1959
*Oct. 21, 22
Nov. 30

WM. F. MORRISSEY LIMITED AND CHRISTINA BLANCHE ARMSTRONG ..... APPELLANTS;

AND

THE ONTARIO RACING COMMISSION ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Courts—Powers of Ontario Racing Commission—Owner ordered to change names of horses for racing on Ontario tracks—Whether contrary to Live Stock Pedigree Act, R.S.C. 1952, c. 168 and s. 95 of B.N.A. Act—The Racing Commission Act, R.S.O. 1950, c. 329, as amended—Whether Commission must act judicially.

The owner of certain race horses obtained a writ of prohibition ordering the respondent commission to take no further action to suspend or prohibit these horses from racing in Ontario because of their registered names. The writ was set aside by the Court of Appeal. The owner appealed to this Court and contended that by virtue of the *Live Stock Pedigree Act* and s. 95 of the *B.N.A. Act*, the commission had no authority over the registered names of thoroughbred horses, and in the alternative, that the *Racing Commission Act* did not confer such authority upon the commission, and finally that the order of the commission was made arbitrarily and constituted a denial of natural justice.

Held: The appeal should be dismissed.

The *Live Stock Pedigree Act*, which provides for the incorporation of associations for the purpose of keeping a record of pure bred domestic live stock of a distinct breed, has not conferred upon the Canadian Thoroughbred Horse Society the power to legislate regarding the naming of thoroughbred horses in Canada. The statute does not delegate to the Society such powers. Therefore, the action which the commission proposed to take did not involve any conflict with the statute.

The wide scope of administrative powers entrusted to the commission by the *Racing Commission Act* was sufficient to enable it to do what it said it would do. The commission has power to govern, direct, control and regulate horse racing in Ontario. It is for the commission to determine what conduct it considers to be contrary to the public interest in deciding as to whether a licence issued by it should be revoked. The commission could have revoked the licence if it had decided to do so.

Without deciding whether or not the commission was required in this case to act judicially, the commission in fact held a hearing at which the owner had the opportunity to be heard and to submit his contentions. His explanations were not believed by the commission. It

*PRESENT: Taschereau, Cartwright, Martland Judson and Ritchie JJ.

is not the function of this Court to review the decision of the commission. The task is to decide whether the commission had the legal authority to do what it proposed to do. It had that necessary power and in deciding whether or not it should exercise it, the commission acted judicially.

APPEAL from a judgment of the Court of Appeal for Ontario[1], setting aside a writ of prohibition. Appeal dismissed.

A. Maloney, Q.C., W. E. MacDonald, Q.C., and *P. Hess,* for the appellants.

R. N. Starr, Q.C., for the respondent.

The judgment of the Court was delivered by

MARTLAND J.:—The appellant Wm. F. Morrissey Limited, a company incorporated under the laws of Ontario, was, at all material times, the owner of six race horses respectively named by it Hot Ice, Stole The Ring, Irenes Orphan, Rabbit Mouth, Red Nose Clown and Into The Grape. These horses, along with others owned by the appellant company, were leased by it to the appellant Christina Blanche Armstrong, who was the secretary-treasurer and a director of the appellant company. She held a licence from the Ontario Racing Commission to enter and run horses at race meets under its jurisdiction. The horses were raced in her name with all winnings to be paid to the appellant company.

The respondent (hereinafter referred to as "the Commission") is a body corporate, incorporated under *The Racing Commission Act,* R.S.O. 1950, c. 329, as amended, whose object, as defined by that statute, is to govern, direct, control and regulate horse racing in Ontario in any or all of its forms. The Commission has power to license owners, trainers, drivers, jockeys, etc. and "to suspend or revoke any licence for conduct which the Commission considers to be contrary to the public interest".

Section 15 of this Act provides that

Rules for the conduct of horse racing may be promulgated by the Commission under this Act and any order or ruling issued or made by the Commission under this Act shall be deemed to be of an administrative and not of a legislative nature.

[1] (1958), 12 D.L.R. (2d) 772.

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Pursuant to this authority rules have been promulgated by the Commission and include the following:

381. No horse shall be allowed to enter or start in any race unless it is duly registered with and approved by the Registry Office of the Jockey Club (New York) and its registration papers filed with the Commission.

382. If a horse's name is changed, its new name shall be registered with the Jockey Club (New York) and its old, as well as its new name, shall be given in every entry list until it has run three races, and both names must be printed in the official programme for those three races.

* * *

474. Canadian bred horses, to be eligible to enter and start in Canadian bred races, or to receive Canadian bred weight allowances in other races, shall have their Canadian registration papers on file with the Commission, and the trainer of such horses shall be responsible for filing such papers.

A meeting of the Commission was held on May 22, 1957. The minutes of this meeting contain the following material:

It having been brought to the attention of the Commission that the names of horses running in the name of Miss C. Blanche Armstrong were in poor taste,

IT WAS MOVED that the names of some of the horses referred to were not acceptable to the Commission and that a meeting of the Commission be called for May 27 next, at 2:00 p.m. in the Directors' Room of the Ontario Jockey Club at Old Woodbine race track to further discuss the matter with Miss Armstrong and Mr. William Morrissey, from whom the horses are leased.

A letter was sent from the Commission to the appellant Armstrong, requesting her and Mr. Morrissey to attend at a meeting of the Commission on May 27. This meeting was held and the following items appear in the minutes of that meeting:

The Minutes of the meeting held on May 22, 1957, were read to the meeting and APPROVED.

Miss C. B. Armstrong and Mr. William F. Morrissey attended at the Commission's request and they are requested by the Commission to change the names of the following horses owned by Mr. Morrissey and raced by Miss Armstrong:

STOLE THE RING: *HOT ICE*: *RED NOSE CLOWN*: *IRENES ORPHAN*: *RABBIT MOUTH*: *INTO THE GRAPE*:

Mr. Morrissey and Miss Armstrong were informed that they would be expected to have these names changed by July 12, 1957, but if for any valid reason any name could not be changed by that time, a short extension might be granted by the Commission beyond that time.

In the affidavit of Mr. William Morrissey, who was the president and the principal shareholder of the appellant company, it is stated that at this meeting the Chairman and the Vice-Chairman of the Commission accused him of having named the six race horses previously mentioned with names calculated to bring ridicule and embarrassment to a man well known in the horse racing industry. This Morrissey denied. He stated that a heated argument followed during which he was asked to explain how he chose the names in question. He says that he gave a full explanation and that the Chairman stated that he did not believe Morrissey. He further states that the Chairman of the Commission told the appellant Armstrong that, unless the names of the six race horses were changed on the records of the New York Jockey Club by July 12, 1957, an official ruling of the Commission would be given prohibiting the entry of the said six race horses in any races in Ontario.

There is no explanation as to how the names were chosen in the material which is before us.

On the same day Morrissey proceeded to write to the Jockey Club (New York), with which the horses were registered, requesting permission to change the names. Later he changed his mind and applied in the Supreme Court of Ontario for a writ of certiorari and for a writ of prohibition to order the Commission to take no further action to suspend or prohibit from racing in the Province of Ontario, because of the registered names they bear, the six horses in question. An order in this form was granted.

The Court of Appeal of Ontario[1] allowed an appeal from this order and set it aside. The present appeal is from that judgment.

Three grounds of appeal were argued:

1. That, by virtue of *The Live Stock Pedigree Act* and s. 95 of the *British North America Act,* the Commission had no authority over the registered names of thoroughbred horses.

2. In the alternative, *The Racing Commission Act* did not confer such authority upon the Commission.

[1] (1958), 12 D.L.R. (2d) 772.

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3. The order of the Commission was made arbitrarily and constituted a denial to the appellants of natural justice.

The Live Stock Pedigree Act, R.S.C. 1952, c. 168, provides for the incorporation of associations for the purpose of keeping a record of pure bred domestic live stock of a distinct breed. Incorporated associations are empowered and required to enact by-laws which, among other things, relate to rules of eligibility for the registration of animals, the issuance of certificates of registration and for certificates of transfer of ownership of registered animals.

Associations are empowered to affiliate with each other for keeping live stock records and the affiliation is known as the Canadian National Live Stock Records. The Minister of Agriculture may approve, under seal, a certificate of registration issued by an association which is affiliated with other associations. Such a certificate contains information regarding a registered animal, including its name.

The Canadian Thoroughbred Horse Society was incorporated as an association under this Act. The object for which it was formed was to keep a record of the pedigrees of pure bred horses and to collect, publish and preserve reliable and valuable data concerning this breed. It entered into articles of affiliation with other associations in the manner provided in the Act.

I do not agree with the contention of the appellants that this Act has conferred upon this society the power to legislate regarding the naming of thoroughbred horses in Canada. The society was incorporated for the purpose of keeping a record of thoroughbred horses in Canada and has power to enact by-laws to establish rules of eligibility for registration of animals by the society, but the statute does not delegate to it powers of legislation regarding the naming of thoroughbred horses. The certificates of registration issued by the Canadian National Live Stock Records set forth the name of a registered animal, along with other pertinent data concerning it, but it is clear that the function of the society and of the Canadian National Live Stock Records is essentially one of registration.

In my opinion, therefore, the action which the Commission intimated to the appellants it proposed to take if the names of the six race horses were not changed did not involve any conflict with the provisions of *The Live Stock Pedigree Act*.

With respect to the second point of argument, I agree with the Court of Appeal that the wide scope of administrative powers entrusted to the Commission by virtue of *The Racing Commission Act* was sufficient to enable it to do what it had said it would do in the event that the names of the race horses were not changed. The Commission has power to govern, direct, control and regulate horse racing in Ontario. It is for the Commission itself to determine what conduct it considers to be contrary to the public interest in deciding as to whether a licence issued by it should be revoked. The Commission did not indicate the exact steps which it proposed to take in the event that the names of the horses were not changed, but it is clear that it could have taken the step of revoking the licence held by the appellant Armstrong if it had decided so to do.

The last argument was that there had been a denial of natural justice to the appellants.

It is not necessary in these proceedings to determine whether or not *The Racing Commission Act* requires the Commission to act judicially in considering whether or not to exercise the powers which, in this case, it proposed to use if the names of the horses were not changed. In the present case it did, in fact, hold a hearing at which the appellants had the opportunity to be heard and to submit their contentions. The nature of the complaint against them was clearly stated to the appellants. Morrissey denied to the Commission that he had given the horses names calculated to bring ridicule and embarrassment to a man well known in the racing industry. He gave to the Commission his explanation of the reasons for choosing the names which he had selected and the Chairman of the Commission advised him that he was not believed.

It is not the function of this Court to review the decision of the Commission. The task is to decide whether the Commission had the legal authority to do what it proposed to do.

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In my view it had the necessary power and, in deciding whether or not it should exercise that power, it did act judicially.

For these reasons I am of the opinion that this appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants: W. E. MacDonald, Toronto.

Solicitors for the respondent: Sinclair, Goodenough, Higginbottom & McDonnell, Toronto.