

(1949) 03 CAL CK 0034
In the Calcutta High Court
Case No : Appeal in Suit No. 691 of 1949

Sheonath Singh

APPELLANT

Vs

Royal Calcutta Turf Club

RESPONDENT

Date of Decision : 15-03-1949

Acts Referred:

Citation : (1949) 03 CAL CK 0034

Final Decision : Dismissed

Judgement

Banerjee, J.—This is an application for an ad-interim injunction arising out of the following circumstances.

2. The Plaintiffs are owners of race horses which are registered under the rules of Defendant No. 1, the Royal Calcutta Turf club. Defendants Nos. 2 to 7 are the stewards of Defendant No. 1, Defendant No. 7 (Major Nabi Khan) being the stipendiary steward.

3. Among the horses belonging to the Plaintiffs, is a chestnut English mare named "Taisch" (referred to in the plaint and in the petition, as "the horse", which nomenclature I shall adopt in his judgment for the sake of convenience).

4. At all material times, the Plaintiffs had employed one Captain H. Fownes, who holds a trainer's license from the stewards of Defendant No. 1, to train the Plaintiffs' horses for racing in Calcutta.

5. It is alleged in the plaint that the horse was purchased in 1945-46, from Defendant No. 1, at a price of about Rs. 78,000 and is of very good breeding, had been a winner in England before she was brought into this country. She ran several races in India. In 1947, she ran second in the Governor's Cup. In 1948, she ran second in the Byculla Cup, Bombay. In 1948, she (sic) in the Kenny Plate, Poona.

6. The horse ran in Calcutta on December 27, 1948, in the Merchant's Cup. That is a race for horses in classes I and II, run by Defendant No. 1 in accordance

with its rules. The horse passed the winning post and was placed first by the judge.

7. The Plaintiffs, as the owners of the horse, became entitled to and were duly awarded the Merchant's Cup and a cash prize of Rs. 8,000. The cup was made over to the Plaintiffs. The Rum was paid to them.

8. After the race, but before the horse was taken to the stable samples of the horse's saliva, sweat and urine were taken. The Plaintiffs' trainer was present. The trainer, however, did not wait for the sealing of the samples. They were sealed and sent to England for analysis.

9. The analysis was made by the Jockey's Club in England to which Defendant No. 1 is affiliated. From the report of the analysis, it appears that the samples contained opium alkaloids. After the receipt of the report the secretary of Defendant No. 1 on January 14, 1949, requested the Plaintiffs "to attend (sic) enquiry to be held on January 18, 1949, by the stipendiary "steward" concerning the analyst's "report on the samples".

10. On January 18, 21, 24, 25 and 28, 1949, the enquiry was held by the stipendiary steward. At the enquiry, Plaintiff Sheonath his trainer, his syce and jamadar, were present.

11. Evidence was taken and materials collected by the stipendiary steward.

12. A meeting of the stewards (Defendants Nos. 2 to 6) was held on February 11, 1949, on notice to the Plaintiffs, to consider the matter. The secretary was present. The Plaintiff Sheonath attended the meeting. The stewards found that drug had been administered to the horse prior to the race in the Merchant's Cup and disqualified the horse for that race and for all future race under the rules of Defendant No. 1. Jamadar Mongroo's name was removed from the list of registered jamadars. (sic) Jagnandan was disqualified and warned off. The order of the Defendants was published on February 24, 1949, in the Racings Calendar under the heading "Royal Calcutta Turf Club Notice".

13. On February 28, 1949, this suit was filed by the Plaintiffs. In the plaint and the petition it is alleged that the meeting; held by the stipendiary steward were improper and the report submitted by him to the Defendants Nos. 2 to 6 was void and of no effect. The Plaintiffs deny the correctness of the statement in the notice that drug had been administered to the horse. The Plaintiffs allege that the Defendants did not act honestly; they did not observe the rules of natural justice; that "there was no "evidence or reasonable evidence before the stewards who "purported to act as a tribunal in order to come to a decision"; the tribunal was not properly constituted and acted beyond the scope of its jurisdiction : the Defendants disqualified the horse out of malice.

14. In the plaint it is also alleged that the Defendants wrongfully demanded return of the Merchant's Cup and wrongfully purported (sic) debit the said sum of Rs. 8,000 in the account of the Plaintiff Sheonath with Defendant No. 1.

15. There are other allegations in the plaint not material to be dated. The following reliefs, inter alia, are claimed in the plaint:

- (i) declaration that the order disqualifying the horse is void;
- (ii) injunction restraining the Defendants, their servants and agents from giving effect to the said order or from restraining the Plaintiffs in any manner from running the said horse "Taisch" in races run by Defendant 1;
- (iii) declaration that the Plaintiffs are entitled to retain the said Merchant's Cup and the prize money of Rs. 8,000;
- (iv) injunction restraining the Defendants from demanding back the said Merchant's Cup and debiting the sum of Rs. 8,000 in the account of Plaintiff Sheonath with Defendant No. 1.

16. On the same day, February 28, 1949, an application was made ex parte before me for injunction in terms of prayers (ii) and (iv) mentioned above.

17. I granted an interim injunction in terms of prayer (iv). As ex parte before me for injunction in terms of prayers (ii) and (iv) on notice to the Defendants. The notice of motion was returnable on March 3, 1949.

18. The Plaintiff Sheonath filed an affidavit affirmed on March 1, 1949, wherein he "set out additional facts", in support of his application for injunction. The additional facts are that the samples were not sealed in the presence of the Plaintiffs or of any one representing them; that no evidence was adduced in the enquiry held by the stipendiary steward to prove that the samples were actually sent to analysts in England; that Plaintiff Sheonath appeared before the stewards on February 11, 1949, but no enquiry was held by them on that day or on any day subsequent; that the stewards had no power to delegate their duties and functions to the stipendiary steward and that the enquiry by the stipendiary steward was not in accordance with the rules of racing and did not conform to the principles of natural justice. Plaintiffs further alleged that on March 5, 1949, there would be a race under the Rules of the Royal Western India Turf Club, Bombay and that the said horse had been entered on or about December 1, 1948, for that race; that if the horse was not allowed to run the Plaintiffs would suffer irreparable injury.

19. I may mention here that the Royal Western India Turf Club Ltd., is a sister club. The Turf authorities in India are the Royal Calcutta Turf Club and the Royal Western India Turf Club, Ltd. Rules of the one are observed by the other, a horse disqualified by the Royal Calcutta Turf Club is not allowed to run a race held under the rules of the Royal Western India Turf Club, Ltd.

20. An application was made for amendment of the plaint by adding the following words in the cause title after the name and description of the Defendants, namely:

As stewards and members of Defendant No. 1 The Royal Calcutta Turf Club and

also on behalf of and representing all other members of the said Roy Calcutta Turf Club,

and for leave under Order I, Rule 8, CPC allowed the amendment and gave the leave asked for. The suit thus became a suit against numerous parties having a common interest.

21. On behalf of the Defendants two affidavits in answer have been filed--one, an affidavit of Defendant No. 4 and the other, a join-affidavit of the secretary of Defendant No. 1 and one Thomas Frederick Arnold, the veterinary surgeon of Defendant No. 1 who took the samples. In the affidavit of Defendant No. 4 it is stated that the samples were taken by the said Major Arnold in the presence of the trainer of the Plaintiffs; that he did not wait for the sealing; that the samples were in fact sealed and sent to England; that the stipendiary steward examined witnesses and gave the Plaintiffs full opportunity of adducing evidence and cross-examining the witnesses; that the Plaintiff Sheonath was present throughout the enquiry and adduced such evidence and put such questions as he thought fit; on February 11, 1949, at a meeting of the stewards the matter was considered in the presence of the Plaintiff Sheonath; that after a careful consideration, the stewards came to the conclusion that drug had been administered to the said horse prior to the race and disqualified the horse; that at the meeting of February 11, the stewards specifically asked the Plaintiff Sheonath if he was satisfied that all evidence he wished to bring forward had been brought forward and he said "yes"; Major Arnold has stated on oath that he took the, samples under instructions of Defendant No. 1 in the presence of Captain Fownes, trainer of the Plaintiffs' horses; that he informed Captain Fownes that the bottles would be sealed up, but he did not wait to see the sealing which was done immediately by the Major himself; that after sealing, at about 3-55 p.m. on December 27, 1948, he deposited the bottles in the weighing room veterinary box No. 1 and made over the key to the secretary. The secretary substantially supports Major Arnold and says that he obtained the key from Major Arnold of box No. 1 at about 4 p.m. and took the key to the office of Defendant No. 1 where it was kept in the office safe; on December 28, 1948, he opened the safe, had the bottles packed in a box and sealed in his presence and despatched to England following question:

All trainers know the rules and the procedure for taking samples and that such samples would be sent to England for examination. This has been the practice since 1947.

22. On March 7, 1949, another affidavit was filed on behalf of the Plaintiffs affirmed by the Plaintiff Sheonath Singh. In that affidavit he reiterates what he stated in the petition. There are certain important admissions in this affidavit. He admits that he was present at the enquiry on February 11, 1949, when Defendant No. 4 (Gavin Smith Johnston) put to him the following questions:

Q. Have you anything to say about the enquiry held by Major Nabi Khan and are

you satisfied with it? A. I have nothing against Mr. Nabi Khan personally and I am satisfied with the manner in which he has conducted the enquiry, but he has placed on the records of the enquiry that he would afford (me) an opportunity for adducing further evidence and for further examination and cross-examination of the witnesses.

23. It is alleged in this affidavit that after these questions and answers, Defendant No. 4 "looked to his right and left, inviting" his colleagues to ask any question, who nodded their heads" and that immediately Defendant No. 4 addressing the Plaintiff Sheonath said:

Mr. Singh your mare "Taisch" was found drugged and therefore, she has been disqualified for that race and future races.

24. Plaintiff Sheonath was "startled" and immediately addressing the Chief Steward said: "Mr. Gavin Smith Johnston, I want "to speak further on the subject"; but, before he could proceed, the Chief Steward abruptly said: "No" and the Secretary opened the door for him to go out.

25. To prove malice, the Plaintiffs rely on para. 24 of the petition and on the affidavit of one Bagri affirmed on March 3, 1949. "Bagri in his affidavit says that, out of malice, the stewards tampered with the test samples of saliva, sweat and urine of Bagri's horse "Prince Winooka" and stopped the horse from partaking in further races; that eventually the ban was withdrawn.

26. Assuming that the stewards acted out of malice towards Bagri, I see no reason why they should act out of malice against the Plaintiffs. Further, it has been said, on behalf of the Defendants, that the allegations against the stewards were withdrawn by Bagri himself at the enquiry.

27. These are the facts on the affidavits.

28. The questions before me are: (a) whether I should continue the injunction I have granted; and (b) whether I should grant an injunction in terms of (ii) mentioned above. I pointed out to Mr. S.C. Bose, counsel for the Plaintiffs, that the order disqualifying the horse had already been made and the sum of Rs. 8,000 debited and asked him how I could grant any relief to prevent a party from doing that which had already been done.

29. Mr. Bose in answer said that he would modify prayer (ii) for the injunction in this way: that the operation of the order disqualifying the horse be stayed or suspended temporarily pending disposal of the suit. As to (iv), relating to the debit of Rs. 8,000, there was no satisfactory answer.

30. On behalf of the Plaintiffs, counsel contends that the order disqualifying the horse is void because the enquiry was not made by the stewards; it was made by the stipendiary steward. He said Rule 26 of the Rules of Racing, Royal Calcutta Turf Club, conferred upon the stewards power at their discretion.

to make enquiry into, finally decide and deal with any matter relating to racing

whether or not referred to them by the stewards of a meeting,
but no power was given to the stipendiary steward.

31. There seems to be a misconception of facts on this point. The evidence and materials were collected by the stipendiary steward in the enquiry held by him and these materials and evidence were placed before the stewards at the meeting held on February 11, 1949. At that meeting the stewards gave their decision and made the order which was published in the Racing Calendar on February 24, 1949. The decision was not that of the stipendiary steward. It was a decision of the stewards of Defendant No. 1.

32. "Stewards," according to the rules, means--

the stewards of the meeting, including duly appointed deputies and shall also be taken to include any majority of a quorum of them.

33. Rule 12 provides that there must be at least three stewards for every meeting. In the meeting of February 11, there were more than three stewards present. In this respect, therefore there has been no lack of compliance of the rules.

34. It is contended on behalf of the Plaintiffs that the stewards did not take evidence themselves, but acted on information received from the stipendiary steward. Therefore their finding is bad. The answer to that contention is this:

A tribunal of this type, often referred to as a domestic tribunal, is not like a Court of Justice.

It is useful to bear in mind the very wide differences between the principles applicable to courts of justice and those applicable to domestic tribunals.*** A domestic tribunal is in general a tribunal composed of laymen. It has no power to administer an oath.*** It is not bound by the rules of evidence ; it is indeed probably ignorant of them. It may act and it sometimes must act, on mere hearsay and in many cases the members present or some of them*** are themselves both the witnesses and the judges.*** There are no effective means for testing by cross-examination the truth of the statements that may be made. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing and there is no one even to warn them of the danger of acting on preconceived views.

Maclean v. Workers Union (1929) 1 Ch. 602, 620-1.

35. The stewards, acting on the evidence and materials collected by the stipendiary steward, did not do anything wrong. On the ground of improper reception of evidence their order cannot be assailed.

36. The second point taken by counsel for the Plaintiffs is that the order is bad on the face of it, as it contains no finding that the horse was the subject of fraudulent practice. Counsel says, Rule 49 of the Rules of Racing requires that--

any horse which has been the subject of fraudulent practice may, at the discretion of the stewards of the Turf Club, be disqualified for such time and for such races as they shall determine.

37. According to counsel there must be an express finding otherwise the order would be bad.

38. I put to Mr. Bose this question : Suppose in an enquiry before a domestic tribunal everything that is required and desired is done, but the decision of the tribunal does not contain a definite finding; would the decision be void for the mere omission to record the finding? I did not get a satisfactory answer from a counsel of Mr. Bose's eminence. Why not? Because there is no answer.

39. The next contention of counsel is that the enquiry has been conducted in violation of the principles of natural justice.

The phrase, "the principles of natural justice", can only mean in this connection the principles of fair play.**** A provision for an enquiry necessarily imports that the accused should be given his chance of defence and explanation.**** In most cases it is a reasonable inference from the rules that, if there is anything of the nature of a his between two persons, neither of them should sit on the tribunal. But when it is sought to lay down elaborate rules, taken from decisions as to courts of law and to apply them in such a case as the present, I think it is prudent to remember that these more or less artificial principles have no application except so far as they can be derived from a fair construction of the rules and that the implication can only be made if it is clear that the parties, who are laymen and not lawyers, must have intended it.

Maclean v. Workers Union (1929) 1 Ch. 602, 625.

See also *Ezra v. Mahendra Nath Banerji* ILR (1946) 2 Cal. 88.

40. On this subject, in *Russell v. Norfolk (Duke)* (1949) 1 All E.R. 109, 119-120 Denning L.J. has expressed himself thus:

This penalty of disqualification is the most severe penalty that the stewards can inflict. It is the same penalty as that which is imposed on persons guilty of corrupt practices.*** Common justice requires that before any man is found guilty of an offence carrying such consequences, there should be an enquiry at which he has the opportunity of being heard.**** The stewards should not act on information against him without giving him an opportunity of answering it. If an enquiry has been held in accordance with these essentials of justice, there is no reason why the result of the enquiry should not be published to all concerned with racing, and indeed, it is in the interests of all that it should be.

41. It is clear, therefore, that all that is needed in an enquiry before a tribunal of this type is to give the aggrieved party an opportunity of answering the charge made against him and when that is done, the requirement of the principles of natural justice is satisfied.

42. I am not satisfied in this case that there was any violation of these principles. The Plaintiffs case is that they were prevented from giving further evidence. They have not indicated what further evidence they wanted to give. If it were a fact that the Plaintiffs had not been given full or proper or reasonable opportunity to adduce evidence, there would have been a protest, for we find from Plaintiff Sheonath's own affidavit that he was "startled" on February 11, 1949, when the Chief Steward said that the horse had been disqualified. Between February 11 and 28, during all these days, not a single letter was written to the stewards remonstrating that the Plaintiffs had been denied opportunity to adduce evidence.

43. On the materials before me, I am unable to accept Plaintiffs' evidence that they had not the opportunity to give what evidence they wanted to give.

44. The next contention of Mr. Bose is that since there is a contradiction upon the facts as to whether the Plaintiffs had or not full opportunity to adduce evidence, interim injunction should issue simply in order to keep the parties in status quo while their rights are being determined. If in this case I act on that principle, then the Plaintiffs are not entitled to any injunction at all. To keep the parties in status quo means to keep the order of the stewards intact. It does not mean that the operation of the order should be stayed.

45. The last contention of Mr. Bose was an appeal to the principle of the balance of convenience and inconvenience. He said that Defendant No. 1 would not be prejudiced if the horse was allowed to run pending the trial of the suit; on the other hand, if the horse was not allowed to run, the Plaintiffs would suffer irreparable injury. In answer to this contention, I quote an observation of Cotton L.J. from *Challender v. Royle* (1887) 36 Ch. D. 425, 436:

It is very true that in all cases of interlocutory injunction the court does consider and ought to consider the balance of convenience and inconvenience in granting or refusing the injunction. But there is another very material question to be considered, has the Plaintiff made out a prima facie case? That is to say if the evidence remains as it is, is it probable that at the hearing of the action he will get a decree in his favour?

46. In this case, can I say, on the evidence now before me, that it is probable that at the hearing of the action, the Plaintiffs will get a decree in their favour?

47. Now, what is the evidence here? The analyst's report has not been challenged. From the report we get the following facts:

(i) Samples of saliva, sweat and urine of a horse were sent by Defendant No. 1 to England by air.

(ii) The name of that horse is "Taisch".

(iii) The date of the taking of samples is December 27, 1948.

(iv) Samples received in London on January 3, 1949, in a sealed box bearing signature of T.F. Arnold.

48. The report, read with the joint affidavit of Arnold and the Secretary, practically establishes the case of the Defendants and demolishes the case of the Plaintiffs.

49. How can the Plaintiffs establish their case? Broadly speaking, they can do so in either of two ways--by proving that the samples of saliva, sweat and urine were not of the horse, or that the samples were that of the horse but were tampered with by the Defendants. These facts have not at present been proved. The Plaintiffs have made suggestions only and left their case there. The suggestions, however, imply moral turpitude of a very grave character. On the materials before me I am unable to impute it to the Defendants.

50. It is definitely said on behalf of the Defendants that the samples were taken before the Plaintiffs' trainer.

51. The Plaintiff Sheonath Singh in his affidavit affirmed on March 7, 1949, suggests that the samples were not of the horse and were not sealed nor sent to England. But the man who could have thrown any light in the matter was Captain Fownes. He has not affirmed any affidavit though he had the opportunity to do so. I do not place much reliance on the uncorroborated statement of the Plaintiff Sheonath: "I do not admit that the said "samples were sealed or sent to England".

52. Unless the Plaintiffs prove by positive evidence that the samples were not of the horse or the analysis is incorrect, I do not see how they can succeed in this case. It was no fault of the Defendants that the Plaintiffs' trainer, in spite of request, did not wait for the sealing of the samples. If it were true that the Plaintiffs had any suspicion about it, they would have put that on record long ago. The samples were taken on December 27, 1948; the plaint was filed on February 28, 1949. During all this time it was never said nor suggested that the samples were not that of the horse or not sent to England. The Plaintiffs' trainer was present at the time when the samples were taken. Presumably the Plaintiffs knew at that time that the samples had been taken.

53. The affidavits filed by or on behalf of the Plaintiffs suffer from one material defect. The petition is vague. The affidavit affirmed on March 1 is an improvement on the petition. The affidavit affirmed on March 7, 1949, is a further improvement. The affidavits seem to improve with the passing of time. I do not know what evidence the Plaintiffs will offer at the trial, but I am satisfied that if the case is decided on the evidence now before me, I would not be disposed to give a decree to the Plaintiffs. Applying, therefore, the test laid down by Cotton L.J., I should say that the Plaintiffs have not been able to make out a *prima facie* case.

54. As to the balance of convenience and inconvenience, I should think that the balance of convenience is against the injunction. The Plaintiffs' own case is that numerous persons are interested in the suit. They have obtained leave under Order I. Rule 8, CPC. The remarks of Denning L.J. clearly show that persons

concerned with racing are interested in the result of the suit. I think that Defendant No. 1 will suffer irreparable injury if the court makes an order suspending (assuming the court can do it) the disqualification of the horse.

55. Considering all these circumstances, I am not disposed to grant the injunction in terms of prayer (ii), even in the modified form asked by counsel for the Plaintiffs.

56. As to injunction restraining the Defendants from demanding the return of the cup, I think I should not grant it. For logically so long as the order of disqualification of the horse stands, the Plaintiffs are not entitled to the cup. The cup belongs to the person who has been declared to be the winner and it must go to the winner. I am told by the Advocate-General who appears for the Defendants that the cup costs about Rs. 500. This is not disputed on behalf of the Plaintiffs. If the Plaintiffs win the suit, they will get the cup back. I have no doubt that Defendant No. 1 can provide a cup if the original is lost or destroyed.

57. As to Rs. 8,000, I have said that the debit has already been made. I, therefore, do not make any order. As indeed I cannot grant an injunction restraining a person from doing an act which has already been done.

On these considerations, I dismiss the application.

The costs will be costs in the cause.

The interim injunction is dissolved.

58. In conclusion, I desire to add that whatever I might have said in this judgment is confined to this application only. The observations are made on the materials before me. The Judge at the trial will be free to come to any finding he thinks fit on the facts that may be placed before him then. I do not say anything with regard to what may take place at the trial.

59. At the conclusion of the hearing of this application, counsel for the Plaintiffs said that if I should refuse the application, I should give the Plaintiffs a fortnight's time to pay the amount for which the account of Plaintiff Sheonath with Defendant No. 1 stands debited. I grant the time asked for.

60. Both parties desire to go to an early trial. I give the following directions in the suit:

Written statement to be filed within a week.

Cross-order for discovery within ten days thereafter.

Inspection forthwith thereafter.

61. The suit will appear at the top of the prospective list on 8th April next.

62. Liberty to either party to apply for an early date for the hearing of the suit.

63. In fairness to the junior counsel for the Plaintiffs I desire to add a word. Mr.

Bose referred me to the Rules of Racing relating to the naming and registering of horses, jockeys' licenses, trainers' licenses, powers of Defendant ~No. 1, disqualification of horses, etc., devolution of rights and liabilities on the death of the owner. On these rules he said there was a duty cast upon the Defendants not to disqualify a horse except on a proper enquiry and a proper finding. His junior, however, contended that on the rules (I quote his words) there was an--

implied contract containing a negative covenant that the Defendants will not enforce their right to disqualify a horse for fraud or misconduct in any matter relating to racing without holding an enquiry and an enquiry in conformity with the rules of natural justice and in conformity with the Rules of Racing.

64. This theory of implied contract seems to have been negated in the judgment of Goddard L.C.J. in *Russell v. Norfolk (Duke)* (supra). If the suit is based on an implied contract, it seems it has not been clearly pleaded in the plaint. However that is a question which arises at the trial.

65. Having regard to the view I have taken, I have not thought it necessary to discuss other cases referred to by counsel.