and burden on the trainer, groom or other person having the charge, custody or care of a horse, Rule 207 (3) states the presumptions that apply unless the contrary is proved. These presumptions are therefore rebuttable."

The Court is mindful of the fact that a domestic tribunal such as this is not bound by the strict rules of evidence. (See the judgment of Parnell, J. in Sharpe v. The Jamaica Racing Commission 12 J.L.R. 1319). However, even if the strict rules of evidence are applied, the record in the

instant case discloses abundant evidence in support of the Tribunal's finding. Among other things, it discloses that the applicant was aware that one of the persons who had access to the horse prior to November 14, 1987, was someone whom the applicant had very good reasons not to trust. That person was Fabian White. Notwithstanding the information and suspicion that the applicant had, he failed to act as prudence would have dictated. He waited until it was too late.

The evidence as to Fabian White's activities came from the applicant himself. Both the applicant and the groom also testified as to the security of the premises. Their testimony indicated that in the relevant area, the horses under their care were safe from outside interference. Indeed, the applicant in answer to his attorney-at-law stated in reference to the possibility of external interference with the horse, "only unless they break in ... but if they didn't break in they couldn't get to it." The groom also gave similar answers, particularly when questioned by Miss Allaby.

This evidence coming from the applicant and the groom was not only admissible but very relevant.

The application based on grounds 1 and 3 must therefore fail.

In relation to ground 2, it has been urged that the provision in Rule 207 (2) is ultra vires the Jamaica Racing Commission Act. That cannot be so as Section 29 of the Act gives the Commission the power to make regulations generally for the proper carrying out of the provisions and purposes of the Act. It has been submitted that in making the Racing Chemist's Certificate conclusive proof of the facts stated therein, the Rule has exceeded its limit and has left no room for contrary evidence. That is not so, as Section 25 of the Act gives the Tribunal wide powers to summon witnesses, receive documents and to generally conduct the investigation. In any event, Rule 17 provides for the Commission to consider any

film, photograph, notes of evidence, statement, report or other material forwarded to it in the course of exercising any of its powers under the Act.

It is clear that Rule 207 (2) is not as restrictive as is being urged. It means simply that if there is no evidence to the contrary then the Chemist's Report shall be conclusive evidence of the facts stated therein.

It was open to the applicant to request the attendance of the Racing Chemist if the applicant had reason to doubt the accuracy of the Chemist's report in any way. It was also open to the applicant to produce any evidence that he had to rebut the integrity of the Racing Chemist's report. He did none of these. He merely objected to the admission of the report without giving his reasons for the objection.

The question of ultra vires does not therefore arise and on this ground also the application fails.

The motion is accordingly dismissed with costs to the respondent to be agreed or taxed.

Cases referred to

(1) Regina v The Jamaica Racing Commission, Ex Parte Clive Green — Suit No M64 of 1988

(2) Sharpe v The Jamaica Racing Commission 12 J.L.R 1349.