

CO/3413/2015

Neutral Citation Number: [2016] EWHC 1280 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 26 January 2016

B e f o r e:

LORD JUSTICE LLOYD JONES

MR JUSTICE SUPPERSTONE

Between:

THE QUEEN ON THE APPLICATION OF RAHMAN

Claimant

v

LOCAL GOVERNMENT ELECTION COURT

Defendant

ERLAM & OTHERS

Interested Parties

Mr S Knafler QC (instructed by Chua's Solicitors) appeared on behalf of the **Claimant**
The **Defendant** did not appear and was not represented
Mr E Bartley Jones QC and **Mr F Hoar** (instructed by Richard Slade Solicitors) appeared
on behalf of the **Interested Parties**

J U D G M E N T

LORD JUSTICE LLOYD JONES:

1. Mr Lutfur Rahman was the Mayor of Tower Hamlets. He held that position from the time of his election in 2010 until 23 April 2015 when his re-election in 2014 was declared void by the Local Government Election Court. That court adjudicated on an election petition presented on 10 June 2014 by four petitioners. The Election Commissioner was Mr Richard Mawrey QC, who was appointed on 29 July 2014.
2. On 23 April 2015 the defendant court ruled that the claimant was guilty on the following matters: (1) by his agents of corrupt practices contrary to section 60 and section 62 of the Representation of the People Act 1983 ("the 1983 Act"); (2) by his agents of illegal practices contrary to section 13D(1) and section 61(1)(a) of the 1983 Act; (3) personally and by his agents of an illegal practice contrary to section 106 of the 1983 Act; (4) by his agents of an illegal practice contrary to section 111 of the 1983 Act; and (5) personally and by his agents of a corrupt practice contrary to sections 113 and 115 of the 1983 Act.
3. This challenge relates to the defendant court's findings in categories 4 and 5 above. The findings in the fifth and final category were the only findings of corrupt practices made against the claimant personally, as distinct from by reason of actions of his agents for which he was responsible. That being the case, if the findings in relation to the fifth matter were to be overturned, the period of the claimant's disqualification from standing for election to public office would be reduced from 5 years to 3 years.
4. The grounds on which the claimant seeks permission to bring proceedings for judicial review are as follows. First, in respect of the court's conclusions under section 111 of the 1983 Act, it is said that the Commissioner relied on findings of fact for which there was no proper evidential basis and which therefore amounted to errors of law. Secondly, in respect of the conclusion under section 113 of the 1983 Act, it is said that these findings involved an erroneous construction of the provision, and that the Commissioner relied on findings of fact for which there was no proper evidential basis, and which therefore amounted to errors of law. Thirdly, in respect of section 115 of the 1983 Act, it is said that the Commissioner's approach to the provision was contrary to authority and incompatible with articles 9 and/or 10 of the European Convention on Human Rights ("ECHR") and, accordingly, contrary to sections 3 and 6 of the Human Rights Act 1998.
5. Three of the four original petitioners have filed an acknowledgement of service in which they indicate their intention to resist some but not all of the grounds on which the claimant seeks judicial review. I shall refer to them as the interested parties. There were, in fact, other interested parties but they have indicated that they do not wish to take any further part in these proceedings.
6. On 9 October 2015, Ouseley J adjourned the claimant's application for permission, and also the other orders sought, to be listed in open court on a date to be fixed. That hearing has taken place before this Divisional Court today.

7. Since the decision of the Commissioner, which the claimant now seeks to challenge, on 18 November 2015 the claimant was adjudged bankrupt on his own bankruptcy petition presented that day. As yet, no trustee in bankruptcy has been appointed but the official receiver has summoned a general meeting of the claimant's creditors under section 293(1) of the Insolvency Act 1986, for the purpose of appointing a trustee of Mr Rahman's estate in bankruptcy. This gives rise to the question as to what effect that has on the application to apply for judicial review. We are told that there is no authority directly on the point.
8. Section 306 of the Insolvency Act 1986 vests the bankrupt's estate in his trustee immediately on his appointment taking effect or in the case of the official receiver, on his becoming trustee. What forms part of the bankrupt's estate is defined in section 283(1), which provides that a bankrupt's estate, for the purposes of that part of the statute, comprises property including:

"(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy"

Section 436 contains a very wide explanation of the word "property":

"'property' includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property"

However, there are certain causes of action which, although they might appear to fall within this wide definition, do not vest in the trustee. Those sections to which I have just referred have been interpreted as excluding certain actions personal to the bankrupt. Thus, as Hoffmann LJ pointed out in Heath v Tang [1993] 1 WLR 1421, despite the breadth of the definition in section 436 there are certain causes of action personal to the bankrupt which do not vest in his trustee. These include cases where the damages are to be estimated by immediate reference to pain felt by the bankrupt in respect of his body, mind or character, and without immediate reference to his rights of property. Those words are taken from Beckham v Drake (1849) 2 HLC 579,604.

9. As Aldous LJ observed in Ord v Upton, actions which relate to a bankrupt's personal reputation or body have not been considered to be property and therefore do not vest in anybody other than the bankrupt. That case concerned a single cause of action in negligence against a doctor, which would give rise to an award for loss of earnings and for pain and suffering. The Court of Appeal held that it was a hybrid cause of action. It would only remain with Mr Ord, the bankrupt, if it fell within the exception to section 436. To do so, it must relate only to a cause of action personal to the bankrupt. As Aldous LJ put it:

"All causes of action which seek to recover property vest in the trustee whether or not they contain other heads of damage to which the bankrupt is entitled."

Accordingly, the court concluded:

"The authorities are only consistent with the conclusion that the trustee is entitled to the damages for past and future loss of earnings and is not entitled to the damages for pain and suffering. As there is a single cause of action, it vested in the trustee... The trustee as constructive trustee would have to account to the bankrupt for the property which he obtained inadvertently or by arrangement in an action which vested in him for the benefit of the creditors."

10. Subject to one point, I consider that the claim for judicial review which the claimant seeks to bring is personal to him. It seeks to challenge certain findings against him of his involvement in corrupt practices. The judicial review proceedings would relate to his character and reputation. In my view, any entitlement or right he may otherwise have to bring such proceedings for judicial review would be personal to him and therefore would not vest in the trustee, but would remain in him. The qualification which I would enter to that relates to the question of costs and the costs order made by the election court.
11. Section 285(3) of the Insolvency Act 1986 made the costs order unenforceable against the claimant personally as from the date of the bankruptcy order. He therefore has no interest in challenging that order. See the judgment of Hoffmann LJ in Heath v Tang at page 1427. It appears, however, that an action may be permitted to proceed where a claimant has an interest of a personal nature in the result, notwithstanding that he has no right to challenge the costs order (see Dence v Mason (1879) WN 177 cited by Hoffmann LJ in Heath and Tang at page 1424).
12. The position of the interested parties represented by Mr Edward Bartley Jones QC and Mr Francis Hoar is that if all Mr Rahman is seeking to achieve by this application for judicial review is the vindication of some part of his character, then they accept that his claim will not form part of his estate in bankruptcy. However, they submit that if he is seeking to go further and to challenge or disturb the costs orders as made by Mr Commissioner Mawrey, then the position would be different. That would be a matter for his trustee alone. They therefore submit that it is important for the claimant to indicate whether he is seeking, by way of judicial review, to vary the costs orders made by the Commissioner.
13. Mr Stephen Knafler QC, who has entered the case at a late stage, and who has now submitted a skeleton, has made clear that in the event that the application for judicial review were ultimately to succeed, the claimant would not seek to vary any of the costs orders made by the election court, and he offers an undertaking to the court to that effect.
14. I conclude, therefore, that the claimant has no locus to challenge the costs order. Any challenge to the costs order must be brought by his trustee in bankruptcy. Accordingly, any grant of permission to apply for judicial review will have to be subject to the

condition that Mr Rahman as a claimant in his personal capacity may not challenge the costs order.

15. I turn to the question of jurisdiction. It was common ground between the parties that, notwithstanding sections 144(1) and 145(1) which are in materially identical terms, the decision of an election court is amenable to judicial review for error of law. That is, in my view, a correct view of the law. I draw attention to the judgment of Thomas LJ in Woolas to that effect. Moreover, for this purpose, an error of law would include a factual finding for which there was no evidential basis, that is circumstances in which a conclusion drawn by the Commissioner was not supported by evidence, or his conclusion was not reasonably open to him on the evidence.
16. A further point is taken by the interested parties. Section 146 of the Representation of the People Act 1983 makes provision for an election court to state a case on a point of law. It is submitted that as a result, this is a further limitation on the availability of judicial review, given that there is an alternative procedure by which points of law can be raised before the High Court. This is a matter to which I will return.

Ground 1: Paid canvassers

17. The Commissioner found the claimant guilty by his agents of an illegal practice contrary to section 111 of the 1983 Act in that by his agents he paid canvassers. The Commissioner stated that he applied the criminal standard of proof to the issue of whether there had been general corruption, and the civil standard of proof to the issue of whether it might reasonably be supposed to have affected the result. There is no challenge to that approach. The Commissioner came to his conclusion that canvassers had been paid to canvass on behalf of the claimants' party. He came to that conclusion on the basis of the evidence of three witnesses, each of whom claimed to have met canvassers who said that they were being paid by Mr Alibor Choudhury. Mr Choudhury was the treasurer of the THF Party, the party founded by Mr Rahman. The Commissioner accepted in his judgment that the evidence was limited. None of the paid canvassers was identified. The three witnesses were all partisan in the sense that they were all Labour candidates or close relatives of Labour candidates in the election. Nevertheless, the Commissioner accepted their accounts. Contrary to the submission of Mr Knafler, I do not consider this was simply a case of preferring one witness over another, and therefore a departure from the application of the criminal standard as set out previously by the Commissioner at paragraph 49 of his judgment. The passage in the judgment has to be read as a whole. As the Commissioner pointed out, this would have been an extraordinary story to have invented, and it would have been even more extraordinary that three separate incidents should have been invented independently by three different witnesses.
18. The judge had heard the evidence of the witnesses who had been cross-examined. He saw no reason to disbelieve them. Moreover, while it is true that Mr Choudhury gave evidence, and denied these allegations, the Commissioner found him not to be a truthful witness in terms which I can only describe as comprehensive. Although the evidence was not particularly strong and was accepted by the Commissioner as not being particularly strong, I consider that it is unarguable that there was no evidence of the

alleged conduct or no evidential basis for the Commissioner's findings. There is, in my view, no arguable error of law here. There is no arguable case which has a realistic prospect of success. I note in passing that the judge found that a separate allegation of breach of section 111 involving the use of paid Council staff to canvas for the THF was not made out.

19. In these circumstances it is not necessary to consider in this context the arguments advanced on the amended section 31 of the Senior Courts Act 1981.

Count 2: Bribery

20. The court found the claimant guilty, personally and by his agents, of corrupt practices under section 113. There are, essentially two limbs to this conclusion. The first concerns substantial grants made by the Council to organisations representing or serving the Bangladeshi or Muslim communities in order to induce voters to vote for the claimant. The second concerns the use of Council money to pay media, including a Bengali language television channel and its chief political correspondent, to promote Mr Rahman's campaign. I consider each in turn.
21. First, the grants to community organisations. Here, there is a challenge on the basis of no evidence to support the conclusion of fact drawn by the Commissioner. He found "the lion's share" of the grants went to organisations that were run by and/or for the Bangladeshi community. The interested parties accept that the Commissioner should not have used the words "the lion's share" and that the Commissioner appears here to have overlooked the table of grants which had been produced on behalf of Mr Rahman and which had been supplied to him during the proceedings. However, it never was the petitioners' case that the lion's share went to organisations that were run by or run for the Bangladeshi community. Thus, it is accepted that there has been a degree of misanalysis and a degree of overstatement by the Commissioner at paragraph 461 and following of his judgment, in relation to the grants made. In these circumstances, I am not impressed by Mr Knafler's analysis of the proportion of grants made to Bangladeshi focused organisations. It seems to me that it does not matter. The Commissioner identifies a substantial number of grants not made in accordance with the recommendations of the officers of the Council. The Commissioner identifies these in order to justify his finding of bribery under section 113(2).
22. At paragraph 492 of his judgment he states that the court was particularly interested in those instances of grants being paid to those who were ineligible and, to an even greater extent, to those who had not applied for them. He asked what was the purpose of such an exercise. He referred to the lunch clubs as a very good example. They were given money without having applied for it. The beneficiaries tended to be older and less well off members of the Bangladeshi community. There was, in the Commissioner's view, cogent evidence, which he accepted, that close supporters of Mr Rahman would make it clear to those attending the lunches that they owed their good fortune to Mr Rahman with a pretty obvious inference that the only way it was going to continue would be if Mr Rahman remained in office.

23. I do not consider that this ground, insofar as it seeks to challenge the findings of fact, has any realistic prospect of success. However, a further point is taken here in relation to the true interpretation of section of 113(2) and, in particular, whether the conduct as found by the Commissioner falls within that subsection. In approaching this issue, I bear in mind that we are interpreting a penal statute.

"113(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf—

(a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or

(b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or

(c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter, or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter.

For the purposes of this subsection—

(i) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure any money or valuable consideration; and

(ii) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment and

(iii) references to procuring the return of any person at an election include, in the case of an election of the London members of the London Assembly at an ordinary election, references to procuring the return of candidates on a list of candidates submitted by a registered political party for the purposes of that election...

113(5) A voter shall be guilty of bribery if before or during an election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting."

24. First, Mr Knafler draws attention to the word "gives" in section 113(2)(a). He submits that this word means that the transfer must have the character of a gift. For present

purposes, I am prepared to accept that that is correct. Mr Knafler says that grants to voluntary organisations are not gifts so that the requirement in (a) that the person should give money is not met. It seems to me that this is clearly far too narrow a reading of the section. The Commissioner found that Mr Rahman had caused the Council to make grants to voluntary organisations in order to influence voters to vote for his party. The fact that there may have been conditions imposed as to the purposes for which the money would be applied would not, to my mind, prevent it from being a gift. To my mind, the making of the grants was clearly within section 113(2).

25. Secondly, Mr Knafler submits that these grants were not given to a third party on behalf of any voter because, in this context, the third party does not hold the money for the benefit of, or to the order of, the voter. However, this is not the basis on which the Commissioner rested his conclusion. At paragraph 491 of his judgment he states:

"The grant money was obviously not given directly to the voters and it is probably right to say that it was not given to another person 'on behalf of any voter'."

He then goes on to ask whether it was, however, given "to or for any other person in order to induce any voter to vote or to refrain from voting.

26. In his view this subparagraph does not require that the recipient of the money, that is the other person referred to, should be the person doing the inducing of the voter. That is covered by (c). Accordingly, under (a) if payment by the candidate to X induces Y, the voter, to vote for the candidate or not to vote for his rival, then the requirements of the paragraph are met. I agree. To my mind this is clearly a correct reading of the statute.

27. Thirdly, Mr Knafler says that the giving must be in order to induce the voter to vote. The Commissioner found that it was. He made clear findings of fact to this effect, findings which I consider he was entitled on the evidence to make. Mr Knafler says that this requirement must mean that the sole or at least the dominant purpose was to induce the voter to vote. I can see no basis for this gloss on the words of the statute. It is enough that it was done for the purpose of inducing the voter to vote. It is a question of fact whether it was or was not done to induce the voter to vote. The Commissioner found that it was. In my judgement, he was entitled to do so. In this regard, I also draw attention to a passage in his judgment where the Commissioner addresses what he refers to as pork barrel politics. I draw attention to it because it provides an answer to Mr Knafler's submission that the judge's reading of section 113(2)(a) is so wide as to cover what has been referred to as pork barrel politics. The judge says at 498:

"The difference between pork barrel politics and bribery is that the former is not in the hands of a single individual or directed to the election of an individual candidate. The reason why Mr Rahman's conduct is on the wrong side of the line is because he was, in reality, the sole controller of the grant fund, and he manipulated them for his own personal electoral benefit."

28. Next, the point was taken on paper, but not pursued before us today, that the grant must have been made on behalf of Mr Rahman. That is correct. The section does require that the grant be made on behalf of Mr Rahman. This, however, is a point to which the Commissioner gave careful consideration at paragraph 495 of his judgment where he said that at one level the grants were made on behalf of the Council but, on another level, if they are deliberately channelled in certain directions by the man who has de facto control over who gets what, and if this is done with the purpose of inducing those who will benefit from the grants to vote for him, the payment can be said to be made on his behalf. I consider again that is clearly a correct reading.
29. Finally, in this regard, Mr Knafler submits that the effect of section 113(5) would be, on the Commissioner's reading of section 113(2)(a), that all of the recipients of the bounty conferred would be committing an offence. Thus all of those enjoying lunch at the lunch club would commit an offence contrary to section 113(5) if the Commissioner were right as to the scope of the offence under section 113(2)(a). However, the offence under 113(5) is not an exact counterpart of the offence under section 113(2)(a). Subsection 113(5) requires that a person receives money or a gift for voting or agreeing to voting. That requirement would have to be made out before anyone could commit an offence contrary to subsection (5).
30. The conclusion of the Commissioner was that a man in control of a fund of money not his own, who corruptly uses his control to make payments from the fund for the purposes of inducing people to vote for him, is within the opening words of section 113(2) and commits the offence of bribery. I agree. I can see no basis on which the challenge based on the interpretation of section 113(5) and its application to the facts as found by the Commissioner could have any realistic prospect of success.
31. I turn to the second limb, the use of Council money to pay the media, including a Bengali language television channel and its chief political correspondent in order to promote Mr Rahman's campaign. Here, the claimant cannot realistically challenge the findings of fact and no attempt has been made to do so. Mr Knafler nevertheless makes the counterpart of his legal submission in relation to the first limb: the facts as found do not meet the requirements of section 113. At paragraph 504 the Commissioner referred to the PWC report, the conclusions of which he adopted. They were that Mr Rahman caused the Council to pay public money by way of fees for broadcasts which were ostensibly about the borough and its administration but which were, in fact, personal political broadcasts on behalf of Mr Rahman promoting him to the Bengali speaking electorate of Tower Hamlets. In the context that Mr Rahman fully intended to stand for re-election when his first term of office expired, the broadcasts could not be regarded as other than intended to promote his political career. Furthermore, despite earlier adverse rulings from Ofcom, both Mr Rahman and the television companies persisted in publicising Mr Rahman and earned further adverse rulings from Ofcom when they did so.
32. The Commissioner's analysis of this is at paragraph 506 where he asks whether this meets the criteria of section 113. In his view, it involves a payment made indirectly by or on behalf of Mr Rahman to another person in order for that person to induce voters to vote for Mr Rahman. The Commissioner states it was undoubtedly corrupt in the

sense that Mr Rahman knew that it was wrong for him to spend public money in this way, and he persisted even after the initial Ofcom rulings. The judge went on to say that, in the circumstances, the court must find that in relation to payments to the media Mr Rahman was guilty of bribery.

- Mr Knafler takes the corresponding point in relation to the word "gives" in section 113(2)(a). Here, as in the first limb, he accepts that the payments were in the form of grants. For reasons that I have already given, I consider that grants are to be regarded as "giving" within the meaning of this subsection. However, there were also findings made in relation to payments to Mr Jubair. Mr Jubair was the chief political correspondent of Channel S. The Commissioner observed that the dealings of Mr Jubair were murky in the extreme. Mr Rahman seems to have arranged for him to be employed by the Council, at the taxpayers' expense, apparently to advise on media relations with the Bangladeshi community. However, the judge found the payments made to Mr Jubair were, to a significant extent, unaccounted for and some £20,000 worth of expenditure was not represented by time sheets. Mr Jubair was not, in fact, called to give evidence. The Commissioner noted that beyond Mr Rahman's evidence there was no evidence before the court to show that Mr Jubair has carried out any work on behalf of the Council. The reality, in the Commissioner's view, was that Mr Jubair's function was to publicise Mr Rahman and his achievements and to ensure that favourable coverage continued in the media, particularly Channel S, with which he remained closely associated. I consider that, once again, such payments being payments beyond services provided are in the nature of a gift. I have already addressed under the first limb the requirement that the giving should be made in order to induce the voter to vote and the requirement that the payment must be made on behalf of the claimant.
33. For all of these reasons, I consider that there are no arguable grounds for judicial review on either limb. In these circumstances, section 31(2)(a) of the Senior Courts Act 1981 is not engaged. It is not necessary to address what situation might have arisen had leave been granted on some parts but not on other parts of ground 2.

Ground 3: Spiritual injury

34. The Commissioner found the claimant guilty personally and by his agents of corrupt practices under section 115. It found that he had exerted undue influence contrary to section 115(2) of the 1983 Act in the form of spiritual injury. This conclusion was founded on statements made by Mr Hoque, Chairman of the Council of Mosques, at a public meeting and at a wedding. A letter signed by 101 imams and other religious leaders and scholars, published in Bengali, in the dual language (English and Bengali) weekly, Dosh.
35. Mr Knafler submits that the facts as found by the Commissioner amount to exhortation and persuasion on the part of some religious leaders but that the Commissioner does not identify any threat to inflict spiritual injury or loss. The interested parties do not resist the grant of permission on this ground. They leave it to the court to decide how section 115 should operate in modern society in respect of spiritual injury.
36. In our view, the Commissioner rightly considered this whole subject of spiritual injury to be a controversial and difficult one. The decided cases are largely concerned with

conditions which prevailed in Ireland in the 19th century, conditions which are very different from those which prevail in this country today.

37. I note that the Law Commission in its consultation paper on electoral law, published in 2014, observed in relation to spiritual injury that no definitive test exists as to where to draw the line between undue influence and political activism. I also note the claimant's reliance on article 9 of the European Convention on Human Rights, a provision which has not been considered previously in this context by courts in this jurisdiction. Against this background, I consider that the claimant's case on ground 3 is arguable and a point of some general interest. This leads directly back to section 31 of the Senior Courts Act. If my Lord concurs in my view that the court should refuse leave on ground 2, and if that conclusion is not reversed on appeal, this would result in a state of affairs where the claimant would remain disqualified from standing for election for public office for a period of 5 years because of his conviction of a corrupt practice, that is bribery contrary to section 113. If the claimant were to succeed on ground 3 in relation to spiritual injury, it would make no difference to that penalty.

Senior Courts Act 1981

Section 31(3)

- (C) When considering whether to grant leave to make an application for judicial review, the High Court—
- (a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
 - (b) must consider that question if the defendant asks it to do so.
- (D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.
- (E) The court may disregard the requirement in subsection (3D) if it considers that it is appropriate to do so for reasons of exceptional public interest.

38. The interested parties do not in this instance ask us to consider this question but we nevertheless consider that we should do so of our own motion. I have come to the view that the outcome for the claimant would have been substantially different had the Commissioner's decision of which complaint is made in ground 3 not occurred. He has been convicted of a further discrete allegation of corruption. The court is here concerned with a conviction for a corrupt practice, a very serious matter. Furthermore, if the point arose, which it does not, I should be willing to certify that reasons of exceptional public interest would require the law of spiritual injury to be considered by the court.

39. Accordingly, I would grant permission to apply for judicial review, limited to ground 3. In doing so, however, I make clear that the other convictions for illegal and corrupt practices will remain undisturbed in any event, and that the effect of such a decision would be that, in any event, Mr Rahman's disqualification from standing for public office would remain a disqualification for a period of 5 years.

Stating a case

40. I turn to section 146(4) of the 1983 Act:

"If it appears to the election court on the trial of an election petition that any question of law as to the admissibility of evidence or otherwise requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve the question by stating a case for the decision of the High Court."

41. I note the observations of the Divisional Court in Woolas at paragraph 59 and following, in particular in relation to the need for speedy finality in this field. However, in my view, the existence of this procedure should not prevent the claim on ground 3 proceeding by way of judicial review in the particular circumstances of this case. The point is an important one, not only to Mr Rahman but also to the conduct of elections. Also, I consider that this is not a situation in which the issue of law could sensibly be considered independently of the findings of fact.

Costs

42. If my Lord concurs in my judgment and if permission is granted on ground 3 only, the interested parties have indicated that they will not take any part in those proceedings. Accordingly, they do not require any protection in respect of costs. For these reasons, I would grant leave on ground 3 on an undertaking by Mr Rahman, by his counsel, not to seek any variation of the costs orders of the proceedings before the election court.
43. Finally, I consider that if this matter proceeds, it would be of great value at the hearing for the court to be assisted by an amicus curiae, and the court will in due course take due steps to seek the appointment of an amicus curiae by the law officers.

MR JUSTICE SUPPERSTONE:

44. I agree.