



JUDICIARY OF
ENGLAND AND WALES

HIGH COURT (ADMINISTRATIVE COURT)

27 APRIL 2012

THE QUEEN ON THE APPLICATION OF MARIA GALLASTEGUI

-V-

WESTMINSTER CITY COUNCIL

SUMMARY TO ASSIST THE MEDIA

The High Court (Sir John Thomas and Mr Justice Silber) has today dismissed a challenge by peace campaigner, Maria Gallastegui, against attempts to prevent her sleeping in Parliament Square as part of her protest.

Introduction:

This is set out in paragraphs 1 – 5.

Maria Gallastegui (“the claimant”) is a peace campaigner and has been conducting a protest from a specific site on the East pavement of Parliament Square in London since 2006. She makes a challenge on various grounds to Part 3 of the Police Reform and Social Responsibility Act 2011 (“the Act”), which confers powers to stop “*a prohibited activity*”. This term covers the erection and use in Parliament Square Gardens or on the pavements surrounding it of “tents” or “other structure that is designed, or adapted... for the purpose of facilitating, sleeping or staying in a place for any period” (s143 (1) and (2)). (para 1)

The case for the claimant is that the enforcement of Part 3 of the Act would compel her to end her protest because she could not afford to travel to Parliament Square from her home in Eastbourne every day to conduct her protest. She therefore needs to sleep at the authorised site. (para 4)

Parties and procedural background:

This is set out in paragraphs 6 – 11.

Grounds of challenge:

1: that the decision of Westminster dated 19 December 2011 to enforce Part 3 of the Act so as to direct the claimant to cease all the “prohibited activities” and remove “any prohibited items” (which comprise a structure that is designed or adapted for the purpose of facilitating sleeping or staying at a place for any period) and remove any “prohibited items” from the area covered by the Act was unlawful and unreasonable, having regard to the fact that the

claimant's protest is authorised under section 134 of the SOCPA and that it remains authorised until April 2015 for the purpose of conducting a 24-hour vigil.

2: that the claimant is entitled to a Declaration of Incompatibility under section 4 of the Human Rights Act 1998 ("HRA") on the grounds that the prohibitions contained in section 143 (2) (b)–(d) of the Act are in breach of the claimant's rights to freedom of expression and assembly under Articles 10 and 11, while the power of seizures under section 145 of the Act is in breach of Article 1 Protocol 1 and the prohibition in section 143 and the power of seizure in section 145 of the Act infringes the claimant's right under Article 6 to have a dispute as to civil rights determined by a court because the claimant's rights are "civil rights".

3: that Westminster's decision to enforce the provisions of Part 3 of the Act against the claimant in December 2011 is in breach of the claimant's right to freedom of expression and protest under Articles 10 and 11 and Article 1 of Protocol 1 as well as Article 6 of the ECHR. (para 12)

Relevant Statutory Provisions

These are considered in detail in paragraphs 13 – 18.

Ground 1: Do the authorisations granted to the claimant under Section 134 of SOCPA prevent Westminster using the powers under Part 3 of the Act against her?

This is considered in detail in paragraphs 19 – 29.

Mr Justice Silber, giving the judgment of the Court, concluded:

"This ground of challenge must therefore be rejected because there is no inconsistency between the provisions in Part 3 of the Act and the authorisations granted under section 134 of SOCPA. They deal with different matters. SOCPA authorisations deal with the way in which the police control demonstrations in Parliament Square, while sections 143 and 145 of the Act deal with the different issues of the use of amplifying noise equipment and the prohibition of the erection and use of tents or structures for the purpose of sleeping overnight in the Square. With very considerable hesitation and only because the issue has not been previously decided, we find that this challenge only just reaches the threshold for granting permission. We therefore grant permission, but dismiss without hesitation the claim on the substantive hearing." (para 29)

Ground 2: Claim for Declaration of Incompatibility with ECHR rights

This is considered in detail in paragraphs 30 – 99.

Mr Justice Silber, on behalf of the Court, concluded:

"In our judgment, each of the submissions advanced by the claimant in support of her claim for a declaration of incompatibility fails. There has been no infringement of her rights under Articles 6, 10 and 11 of the ECHR. The provisions plainly do not destroy the right of the claimant to her freedom of expression. They are limited and proportionate. In view of the importance of the issue, we grant permission. We dismiss the claim." (para 99)

Ground 3: Westminster's Decision to invoke the Act infringed the Claimant's ECHR rights

This is considered in detail in paragraphs 100 – 103.

Mr Justice Silber concluded:

“In our view, it was plainly open to Westminster to conclude on the facts of this case that it was entitled to exercise its powers under Part 3. For those reasons we must reject this ground as well. As was the case with regard to ground 1, it is with very considerable hesitation and only because the issue has not been previously decided, we find that this challenge only just reaches the threshold for granting permission. We therefore grant permission, but dismiss the claim on the substantive hearing.” (para 103)

Conclusion:

The Court “unhesitatingly dismiss[ed] the applications.” (para 104)

-ends-

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.