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Queen's Bench Division

***Erlam and others v Rahman and another (No 2)**

[2014] EWHC 2767 (QB)

2014 July 28, 29;
Aug 7

Supperstone J

B

Local government — Election — Petition — Petition questioning local mayoral election on ground of corrupt or illegal practices — Petitioners applying for trial of petition outside area where election held — Whether special circumstances justifying trial outside election area — Factors relevant to decision as to place of trial — Representation of the People Act 1983 (c 2), s 130(6)

C

The petitioners, who were electors in a London borough, presented an election petition questioning the local mayoral election on the ground of corrupt or illegal practices. They applied to the High Court for an order under section 130(6) of the Representation of the People Act 1983¹ for the trial to take place outside the borough on the basis that special circumstances existed rendering it desirable that the petition should be tried elsewhere. The grounds in support of the application stated that (i) there had been widespread intimidation of electors known not to support the successful candidate, (ii) any election court held in the borough would be surrounded by local groups of supporters of the successful candidate, as a number of polling stations had been during the election, including the election count venue, and (iii) if the trial were to be held in the borough, witnesses giving evidence of such conduct would be likely to be subjected to intimidation before and after giving evidence, such as to affect the integrity of their evidence, the conduct of the trial and the interests of justice. The evidence in support of the application, disputed by the successful candidate, cited the presence of large crowds requiring a heavy police presence at the election count and instances of disorder and intimidation.

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On the application—

Held, refusing the application, that the long-standing provision in primary legislation requiring local trials, namely section 130(6) of the Representation of the People Act 1983 in the case of local government election petitions, indicated that the concept of special circumstances justifying relocation of the trial was unlikely to embrace a concern about the number of attendees or the passion excited by political circumstances which created potential for public rowdiness; that, since the election commissioner hearing the petition was empowered by section 131(2) of the 1983 Act to require all constables and bailiffs to assist the court in the execution of its duties, and by section 181(2) could request the Director of Public Prosecutions, or his representative, to attend the trial if there were concerns about witness intimidation or the like, and since he could discuss security and policing with the chief officer of police so as best to ensure that witnesses who gave evidence were not intimidated, the evidence fell far short of establishing the existence of special circumstances which would warrant fixing the place of trial outside the borough (post, paras 3, 15, 18).

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The following case is referred to in the judgment:

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Erlam v Rahman [2014] EWHC 2766 (QB); [2015] 1 WLR 231, DC

No additional cases were cited in argument.

¹ Representation of the People Act 1983, s 130(6): see post, para 3.

APPLICATION

On 10 June 2014 the petitioners, Andrew Erlam, Debbie Simone, Azmal Hussein and Angela Moffat, presented an election petition challenging a mayoral election held in the London Borough of Tower Hamlets on 22 May 2014 on the ground that there had been electoral fraud and irregularities. The respondents to the petition were, respectively, the successful mayoral candidate, Mohammed Lutfur Rahman, and the borough's returning officer, John S Williams.

On 9 July 2014 the petitioners applied for the trial of the petition to be heard outside the borough on the grounds set out in the judgment, post, para 4. On 29 July 2014 Supperstone J refused the application, for reasons to be given later.

The facts are stated in the judgment, post, paras 1–4.

Francis Hoar (instructed directly) for the petitioners.

James Laddie QC and *Sarah Hannett* (instructed by *K & L Gates LLP*) for the successful candidate.

Timothy Straker QC (instructed by *Sharpe Pritchard*) for the returning officer.

The court took time for consideration.

7 August 2014. SUPPERSTONE J handed down the following judgment.

Introduction

1 On 28 July 2014, following the hearing by the Divisional Court (Supperstone and Spencer JJ) of the strike out application and the application to adjourn the application for a protective costs order (see *Erlam v Rahman* [2015] 1 WLR 231) I heard the petitioners' application dated 9 July 2014 for the trial of the petition to take place outside the London Borough of Tower Hamlets.

2 On 29 July 2014 I announced my decision, dismissing that application. I now give my reasons for the decision.

Legislative framework

3 Parliament has specified that the place for trial is the constituency in the case of a parliamentary election or the local government area for a local government election: sections 123 and 130 of the Representation of the People Act 1983. Allowance has been made for the possibility of the High Court ordering a trial to be elsewhere. Section 130(6) provides:

“The place of trial shall be within the area of the authority for which the election was held, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.”

The application notice

4 The grounds of application are stated to be threefold: (1) There has been widespread intimidation of electors who are known not to support the successful candidate. In particular one of the petitioners, Mr Azmal

A Hussein, has been subjected to intimidation and harassment at his shop in the borough since it became known that he was petitioning to have the election declared void. (2) The petitioners have reason to believe that any Election Court held in the borough would be surrounded by local groups of supporters of the successful candidate, as were a number of polling stations during the election and, in particular, the venue of the count. (3) Given that
B the allegations include allegations of electoral fraud and illegal practices, witnesses giving evidence of such conduct are likely, given the behaviour of the successful candidate's supporters during the election, to be subjected to intimidation before and after they give evidence in the event the trial is held in the borough such as to affect the integrity of their evidence, the conduct of the trial and the interests of justice.

C *The parties' submissions and discussion*

5 In support of his submission that "special circumstances" exist rendering it desirable that the petition should be tried elsewhere than in the borough, Mr Francis Hoar, for the petitioners, relies, in particular, on two witness statements made by Councillor Peter Golds, the leader of the Conservative Party Group on the council.

D 6 Mr James Laddie QC, for the successful candidate, submits that in order to succeed in this application the petitioners would have to satisfy each of the following steps: (i) demonstrate that there is a real risk of disorder or intimidation of witnesses if the trial was to take place in the borough; (ii) demonstrate that there was some reason not to trust the police and courts to safeguard the participants in such a trial; and (iii) demonstrate that the participants would be safeguarded from intimidation via the expedient of
E moving the election court a couple of miles down the road to the Royal Courts of Justice, which is where the petitioners contend it should be held.

7 Mr Hoar relies on passages in Mr Golds's witness statements in support of his submission that the first two of Mr Laddie's three preconditions are satisfied. In his first witness statement dated 15 July 2014 at para 5 Mr Golds states:

F "I have over the past decade sent numerous letters to the police and the electoral authorities, many of which have been ignored or simply brushed aside. I have watched and indeed assisted journalists who have investigated blatant electoral malpractice, to no avail."

(See also paras 6–7 and in exhibit PG1, the letter from Councillor Golds to Mr Tom Hawthorne, Head of Electoral Policy at the Electoral Commission dated 5 June 2014, in particular, in relation to the use of the Troxy for counting purposes and events at Mile End Leisure Centre on 25–26 May 2014.)

G 8 In his second witness statement (unsigned but approved on 25 July 2014) Mr Golds states:

H "5. Since becoming a Tower Hamlets councillor in 2006 I have seen a steady deterioration in behaviour at meetings of the council, emanating from . . . specific groups who congregate in the public section of the council chamber."

"7. From the very first meeting of the council, following the election of the mayor in October 2010, the situation became increasingly threatening

and intimidating. Tower Hamlets First supporters attend in large numbers and regularly abuse opposition councillors, often this is in Bengali, but frequently in English.”

9 At paras 8–13 of his second witness statement Mr Golds refers to racist and homophobic abuse that he has been subjected to. His statement continues:

“14. The scenes at both the recent counts and indeed at polling stations show how unpleasant politics can be in this borough.

“15. I therefore strongly oppose holding any hearing at the Town Hall, as I believe that the atmosphere and actions will not be conducive to the discharge of the law.”

10 In addition Mr Hoar relies on exhibits to Mr Erlam’s witness statement dated 24 July 2014 which refer to the scenes at the election count which required “a heavy police presence . . . as a huge crowd of [the successful candidate’s] supporters gathered outside the venue, where results were not announced until late into the night”. The “atmosphere was crackling with energy . . . as the enormous turnout of the Bangladeshi community that were present broke into celebrations in the street”. At one point there was “quite a ruckus outside as many of those who had gathered to show their support for the successful candidate, now wanted to be inside the building to show just how supportive they were”. That was said to be “an idea that the police weren’t particularly happy about . . . The ensuing drama meant that at one point, nobody was allowed in or out of the building by police”. Mr Hoar also referred to a blog by Mr Kazim Zaidi, who had been an adviser to the successful candidate, who wrote:

“The last six years in Tower Hamlets have been nothing more than a civil war that got out of hand; it spilled out of the Labour group room and into the council chamber. If those who still seem unable to accept the result continue as they are, it will spill out onto the streets where even the cleverest machine politicians will not be able to manage it.”

11 Further evidence as to there being a real risk of disorder or intimidation of witnesses if the trial were to take place in the borough, Mr Hoar contended was to be found in the witness statement of Ms Gloria Thienel, an elector. In her view there was an inadequacy of police at the polling station she had attended (see paras 3 and 4), and the Troxy was a totally inappropriate venue to cope with the number of people that were allowed in, many of whom should not have been there: see paras 11–13.

12 Finally Mr Hoar referred to the witness statement of Mr Randal Smith, another elector, who states at para 3 that he:

“witnessed a case of misrepresentation . . . no later than 10 May 2014 by a man called Mufti Miah who was a candidate for Lufthur Rahman’s Tower Hamlets First Party in Bromley North ward. Miah told me directly: ‘John Biggs is not Labour. He left the Labour Party 25 years ago. I am Labour’ . . . Mufti Miah has never been a member of the Labour Party. Furthermore, he alleged that Zenith Rahman and Khales Ahmed—the local Labour candidates—cannot speak English which is also untrue.”

A Mr Smith states he reported this to the police, but his impression was they did not take the matter seriously at the time: para 4.

13 Commenting on the evidence Mr Laddie makes the following points: (1) There are competing accounts of what did occur during the election and the count. The successful candidate in his witness statement dated 22 July 2014 refers to “a strong police presence on polling day on 22 May 2014 with an officer posted to each polling station in the borough”: para 8.

B Further the successful candidate states that although he does not have first-hand knowledge, since he was involved in the count inside, he does not accept the crowds outside the count were intimidating; independent reports suggest otherwise: para 30. (2) There is no witness statement from Mr Hussein concerning the allegation that Mr Hussein was subject to intimidation and harassment at his shop, despite the fact that he is one of the petitioners. The successful candidate says, at para 27:

“I do not know who it is said has been intimidating and harassing Mr Hussein but it is certainly not done by me or with my authority or by anyone within my control. It is conduct which, if true, I deplore.”

(3) Ms Thienel was an unsuccessful candidate in the local government election although she does not refer to that fact in her witness statement.

D (4) The statement of Mr Smith was only served on 24 July 2014, there being no explanation as to why it could not have been served at the time the application was made.

14 Mr Hoar submitted that the evidence before the court established that the Town Hall was a wholly unsuitable venue for the hearing, that witnesses who will be giving evidence against the successful candidate were likely to be intimidated by supporters in the way that voters were intimidated at the election, and that there was a suspicion that the local police force was totally inadequate for the purposes of exercising control and ensuring an orderly trial, and indeed they displayed a lack of interest in so doing. Mr Hoar submitted that it was necessary for the hearing to take place at the Royal Courts of Justice in order that witnesses would be safeguarded from intimidation.

F 15 I reject this submission. The evidence, in my view, falls far short of establishing the special circumstances that would warrant moving the trial from the borough. In reaching this conclusion, I agree with the observation made by Mr Timothy Straker QC, for the returning officer, that the long-standing provision in primary legislation requiring local trials indicates that the concept of special circumstances is unlikely to embrace a concern about the number of attendees or the passion excited by political circumstances which creates potential for public rowdiness. Section 131(2) of the 1983 Act gives the commissioner who hears the petition power to require “all constables and bailiffs [to] give their assistance to the court in the execution of its duties”. The commissioner can discuss issues of security and policing with the Commissioner of Police of the Metropolis so as to best ensure that witnesses who give evidence are not intimidated. Further, as Mr Straker points out, the commissioner hearing the trial may request the Director of Public Prosecutions “by himself or by his assistant or by his representative”, who may include a barrister or solicitor nominated by him, to attend the trial if there are concerns, for example, about witness intimidation:

H section 181(2).

16 Mr Straker took issue with the suggestion that the Town Hall is not an appropriate venue. If the commissioner considers it to be inappropriate at any time he “may in [his] discretion adjourn the trial from one place to another within the local government area or place where it is held”: section 130(7).

17 Both Mr Laddie and Mr Straker emphasised the importance which Parliament has placed on the local electorate seeing that justice is being done and being able to participate in the process. To many ordinary electors in Tower Hamlets the Royal Courts of Justice in the Strand will appear, as Mr Straker observes, “a world away”.

18 In my judgment, for the reasons I have given, no special circumstances exist to justify fixing the place of trial outside the borough. Accordingly this application is dismissed.

19 When giving my decision on 29 July 2014 I also referred to the petitioners’ application to fix the date of the trial and stated that I do not consider that it is appropriate to fix the date before the further particulars that the court ordered should be given have been provided. I stated that in any event a commissioner will now be appointed to hear this petition and it will be for the commissioner to fix the date of the hearing. Indeed Mr Richard Mawrey QC has now been appointed as commissioner to hear the election petition.

20 Finally, on 29 July 2014, having heard submissions from counsel, I gave directions with regard to witness statements and production of documents: see paragraphs 7–12 of the order of 29 July 2014.

Application refused.

DURAND MALET ESQ, Barrister
