

CO/524/2015

Neutral Citation Number: [2015] EWHC 1347 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 23 April 2015

B e f o r e:

MR JUSTICE MOSTYN

Between:

THE QUEEN ON THE APPLICATION OF ENGLISH BRIDGE UNION_
Claimant

v

SPORT ENGLAND_

Defendant

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Mr R Clayton QC and Mr A Dos Santos (instructed by Irwin Mitchell) appeared on behalf of the **Claimant**

Ms K Gallafent QC (instructed by Field Fisher Waterhouse) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved)

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1. MR JUSTICE MOSTYN: This is a renewed application made orally for permission to apply for judicial review, permission having been refused on paper by Haddon-Cave J on 9 March 2015. The applicant is the English Bridge Union. The respondent is Sport England, which is the name by which the English Sports Council usually goes. The challenge is to the refusal by Sport England to recognise duplicate bridge as a sport. If it had recognised duplicate bridge as a sport there would have been beneficial consequences to the English Bridge Union. The reason that recognition was refused is set out in a letter of 3 November 2014.
2. The test for granting permission is set out in the 2015 White Book at page 2030 at paragraph 54.4.2. This states that:

"The purpose of the requirement for permission is to eliminate at an early stage claims which are hopeless, frivolous or vexatious and to ensure that a claim only proceeds to a substantive hearing if the court is satisfied that there is a case fit for further consideration. The requirement that permission is required is designed to 'prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending although misconceived'."

That is a quote from Lord Diplock. It goes on to say that:

"Permission will be granted only where the court is satisfied that the papers disclose that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence."

3. Sport England functions under a Royal Charter which was originally granted, we think, on 4 February 1971 (assuming that was the 20th year of the reign of Her Majesty) but which was modified by a fresh Charter given on 23 July 1996. The Royal Charter is to be regarded as the offspring of the Physical Training and Recreation Act 1937 in as much as funding provided by the Secretary of State to Sport England is done pursuant to the Physical Training and Recreation Act 1937. The Physical Training and Recreation Act 1937 is, as its name suggests, to do with physical training and recreation. It was passed in 1937 at a time of looming national crisis and the object of the statute was unquestionably to improve the general fitness of the population for the purposes of the struggles that lay ahead. The title of the Act is Physical Training and Recreation and the word physical is said as an adjective to govern both the concept of training and recreation. There is an argument to the effect, and indeed the phraseology of the Act suggests, that that is so. Section 3(1) provides that the Secretary of State may make grants towards the expenses of local voluntary organisation in providing, whether as a part of wider activities or not, or in aiding the provision of, facilities for physical training and recreation.

4. It is strongly arguable, in my view, that those concepts inform the phraseology of the Royal Charter. As I have said, the Royal Charter it is to be regarded as the offspring of the 1937 Act. The Royal Charter states in its second preamble that the new independent English Sports Council (as Sport England is more accurately to be know) has as its objects:

" ... fostering, supporting and encouraging the development of sport and physical recreation and the achievement of excellence therein among the public at large in England and the provision of facilities therefore."

Those words, when taken with the words of the Physical Training and Recreation Act suggest strongly, although not necessarily conclusively, that sport has to have a physical component to it in order for it to be recognised by Sport England and thereby receive funding from the State.

5. In 2010, a recognition policy was promulgated by Sport England. This was not a new recognition policy but was a refreshed or revived policy that had previously been enforced. This provides what the criteria for recognition are. In paragraph 13 it states that the following are core principles of recognition, and then there are a number set out, of which the second is "the decision on what is a sporting activity will be based on the 1993 European Sports Charter". I am slightly surprised that it does not say that the decision would be based on the 1937 Act or on the Royal Charter of 1971 as reissued in 1996. However, it determined that the criteria for determining what is or is not a sporting activity would be based on the 1993 European Sports Charter. One can see the advantage of that, in that it would result in consistency across the continent on what is or is not a sport.
6. The European Charter 1993 says in Article 2(1)(a) that:

"'Sport' means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels."

What is to be noted about that definition is that a competitive element is not a necessary ingredient of a sport (which I find faintly surprising) but it does suggest that an essential ingredient of sport is, even if it is not competitive, that it has to embrace physical activity. So there are a number of strong indicators that a sport has to have a physical component in order for it to satisfy the terms of the 1937 Act, the Royal Charter or the recognition policy of 2010.

7. On the other hand, there is the fact that in 1999 the International Olympic Committee acknowledged that bridge and chess should be considered as sports. There is a proposal of the IOC that bridge and chess, which it characterises as mind sports, albeit sports nonetheless, should be separately categorised and excluded from participation in the Olympic programme. That is not to say that that separate categorisation would mean that the IOC would not recognise it as a sport, it would just be a different kind of sport which would not participate in the Olympics and there have been, as everybody knows,

plenty of sports which have not been admitted to the Olympics or sports which have been in the Olympics and which are no longer in the Olympics. I think that in 1905 even tug of war was in the Olympics and now is no longer in the Olympics.

8. So the fact that the IOC recognises bridge, and chess for that matter, as a sport is, to my mind, significant. I do recognise, just as Haddon-Cave J did, that there are very strong arguments why Sport England was justified in refusing recognition to the English Bridge Union for bridge as a sport. However, I do not, like him, conclude that the matter is completely unarguable or that the case is hopeless, frivolous or vexatious. I do not underestimate the challenges that lie ahead for the English Bridge Union but by a very slender margin I am satisfied that the test for permission is met in this case and I grant permission.
