In the High Court of Justice Queen's Bench Division Administrative Court

CO Ref:3240 /2014

In the matter of an application for Judicial Review

The Queen on the application of
SARAI
versus
London Borough of Hillingdon

Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of service filed by the Defendant and / or Interested Party]

Order by the Honourable Mr Justice Collins

Permission is hereby refused.

Reasons:

1. While the papers were put before me as a result of the defendant's application to set aside Mostyn J's order, it was obviously sensible to consider whether permission should be granted. I have decided that it should not and so the order of Mostyn J is inevitably discharged.
2. I have sympathy with the concerns about the conduct of the 23 May 2014 hearing. However, the committee for reasons which cannot be said to be arguably unlawful decided on 11 June 2014 that the licence should be revoked. This was based not only on serious crime but a breach of the licence conditions by public nuisance.
3. The legislation is badly drafted and is by no means clear. Whatever the true construction, there clearly should be a procedure which enables there to be a possibility of suspending the effect of a determination or of any interim order pending appeal. Section 53B(1) enables an interim order to be made 'pending the determination of the review', but s.53C(2)(c) makes clear (if it is to be given any sensible meaning) that such an interim order may extend to when the determination comes into effect. However, s.53V(2)(b) enables the committee to modify any interim order by imposing different and perhaps less onerous measures. In this case it decided to revoke the licence so that the suspension would inevitably continue in force. The committee clearly also decided that the licence should continue to be suspended. That it was on whatever is the true construction of the statutory provisions entitled to do.
4. There is undoubtedly a serious lacuna in the legislation since it was in my view be disproportionate in terms of Article 1 Protocol 1 if there were no power to suspend an adverse decision pending appeal or a fortiori no power to give immediate effect to a decision that the application under s.53A was not made out albeit an interim order had been made. S.53C(2)(c) does indeed seem to be an unnecessary provision since s.53B(1) makes clear that interim steps are what they say, namely steps taken pending determination and once a determination has come into effect they will automatically lapse. However, it must be assumed that Parliament meant s.53C(2)(c) to have some effect and in my judgment it only makes sense if it implies and must enable justice to be done carry within it by the words in brackets a power to vary or indeed to remove any interim steps pending the expiry of 21 days or any appeal.
5. If the magistrates have no power to suspend, as to do justice they should have, it is clearly essential that a hearing takes place as soon as possible and the magistrates court must pull out all stops to ensure a speedy hearing.
6. I recognise that the provisions are far from clear and it may be a judicial decision is needed. But this is the wrong case since it is clear beyond doubt that for good reason the committee decided that the suspension should remain pending appeal. This therefore is not the case for the matter to be determined since the facts are against the claimants.

Signed: Sir Andrew Collins

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 27 AUG 2014
Solicitors:
Ref No. CON/PKD/JR/SARAI

Notes for the Claimant
If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12