Law v National Greyhound Racing Club [1983] APP.L.R. 07/29

CA on appeal from Chancery Division (Walton J.) before Lawton LJ; Fox LJ; Slade LJ. 29th July 1983.

LORD JUSTICE LAMTON:

1. This is an appeal by the defendants, the National Greyhound Racing Club, a company limited by guarantee, from the judgment of Walton J. given on May 10, 1983, whereby he refused to strike out the plaintiff's claim for want of jurisdiction.

2. By an originating summons issued on February 11, 1933, the plaintiff, who trains racing greyhounds, asked the Court to grant him relief as follows:

    1. A declaration that the decision made by the Stewards of the defendants on the 9th December 1982 insofar as they purported to suspend the plaintiff's trainer's licence was void and ultra vires the Stewards' powers, in that the said action amounted to a breach of the implied term of the agreement between the plaintiff and the defendants that all actions taken by the Stewards which could deprive the plaintiff of his licence, would be reasonable and fair and made on reasonable grounds.

    2. Further, or in the alternative, a declaration in the same terms as set out in paragraph 1, on the grounds that the Stewards' said action was ultra vires and void in that it was in unreasonable restraint of trade and contrary to public policy.

    3. A declaration that rule 174(a) (ii) of the "Rules of Racing" is invalid and of no effect, and/or limited by the implied term that it would not be invoked to suspend or disqualify a licence-holder without proof of culpability and/or blameworthiness on the part of the licence-holder.

    4. An order that the suspension of the plaintiff's licence imposed on the 9th December 1982 shall not take effect.

    5. Further, and/or in the alternative, if the suspension referred to above shall take effect damages in respect thereof for breach of contract and/or interference or restraint of trade.

    6. Further or other relief as may be just.

3. The defendants tried to persuade Walton J. that the plaintiff's claim was misconceived because if he had any valid complaint about the way the Stewards had treated him, he should have applied for judicial review. They failed. They have tried to persuade this Court that, on the correct construction of section 31 of the Supreme Court Act 1991, when a domestic tribunal is alleged to have made, in abuse of its powers, a decision which affects a member of the public or the public generally, the complainant must apply for judicial review and cannot proceed by way of an action or an originating summons for either a declaration or an injunction.

4. In a judgment of this Court given on October 16, 1981 in a restrictive practices case unsuccessfully brought against the defendants, Waller L.J. referred to them as follows:

    "The NGRC [that is the defendants] is a limited company whose objects include acting as the judicial body for the discipline and conduct of greyhound racing in England, Wales and Scotland. Also, after consultation with the British Greyhound Racing Board, to frame and amend a code of rules for greyhound racing. Farther, to license greyhound race courses, trainers, kennel hands and officials. Also to improve the care and welfare of greyhounds generally.

    There are 107 greyhound racing stadia in Great Britain, of which 48 are licensed by the NGRC. The remainder are unapproved by the NGRC. A principal objective of the rules of the NGRC is to achieve an orderly and reliable method of conducting greyhound racing in England, Wales and Scotland. The NGRC licenses, among others, race courses, race course executives, trainers and owners".

5. In order to achieve these objects the defendants have issued "Rules of Racing" and have appointed Stewards who have no financial interest in greyhound racing, to enforce them. All who wish to take part in greyhound racing in stadia licensed by the defendants are deemed under rule 2 to have read the Rules and to have submitted themselves to such Rules and to the defendants' jurisdiction. Trainers of greyhounds racing at licensed stadia themselves have to be licensed and if their licences are suspended they cannot act as trainers during the period of suspension.

6. One of the malpractices with which the Stewards have to deal is the doping of greyhounds. The Stewards try to stop it. The Rules give them wide powers to do so. Proving that someone has doped a greyhound is difficult. No doubt because of this, the Rules empower the Stewards to impose penalties, including the suspension of licence, upon any licensed trainer who, under rule 174(a) (ii) "Has in his charge a greyhound which on examination ... shows presence in its tissues or body fluids or excreta any quantities of any substance which by its nature could affect the performance of a greyhound or shows evidence in any way of administration for any improper use of such substance the origin of which cannot be traced to normal and ordinary feeding".

7. On December 9, 1982 the Stewards held an inquiry which the plaintiff attended and decided that he had had in his charge a greyhound which on examination showed presence in its tissues of substances which would affect its performance. They suspended his trainer's licence for 6 months. It is this decision which the plaintiff has challenged in his originating summons.

8. In my judgment, such powers as the Stewards had to suspend the plaintiff's licence were derived from a contract between him and the defendants. This was so for all who took part in greyhound racing in stadia licensed by the defendants. A Stewards' inquiry under the defendants' Rules of Racing concerned only those who voluntarily submitted themselves to the Stewards' jurisdiction. There was no public element in the jurisdiction itself. Its exercise,

however, could have consequences from which the public benefited, as for example by the stamping out of malpractices, and from which individuals might have their rights restricted by, for example, being prevented from employing a trainer whose licence had been suspended. Consequences affecting the public generally can flow from the decisions of many domestic tribunals. In the past the Courts have always refused to use the orders of certiorari to review the decisions of domestic tribunals. In ***Reg. v. Criminal Injuries Compensation Board. Ex parte Lain*** [1967] 2 QB 864 Lord Parker, C.J. said at page 882: *"Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned".*

9. Before the passing of the Supreme Court Act 1981, as I think Mr. Henderson for the defendants accepted, anyone aggrieved by a decision of a domestic tribunal could only proceed by way of a claim for damages or for relief by way of a declaration or an injunction. The old case of ***The King v. The Benchers of Lincoln's Inn*** (1825) 4 B and C 855 is no authority to the contrary effect, nor is ***Reg. v. Aston University Senate. Ex parte Roffey and Another*** [1969] 2 QB 538, which on the issue of jurisdiction was probably wrongly decided - see ***Herring v. Templeman and Others*** [1973] 3 AH ER 50 at page 585.

10. Mr. Henderson, however, submitted that section 31 of the Supreme Court Act 1981 has given the Court jurisdiction to entertain judicial review of the proceedings of a domestic tribunal if, as in this case, those proceedings were likely to have consequences affecting the public generally. It was desirable, he said, that the quick remedy of judicial review should be available. He gave this case as an example. The plaintiff has challenged the right of the Stewards to apply rule 174(a)(ii). If the plaintiff is allowed to continue with his originating summons, other cases may occur in which the Stewards would feel it right to apply rule 174(a)(ii) hut until judgment in this case is given there will he uncertainty as to their power to do so.

11. This submission was based upon the use of the word "shall" in section 3l(l) and the terms of sub-section (2). Sub-section (l) provides that if an application is made to the High Court for a declaration or injunction under sub-section (2) it shall be made in accordance with rules of Court by a procedure to be known as an application for judicial review. Sub-section (2) provides as follows:-

"A declaration may be made or an injunction granted under this sub-section in any case where an application for judicial review, seeking that relief, has been made and the High Court considers that, having regard to -
(a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
(b) the nature of the persons and bodies against whom relief may be granted by such orders;
(c) all the circumstances of the case,
it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be".

12. The nature of the matters with which the plaintiff's originating summons deals is the alleged abuse of power by the Stewards. Abuse of power, submitted Mr. Henderson, was a matter with which prerogative orders dealt. The circumstances of the case involved the public interest because of the need to stamp out malpractices in greyhound racing. Although prerogative orders had not in the past been made against domestic tribunals, in this case "*it would be just and convenient"* for the declarations asked for by the plaintiff to be made or refused. Mr. Henderson saw no difficulty in the fact that when the Court had regard to *"the nature of the persons and bodies against whom relief may be granted by orders of mandamus, prohibition or certiorari",* it would find that domestic tribunals were not amongst them. All the sub-section required the Court to do was to have regard to this factor. If, despite its absence, the Court was of the opinion that it was just and convenient to make the declaration it could do so.

13. I cannot accept this submission. The purpose of section 31 is to regulate procedure in relation to judicial reviews, not to extend the jurisdiction of the Court. It puts into statutory language, with modifications, what is in Order 53 of the Rules of the Supreme Court. That Order *"introduced a most beneficent reform in the practice and procedure relating to administrative law":* see the note in the Supreme Court Practice 1982 at page 86$. It did not purport to enlarge the jurisdiction of the Court so as to enable it to review the decisions of domestic tribunals. In ***Reg. v. British Broadcasting Corporation. Ex parte Lavelle*** [1983] 1 WLR 23, which was a case in which an employee of the British Broadcasting Corporation applied for judicial review and for an order of certiorari under Order 53, in respect of a decision to dismiss her, Woolf J. said at page 30: *"Rule 1 [of the Rules of the Supreme Court] has since received statutory confirmation in almost Identical terms in section 31 of the Supreme Court Act 1981. There is nothing in rule 1 or section 31 which expressly extends the circumstances in which the prerogative remedies of mandamus, prohibition or certiorari are available. Those remedies were not previously available to enforce private rights but were, what could be described as, public law remedies. They were not appropriate, and in my view remain inappropriate remedies, for enforcing performance of ordinary obligations owed by a master to his servant. An application for judicial review has not and should not be extended to a pure employment situation. Nor does it, in my view, make any difference that what is sought to be attacked is a decision of a domestic tribunal such as the series of disciplinary tribunals provided for by the BBC".*

14. He then referred to what Denning L.J. had said in ***Lee v. Showmen's Guild of Great Britain*** [1957] 2 QB 329 at page 346 and to Lord Parker C.J.'s judgment in ***Reg, v. Criminal. Injuries Compensation Board*** (supra). He continued as follows: *"Notwithstanding the present wording of Ord. 53, r. 1 and section 31 of the Act of 1931, the position remains the same and if this application had been confined to an application for an order of certiorari, in my view there would have been no jurisdiction to make the order sought. However, in seeking a stay, the applicant is seeking, in effect, an injunction. The matter was argued before me on the basis that relief by way of an injunction was being*

sought on the application for judicial review. Ord. 53, l(2) does not strictly confine applications for judicial review to cases where an order for mandamus, prohibition or certiorari could be granted. It merely requires that the court should have regard to the nature of the matter in respect of which such relief may be granted. However, although applications for judicial review are not confined to those cases where relief could be granted by way of prerogative order, I regard the wording of Ord. 53, r. l(2) and section 30(2) of the Act of 1981 as making it clear that the application for judicial review is confined to reviewing activities of a public nature as opposed to those of a purely private or domestic character. The disciplinary appeal procedure set up by the BBC depends purely upon the contract of employment between the applicant and the BBC, and therefore it is a procedure of a purely private or domestic character".

15. I agree with Woolf J. Support for what he said is implicit in two decisions of the House of Lords, namely, ***O'Reilly and Others v. Mackman and Others*** [1982] 3 WLR 1096 and ***Cocks v. Thanet District Council*** [l987] 3 WLR 1121.

I would dismiss the appeal.

LORD JUSTICE FOX:

16. Under Rule 2 of the Rules of Racing established by the National Greyhound Racing Club it is provided, inter alia, that "*every person who is an Owner, Authorised Agent, holder of a Licence or the holder of a temporary appointment under Rule 104, or who is a subject of Rule 83(v) shall be deemed to have read the Rules of Pacing ... and to submit himself/herself to such Rules and to the jurisdiction of the NGRC . . . ".*

17. Accordingly, in my view, the authority of the Stewards to suspend the licence of the plaintiff derives wholly from a contract between him and the defendants. I see nothing to suggest that the defendants have rights or duties relating to members of the public as such. What the defendants do in relation to the control of greyhound racing may affect the public, or a section of it, but the defendants' powers in relation to the matters with which this case is concerned are contractual.

18. Apart from the alteration of the Rules of the Supreme Court in 1973 and the provisions of the Supreme Court Act 1981 the prerogative orders would not, in my view, lie to a tribunal set up by the defendants because the powers of such a tribunal derive from contract only. I do not think that the authorities leave scope for any real doubt as to that. In ***Reg. v. Criminal Injuries Compensation Board. Ex parte Lain*** [1967] 2 QB 864 at page 882 Lord Parker C.J. said: *"The only constant points throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned".*

19. In ***Rex, v. Post Office. Ex parte Byrne*** [1975] ICR 221 it was held that certiorari did not lie in respect of a Post Office disciplinary decision as regards an employee because *"the only authority which any Post Office employee superior in rank to the present applicant exercises or can exercise in relation to the applicant is an authority which derives exclusively from the contract which the applicant has made with the Post Office, namely, his contract of employment".*

20. We were referred to ***The King v. The Benchers of Lincoln's Inn*** (1825) B and C (KB) 855. If there is anything in that case which is contrary to the rule as recognised in the other authorities to which I have referred it is obiter only.

21. I come then to the effect produced by the amendments to the Rules of Court and by the Supreme Court Act 1981.

22. I take the effect of the present Order 53 to be as stated by Lord Diplock in **Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Limited** [1982] AC 617 at page 639 as follows: "*In contrast to this, judicial review is a remedy that lies exclusively in public law. In my view the language of rule l(2) and rule 3 of the new Order 53 shows an intention that upon an application for judicial review the court should have jurisdiction to grant a declaration or an injunction as an alternative to making one of the prerogative orders, whenever in its discretion it thinks that it is just and convenient to do so; and that this jurisdiction should be exercisable in any ease in which the applicant would previously have had locus standi to apply for any of the prerogative orders".*

23. Accordingly, it seems to me that the power under Order 53 to grant an injunction or to make a declaration is only exercisable in cases where, previously to the change in the Rules, the applicant could have obtained a prerogative order - and the opening words of the passage which I have quoted make it clear that the remedy is in the realm of public law only.

24. I see nothing in the Supreme Court Act 1981 which suggests any parliamentary intention to extend the scope of the prerogative orders. Section 29(I) states: *"The High Court shall have jurisdiction to make orders of mandamus, prohibition and certiorari in those classes of cases in which it had power to do so immediately before the commencement of this Act".*

The jurisdiction, therefore, remains unaltered with the result that certiorari would not lie against the defendants in respect of the Stewards' decisions.

25. It is said, however, on behalf of the plaintiff that section 3l(l) of the Act of 1981 (which uses the word "shall") makes it obligatory to apply for judicial review in any case falling within section 31 (2) where an injunction or declaration is sought. It is said the public interest in greyhound racing is such that the Stewards' decisions have a public impact, that the Stewards' authority is quasi-judicial in nature, that if the defendants were, for example, established by Royal Charter the prerogative orders would lie and that it would be just and convenient to deal

with the matter by way of judicial review (bearing in mind, in particular, the need to protect the Stewards from unreasonable claims and for speedy decisions). It is, therefore, said that the case comes within section 31(2).

26. Section 3l(2) is not in terms limited to cases where the prerogative orders would, in fact, lie. But Parliament having chosen in section 29(l) to enact that the jurisdiction of the High Court to grant the orders is unaltered, I find it impossible, when one comes to section 31) to suppose that the section was intended to require that applications for injunction or declarations in cases coming within section 3l(2) should be made in respect of the review of purely private law matters. It seems to me that it would be a very curious result if the Court, being required to have regard to *"the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari"* should make orders on an application for judicial review in cases where the prerogative orders would not apply at all. I agree with the observations of Woolf J. in ***Reg. v. British Broadcasting Corporation. Ex parte Lavelle*** [l983] 1 WLR 23 which are cited by Lawton L.J. in his judgment.

I agree that the appeal should be dismissed.

LORD JUSTICE SLADE:

27. I agree that this appeal should be dismissed. National Greyhound Racing Club Ltd.. ("the NGRC") is a company limited by guarantee, incorporated under the Companies Acts 1948-1976. Its objects are set out in its memorandum of association. The first three stated objects reflect a number of its primary activities. It is to act as a "judicial body" for the discipline and conduct of greyhound racing in England, Wales and Scotland. After consultation and agreement with the British Greyhound Racing Board Ltd. ("the BGRB"), it is to frame, amend and administer a Code of Rules. It is to license, among others, greyhound racecourses, trainers and officials, and, after consultation with the BGRB, to fix and collect fees relating to such licences.

28. In exercise of these powers the NGRC has promulgated Rules of Racing, which are intended to apply to holders of its licences, among other persons. The Rules are such as to prohibit those persons who train or race under licence from the NGRC from being associated with an unapproved racecourse. We were, I think, told that while the NGRC enjoys no monopoly north of Bedford, all the greyhound racecourses in the south of England hold licences from the NGRC and that every year several millions of persons visit racecourses licensed by it. The Senior Steward of the NGRC, Major-General J.H.S. Majury, who has acted in this capacity at the inquiries which have led to the plaintiff's suspension as a trainer, has stated in an affidavit that towards the end of 1981 and during the early months of 1932, the incidence of administration of drugs to greyhounds increased. He states that this increase was of major concern to him and his fellow Stewards as guardians of the integrity of the sport and the interests of the racegoing public.

29. I do not doubt the genuineness of this concern or the importance to the general public of the activities which the NGRC performs, not least its disciplinary functions. Furthermore, it is easy to understand why the NGRC would prefer that any person who seeks to challenge the exercise of its disciplinary functions should be compelled to do so, if at all, by way of an application for judicial review. In this manner the NGRC would enjoy the benefit of what Lord Diplock in ***O'Reilly v. Mackman*** [1982] 3 WLR 1096 at p. 1107B described as "the safeguards imposed in the public interest against groundless, unmeritorious or tardy attacks upon the validity of decisions made by public authorities in the field of public law". Notwithstanding recent procedural changes, these safeguards are still real and substantial. Leave is required to bring proceedings. Terms may be imposed as to costs and the giving of security. There is a time bar of three months, though the Court has power for sufficient reason to extend this. The Court retains firm control over discovery and cross-examination. (See generally ***O'Reilly v. Mackman*** [1982] 3 WLR supra at p. 626 per Ackner L.J.).

30. The difficulty, to my mind insuperable, which has faced Mr. Henderson in contending that the process of judicial review is a procedure, and indeed the only procedure, available to the plaintiff in the present case, is that, as he frankly accepted, the Rules of Racing of the NGRC and its decision to suspend the plaintiff in purported compliance with those Rules have not been made in the field of public law. Furthermore, its authority to perform judicial or quasi-judicial functions in respect of persons holding licences from it is not derived from statute or statutory instrument or from the Crown. It is derived solely from contract. Rule 2 of the NGRC's Rules of Racing provides that every person who is the holder of a licence shall be deemed to have read the Rules and to submit himself to them and to the jurisdiction of the NGRC. The relief, by way of declaration and injunction, sought by the plaintiff in his originating summons is correspondingly based primarily and explicitly on alleged breach of contract.

31. Thus, this is a claim against a body of persons whose status is essentially that of a domestic, as opposed to a public, tribunal, albeit one whose decisions may be of public concern. Mr. Henderson has not been able to refer us to any case in which relief, by way of any of the prerogative orders, has ever been granted against any such domestic tribunal. The high water mark of the authority relied on in support of the proposition that such relief would have been available even before the passing of the Supreme Court Act 1931, was a passage from the judgment of the Privy Council in Nakkuda ***Ali v. M.F. De S. Jayaratne*** [1951] AC 66 at p. 75 when Lord Radcliffe said this:

"In truth, the only relevant criterion by English law is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision.

When it is a judicial process or a process analogous to the judicial, certiorari can be granted".

But those dicta were obiter and were made in the context of a judgment which attempted to draw a distinction (later shown to be erroneous by the decision of the House of Lords in ***Ridge v. Baldwin*** [1964] AC 40) between decisions that were quasi-judicial and those that were administrative only. They are, I think, of no assistance to the NGRC for present purposes.

32. The relevant law, as it stood in 1975, is to be found reflected in the decision in ***Reg. v. Post Office. Ex parte Byrne*** [1975] ICR 221. In that case a Post Office official, acting under the disciplinary procedure of the Post Office, found that a Post Office telephonist had committed an offence against a supervising officer and placed him on a suspended dismissal. The applicant applied for an order of certiorari to quash the decision on the grounds, among others, that the procedure had contravened the Post Office disciplinary rules. The Divisional Court dismissed the application on the grounds that the only legal authority which any Post Office employee superior in rank to the applicant could exercise in relation to him derived exclusively from the contract of employment made by the applicant with the Post Office, and that such authority affected the applicant's rights not qua subject but qua Poet Office employee: (see at p. 227F-G). Bridge J., with whose judgment Lord Widgery C.J. and Ashworth J. agreed, quoted with approval (at p. 223) A passage from the judgment of Lord Parker C.J. in ***Reg. v. Criminal Injuries Compensation Board. Ex parte Lain*** [1967] QB 864, in which, after referring to certain extensions to the ambit of the remedy of certiorari which had occurred over the years, Lord Parker said: *"The only constant limits throughout were that it was performing a public duty. Public or domestic tribunals have always been outside the scope of certiorari, since their authority is derived solely from contract, that is, from the agreement of the parties".*

33. Such, I think, remained the state of the law in January 1973 when the amendments to RSC Order 53, already referred to by Lawton L.J., came into effect. Lord Diplock described the scope of the amended rule in Inland ***Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd.*** [1982] AC 617 at page 639 in a passage which has already been quoted by Fox L.J. Two points are implicit in this passage. First, on the wording of the new Order 53, the new jurisdiction to grant a declaration or an injunction on an application for judicial review, as an alternative to mating one of the prerogative orders, is exercisable only in a case "*in which the applicant would previously have had locus standi to apply for any of the prerogative orders".* Secondly, this new jurisdiction is a remedy that still lies exclusively in public law.

34. Accordingly, in my opinion, it is plain that, apart from any changes in law or procedure which may have been effected by section 31 of the Supreme Court Act 1931, the present is not a case where the process of judicial review would have been open to the plaintiff.

35. Mr. Henderson, however, has submitted, as the main feature of his argument, that section 31 makes it not only possible, but obligatory, for the plaintiff to use the process of judicial review for the purpose of seeking the declarations and injunctions which he seeks by his originating summons.

36. Section 29(l) of the Act of 1981 provides that *"the High Court shall have jurisdiction to make orders of mandamus, prohibition and certiorari in those classes of cases in which it had power to do so immediately before the commencement of this Act".* The wording of this sub-section, in my opinion, shows that the Act was not intended to extend the jurisdiction of the Court to make orders of mandamus, prohibition and certiorari, and I did not understand Mr. Henderson to contend otherwise. I therefore think it clear that the Court would not have jurisdiction to make orders of this nature at the suit of the plaintiff in the present case.

37. Mr. Henderson, however, pointed out that, omitting immaterial words, section 3l(l) of the Act of 1981 provides:
"An application to the High Court for . . .
(b) a declaration or injunction under sub-section (2) ... shall be made in accordance with rules of court by a procedure to be known as an application for judicial review".

The mandatory word "shall", which does not appear in the new RSC Order 53. in his submission, renders it obligatory to apply to the Court by way of an application for judicial review in any ease where the relief sought is a declaration or injunction falling within sub-section (2). The provisions of sub-section (2) are set out in the judgment of Lawton L.J.

38. In relation to sub-paragraph (a) of that sub-section Mr. Henderson submitted that the nature of the matters in respect of which relief might be granted by the three traditional prerogative orders included (inter alia) excess of jurisdiction, abuse of power, misconstruction of a relevant power-giving rule, denial of natural justice and bias. He referred us to certain Rules of the NGRC (for example, rules 160(4) and 163) which, he submitted, indicated that their Stewards' inquiries had all the hall marks of a quasi-judicial inquiry. The nature of the plaintiff's complaint, he submitted, is such that proceedings for judicial review would undoubtedly be the appropriate procedure if the NGRC were a body created by statute, or statutory instrument or Royal Charter. It is important in the public interest that any questioning of the powers of the Stewards of the NGRC, or the exercise of such powers, should take place promptly. In all the circumstances of the case, he submitted, justice and convenience requires that the Stewards should have the benefit of the protections available to persons and bodies against whom relief is sought by way of judicial review. In his submission such protections ought to be available, provided that the nature of the matter is such that relief might be granted by one of the traditional prerogative orders and all the circumstances render it just and convenient for the declaration sought to be made or the injunction sought to be granted. If this is so it matters not that the respondent to the application is a person or body against whom relief could not be granted by such traditional orders. Though the Court must "have regard to" the matters mentioned in sub-paragraph (b) of section 3l(2), so it is said, the sub-paragraph does not absolutely preclude the Court from

granting relief by way of declaration or injunction on an application for judicial review, in an appropriate case, against such a respondent.

39. I accept that the wording of section 31(2) does not explicitly confine applications for injunctions or declarations by way of judicial review to cases where, on the particular facts, orders for mandamus, prohibition or certiorari could appropriately be granted. Nevertheless, sub-paragraphs (a) and (b) of section 3l(2) must, in my opinion, be read together with section 29(l) of the Act of 1981, which restricts the Court, in making orders of mandamus, prohibition and certiorari, to *"those classes of cases in which it had power to do so immediately before the commencement of this Act"*. It is thus, in my opinion, clear that even since the passing of the Act, on an application for judicial review, the Court would have no jurisdiction to make an order in any of these three traditional forms in respect of a private law dispute arising out of a contractual relationship between the NGRC and one of its licence-holders, whether or not the Court would have otherwise thought it just and convenient to grant such relief. In these circumstances it would be anomalous in the extreme if the effect of the Act was to confer on the Court a new jurisdiction on an application for judicial review to grant an injunction or declaration in respect of a private law dispute of this nature. I do not think that section 31 compels, or indeed permits, such an interpretation. If the Court in such a case were to grant relief by way of declaration or injunction in purported exercise of its powers under section 31 (2), it would be acting not so much *"having regard to the factors mentioned in sub-paragraphs (a) and (b)"* as in flagrant disregard of such factors.

40. RSC Order 53, rule l(2), which uses the permissive word "may", on the face of it gives (or gave) a litigant the option to seek a declaration or injunction by a process other than an application for judicial review, even in a case which demonstrably falls within the sub-rule. The force of the word "shall" in section 31(l), in my opinion, is merely to render obligatory the use of the judicial review procedure, in accordance with the Rules of Court, in any case where relief is sought by way of an order for mandamus, prohibition or certiorari or where a declaration or injunction may appropriately be sought under sub-section (2). However, the word "shall", on which Mr. Henderson relied so strongly in his argument, does not, in my opinion, operate so as to extend the jurisdiction of the Court to grant a declaration or injunction by way of judicial review, beyond the jurisdiction already enjoyed by it under the new Rule. It may, or may not be, desirable that this jurisdiction should be extended so as to cover the quasi-judicial activities of certain domestic tribunals such as the Stewards of the NGRC, particularly when a large section of the public are interested in those activities. However, in his very persuasive argument, Mr. Henderson has not persuaded me that this was either the effect or intention of the Act of 1981.

41. Accordingly, in the present case there is, in my opinion, nothing in RSC Order 53 or in section 31 to oblige or entitle the plaintiff to proceed against the NGRC by way of application for judicial review. Correspondingly, there is no procedural objection to his seeking the declaration which he seeks under RSC Order 15, rule 16 in the ordinary way. I therefore think that Walton J. was right to refuse to strike out his proceedings and I too would dismiss this appeal.

LORD JUSTICE LAWTON: Mr. Owen and Mr. Croxford, you have both had copies of our judgments?
Mr. Owen: We have. (Mr. John Owen QC appeared in place of Mr. Roger Henderson QC)

(Appeal dismissed with costs. Legal aid taxation of Respondent's costs. Leave to appeal to House of Lords refused)

Mr. ROGER HENDERSON QC and Mr. ADRIAN BRUNNER (instructed by Messrs. Bristows Cooke & Carpmael) appeared on behalf of the Appellant (Defendant).
Mr. ANTHONY SCRIVENER QC and Mr. IANCROXFORD (instructed by Messrs. Mitchell Williams, Southend-on-Sea) appeared on behalf of the Respondent (Plaintiff).