

MASSACHUSETTS SUPREME JUDICIAL COURT

Bay State Harness Horse Racing & Breeding Ass'n v. State Racing Commission

340 Mass. 776 (1960) · Decided May 2, 1960

SUMMARY

The Massachusetts Supreme Judicial Court considered a challenge to the State Racing Commission’s issuance of a 1959 harness-racing license to Eastern Racing Association. The court stated that local approval of a race-track location was not required again when statutory amendments later permitted nighttime harness racing. The appeal was ultimately dismissed as moot because the 1959 racing season had ended, although the court addressed the recurring statutory issue.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Cutter, J.
JURISDICTION	Massachusetts
DECIDED	May 2, 1960
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bay State appealed from an interlocutory decree sustaining the commission's demurrer and from a final decree dismissing its petition for review under G. L. c. 30A, § 14.
STANDARD OF REVIEW	The court reviewed the dismissal of the administrative-law petition; because the 1959 races had already occurred, it treated the appeal as moot and did not decide whether Bay State was a person aggrieved under G. L. c. 30A, § 14.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; the mootness disposition is binding, while the court's statutory interpretation was stated as guidance in a moot case and was not disposition-tied.
PARTIES	Bay State Harness Horse Racing & Breeding Association v. State Racing Commission, Eastern Racing Association, Inc., intervener

TOPICS

mootness

judicial review of agency action

pari-mutuel wagering

administrative procedure act

statutory interpretation

PRACTICE AREAS

administrative law

gaming and racing regulation

appellate procedure

QUESTIONS PRESENTED

1. Whether the appeal concerning the 1959 racing license had become moot after the 1959 races were completed.
2. Whether the 1946 statutory authorization of nighttime harness racing required Eastern to obtain a new or separate local approval for nighttime harness racing at Suffolk Downs.
3. Whether Bay State was a person aggrieved under G. L. c. 30A, § 14.

HOLDINGS

1. The case was moot because the 1959 harness races had already been run and the court could grant no relief concerning them.
2. The 1946 amendment authorizing harness racing between 7 p.m. and midnight did not impose a new requirement for local approval when the location of the track had previously been approved for horse racing.

KEY QUOTATIONS

“This case has now become moot, for we can grant no relief concerning 1959 harness races which have already been run.” (340 Mass. at 778)

“The 1946 amendment imposed no new requirement of any further local approval merely because of the provision permitting harness racing at night thereafter.” (340 Mass. at 779-780)

“The final decree dismissing the petition is affirmed, not on the merits, but because this case has become moot.” (340 Mass. at 780)

FACTUAL BACKGROUND

The State Racing Commission licensed Eastern Racing Association to conduct twenty-three nights of harness horse racing in 1959. Because Massachusetts law limited all applicants to a combined maximum of ninety racing nights, Eastern's license prevented Bay State from obtaining more than sixty-seven nights. Suffolk Downs had previously received local approval for horse racing, but Bay State alleged that Eastern had never obtained separate local approval for nighttime harness racing after the Legislature authorized nighttime harness racing in 1946.

PROCEDURAL HISTORY

Bay State petitioned the Superior Court for review of the State Racing Commission's issuance of a 1959 harness-racing license to Eastern Racing Association for twenty-three nights. The commission demurred on the grounds that Bay State failed to state a case and was not an aggrieved person; the Superior Court sustained the demurrer and entered a final decree dismissing the petition. The Supreme Judicial Court affirmed the final decree because the controversy had become moot, while stating its views on a recurring statutory question.

DISPOSITION

affirmed

CASES CITED

- Cumberland Farms, Inc. v. Milk Control Commn., 340 Mass. 672, 674-675
- Ward v. Selectmen of Scituate, 334 Mass. 1, 2-4
- Zelman v. Alcoholic Beverages Control Commn., 335 Mass. 515, 519
- Mullholland v. State Racing Commn., 295 Mass. 286, 288-289
- North Shore Corp. v. Selectmen of Topsfield, 322 Mass. 413, 416-418

OPINION

CUTTER, J.

Cutter, J. The petitioner (Bay State) filed in the Superior Court a petition for review (see G. L. c. 30A, § 14) of the action of the State racing commission in granting a license to Eastern Racing Association, Inc. (Eastern), for twenty-three nights of harness horse racing in 1959.

The commission's action, if valid, precluded Bay State from obtaining more than sixty-seven nights of harness racing in 1959 in view of the statutory maximum of ninety nights of such racing for all applicants. See G. L. c. 128A, § 3 (j), as appearing in St. 1946, c. 575, § 4. Bay State prayed that Eastern's license be set aside and that the commission be ordered to consider issuing a license to Bay State for an additional twenty-three days in 1959.

The commission's demurrer (on the grounds that Bay State did not state a case and was not "aggrieved") was sustained by interlocutory decree. A final decree was entered dismissing the petition. Bay State has appealed from each decree. 1. This case has now become moot, for we can grant no relief concerning 1959 harness races which have already been run.

Licenses for harness horse racing are granted annually. G. L. c. 128A, § 2 (as amended through St. 1950, c. 716 2). The parties, however, inform us that a similar case relating to 1960 harness racing, now pending in the Superior Court, raises one question of law presented by the 1959 case and that this question is likely to arise also in future shears unless now decided.

They urge us to indicate our views on several issues to guide administrative action under the applicable statutes. See *Cumberland Farms, Inc. v. Milk Control Commn.*, ante, 672, 674-675, and

cases cited. There are, of course, substantial, practical, time obstacles (see *Ward v. Selectmen of Scituate*, 334 Mass. 1, 2-4; *Zelman v. Alcoholic Beverages Control Commn.*

335 Mass. 515, 519) to obtaining before the racing season in any year a decision of the Superior Court and, on appeal, of this court after action by the commission on an annual license. See *Mullholland v. State Racing Commn.* 295 Mass. 286, 288-289. These time obstacles, and the possibility^h that some future litigation may be avoided, lead us to state briefly our views on the one question of substantive law which has arisen both in 1959 and in 1960.

Two other substantive questions, presented in 1959, did not arise in 1960 and need not now be stated. We make no intimation whether Bay State is a "person... aggrieved" under G. L. c. 30A, § 14. 2. It is alleged in the petition that when pari-mutuel horse racing was authorized in 1934, "Eastern obtained the approval of the... [appropriate authorities] of Boston and Revere... for daytime racing... at Suffolk Downs....

Night... harness horse racing... was not authorized until... 1946, and Eastern never has obtained the approval of the... [authorities]... of Boston and Revere to conduct... night harness horse racing at Suffolk Downs." Bay State contends that, under G. L. c. 128A, § 13A (as amended through St. 1951, c. 777, § 2), and c. 271, § 33, a separate approval of the appropriate authorities of Boston and Revere was required after 1946 before Eastern could conduct night harness horse racing.

When G. L. c. 128A was inserted by St. 1934, c. 374, § 3, G. L. c. 271, § 33, had long been on the statute books. Chapter 128A gave to the commission general jurisdiction over pari-mutuel racing. Section 13A, added by St. 1935, c. 454, § 8, tended to minimize any possible conflict between c. 128A and § 33, with respect to the control of local communities over racing under c. 128A, by limiting local authorities to approval of "the location of the race track." When "the location... has been 'once approved' by the local authorities their jurisdiction is exhausted." *North Shore Corp. v. Selectmen of Topsfield*, 322 Mass. 413, 416-418.

Chapter 128A, § 3, in its original form (St. 1934, c. 374, § 3) permitted harness racing. See c. 128A, § 3 (j). Section 2 (5) of the original act, however, permitted "horse racing" only between the hours of noon and 7 p.m. By St. 1946, c. 575, §§ 1, 2 (see for recent amendments St. 1958, c. 229, §§ 1, 2), harness racing hours were altered so as to permit such racing either between noon and 7 p.m. or between 7 p.m. and midnight.

This statutory change in no way affected, or related to, local approval of the location of a track. The allegations of the petition show that the location of Suffolk Downs was approved once by the local authorities for horse racing prior to 1946.

The 1946 amendment imposed no new requirement of any further local approval merely because of the provision permitting harness racing at night thereafter. No statutory provision brought to our

attention tends to cut *780down, by any requirement of more than one local approval of the site of a track, the broad discretion of the commission to select licensees or to refuse licenses.

See G. L. c. 128A, § 11, inserted by St. 1934, c. 374, § 3. 3. There is no occasion to consider the appeal from the interlocutory decree sustaining the demurrer. The final decree dismissing the petition is affirmed, not on the merits, but because this case has become moot. So ordered. Section 2 has also been amended by St. 1958, c. 229, § 1, and by St. 1959, c. 295, § 1.

General Laws c. 271, § 33, provides, “No land within a town shall be... used as a race ground or trotting park without the previous consent of and location by the mayor and aldermen... who may regulate and alter the terms and conditions under which the same shall be... used... and may discontinue the same when in their judgment the public good so requires....” General Laws c. 128A, § 13A, now reads in part, “The provisions... of... [§3 thirty-three... of chapter two hundred and seventy-one... shall not apply to race tracks or racing meetings... conducted by licensees under this chapter,... except that no license shall be granted by the commission for a racing meeting in any city... unless the location of the race track where such meeting is to be held... has been once approved by the mayor and aldermen... as provided by said section thirty-three.’.. after a public hearing...” (emphasis supplied).