

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

M/309/04

**IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983
AND IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE
BORDESLEY GREEN WARD OF THE BIRMINGHAM CITY COUNCIL HELD ON 10TH
JUNE 2004**

BETWEEN

**(1) JAMIL AKHTAR
(2) MOHAMED ALI
(3) HAROON ASGHAR
(4) ZULFIQAR HUSSAIN**

Petitioners

and

**(1) SHAH JAHAN
(2) SHAFaq AHMED
(3) AYAZ KHAN
(4) SHAUKAT ALI KHAN
(5) MOHAMMED SAEED
(6) CHAUDHRY ZAKER ULLAH
(7) LIN HOMER (Returning Officer)**

Respondents

REPORT TO THE HIGH COURT OF JUSTICE

To:

The Honourable Mr Justice Jack and

The Honourable Mr Justice Roderick Evans

My Lords

1. I was appointed to sit as the Commissioner for the trial of the Election Petition for the Bordesley Green Ward of Birmingham City Council arising from the election held on 10th June 2004 pursuant to section 130 of the Representation of the People Act 1983 ("the 1983 Act").
2. In November 2004 I conducted the Scrutiny in this Petition and rendered my Scrutiny Report to the High Court on 1st December 2004.
3. Between 21st February and 4th April 2005 I conducted the trial of the Petition.
4. On 4th April 2005 I delivered a detailed Judgment in the Petition. A copy of the Judgment accompanies this Report. As my legal and factual findings are set out at length in the Judgment, they need not be repeated here.
5. At the conclusion of my Judgment I certified that:
 - (a) The election for the Bordesley Green Ward on 10th June 2004 was avoided by corrupt and illegal practices on the part of the three Labour Party Respondents
 - (i) Mr Shah Jahan
 - (ii) Mr Shafaq Ahmed
 - (iii) Mr Ayaz Khan.
 - (b) The election for the Bordesley Green Ward on 10th June 2004 was also avoided for general corruption within section 164 of the 1983 Act in that corrupt and illegal practices for the purpose of promoting or procuring the election of the three said

Labour Party Respondents have so extensively prevailed that they may reasonably be supposed to have affected the result of such election.

- (c) The election of each of the three said Labour Party Respondents for the Ward of Bordesley Green shall be void under sections 159(1) and 164(1)(a) of the said Act.
 - (d) Each of the three said Labour Party Respondents shall be incapable of being elected to fill any of the vacancies for the Ward of Bordesley Green under section 164(1)(b) of the said Act.
6. The Petition contained charges of corrupt and illegal practices and I am therefore under a duty under s.145(3) of the 1983 Act to report to the High Court "whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have extensively prevailed at the election of the authority for which the election was held or in any electoral area of that authority's area."
7. Under s.158 of the 1983 Act I am obliged to state "whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election and the nature of the corrupt or illegal practice".
8. Under s.160(1) any report under s.145 "shall state the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt or illegal practice".

9. Consequently, I must report to the High Court that, for the reasons set out in my Judgment, I found that corrupt and illegal practices have extensively prevailed at the election of the authority for which the election was held, namely the Ward of Bordesley Green. In summary, there was extensive personation by the fraudulent use of postal votes to cast votes for the Labour Party Respondents and the fraudulent alteration of postal ballots improperly obtained from the true voters for the same ends.

10. The frauds were so extensive as not only to affect but to determine the result of the election in that Ward: without the fraudulent votes, none of the Labour Party Respondents would have been elected to office.

11. Again, for the reasons set out in the Judgment, I found that there was reason to believe that corrupt practices extensively prevailed in the electoral area of the relevant authority's area, namely throughout the area of Birmingham City Council. On the evidence before me it was reasonable to conclude that the Labour Party had engaged in a concerted campaign to use fraudulent postal votes in problematical or marginal Wards, particularly those where Muslim voters might vote against the Labour Party in protest against the Iraq war.

12. For the purposes of ss.158 and 160 therefore I must state that corrupt and illegal practices were proved against the three Labour Party Respondents, namely
 - (a) Mr Shah Jahan
 - (b) Mr Shafaq Ahmed

(c) Mr Ayaz Khan.

13. Similarly, I must formally name these three Labour Party Respondents under s.160(1) with the consequences that flow from that under ss.160 to 163 of the 1983 Act.
14. Under s.145(4) of the 1983 Act, I am required to report as to "matters arising in the course of the trial an account of which in the Judgment of the court ought to be submitted to the High Court."
15. For the reasons I have set out in the Judgment, I must report that the present system of postal voting contains no effective safeguards against the kinds of fraud that have been perpetrated at the election to which this Petition relates.
16. The system of registering applications by electors to be included on the absent voters' list is seriously defective:
 - (a) the deadline of six working days before polling day is far too short: a registration authority can be swamped by the receipt of many thousands of applications at this late date;
 - (b) there is no method of insuring that the application has been made by the voter concerned: the provision for a signature is meaningless without a specimen signature being lodged with the registration authority and a duty of that authority to check the signature on the application form;

- (c) the provision permitting a voter to ask for a postal vote to be sent to an address other than his address on the electoral register, is an open invitation to fraud.

- 17. Despatching ballot papers by ordinary post in clearly identifiable envelopes simply facilitates theft.

- 18. The Declaration of Identity (DOI) is a valueless document:
 - (a) there is no means of verifying the voter's signature: the Returning Officer does not even check it against the signature on the application to vote;
 - (b) there is no means of verifying the name, address or signature of the witness.

- 19. Permitting completed ballots to be handed to third parties for transmission to the Elections Office invites tampering with the contents. In Birmingham there were many cases of ballot papers being altered between despatch by the voter and arrival at the Elections Office.

- 20. The law relating to altered ballot papers encourages fraudulent alteration. If any alteration on a ballot paper caused it to be treated as a "spoiled" ballot paper and rejected, many of the Birmingham frauds would have been frustrated.

- 21. The policing of the electoral system is wholly inadequate.

22. The Returning Officer has no investigative functions of any kind and has neither the resources nor the powers to prevent fraud. In any event it would be highly undesirable for the Returning Officer and the Elections Office, as employees of the local authority, to be charged with investigating possible frauds by their actual or potential political masters.
23. The attitude of the police leaves a lot to be desired. In general the police do not have the training or the resources to deal with electoral fraud and they show very little enthusiasm for it. Again one must question the wisdom of requiring a local police force in effect to investigate the misconduct of their political masters.
24. The election petition is both inadequate and inappropriate as a method of controlling fraud. For electoral probity to be policed by what are, in effect, private civil law actions brought at the expense of the litigant, cannot be acceptable.
25. My Lords, I am obliged to report that, on the evidence before me, the problem of postal vote fraud (though obvious) has been ignored by politicians of all political Parties and the warnings of the Electoral Commission and of Returning Officers disregarded. The problem could easily and speedily have been solved (as it largely has in Northern Ireland) but it has not been.
26. It is thus my melancholy duty to report to the High Court that there is every prospect that the forthcoming General Election and local authority elections are likely to be marred by the types of fraud that occurred in Birmingham in June 2004.

Richard B. Mawrey QC

Commissioner

4th April 2005