



27 January 2010

PRESS SUMMARY

Application by Guardian News and Media Ltd and others in Her Majesty’s Treasury (Respondent) v Mohammed Jabar Ahmed and others (FC) (Appellants); Her Majesty’s Treasury (Respondent) v Mohammed al-Ghabra (FC) (Appellant); R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) v Her Majesty’s Treasury (Appellant) [2010] UKSC 1

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown, Lord Kerr

BACKGROUND TO THE APPLICATION

The substantive appeals involve five individuals: four of them, A, K, M and G, are appellants; the fifth, HAY, is the respondent and cross-appellant in an appeal by the Treasury. When the appeals were lodged before the Supreme Court, the individuals’ names were concealed by the use of letters. This was the result of anonymity orders first made at the outset of the proceedings in the administrative court and, in the case of A, K, M and G, continued by the Court of Appeal. At the start of the hearing of the appeals, Guardian News and Media Ltd and other members of the press made an application to have the orders set aside. At that stage the Supreme Court decided to set aside the order in the case of G, as the Court was shown material confirming that his identity as someone subject to a freezing order was already in the public domain. He was subsequently named as Mr Mohammed al-Ghabra. The Court decided to postpone consideration of the application relating to A, K, M and HAY until after the substantive hearing.

A, K and M are brothers. On 2 August 2007 each of them was informed that he had been designated under article 4 of the Terrorism (United Nations Measures) Order 2006, subjecting him to an asset freeze, on the basis that the Treasury had reasonable grounds for suspecting that he was, or might be, facilitating the commission of acts of terrorism. As for HAY, on 29 September 2005 his name was added to the consolidated list maintained by the Sanctions Committee of the Security Council (“the 1267 Committee”). On 10 October 2005 the Bank of England issued a press release naming HAY as someone whose name had been added to the consolidated list, as a result of which he fell within the financial sanctions régime under the Al-Qaida and Taliban (United Nations Measures) Order 2006. He was named as Mr Hani al-Sayyid Al-Sebai.

JUDGMENT

The Supreme Court unanimously sets aside the anonymity orders in respect of A, K, M and HAY. Lord Rodger delivered the judgment of the Court.

REASONS FOR THE JUDGMENT

HAY

HAY contended that his identification in any report of the proceedings would result in identification of himself and his wife and children. He also feared that the Egyptian authorities would take action

against his family members in Egypt (**para 18**). But HAY's listing on the 1267 Committee's list had been announced as long ago as October 2005 and he had been named at the time. In addition, since 1999, press articles had appeared about him, some mentioning his wife and children. He had also successfully brought a claim for damages for wrongful imprisonment against the Home Office and had been named in the judgment, which contained details about him. It was plain that the Egyptian Government was well aware of his position (**para 19**). Even though he made press statements and often broadcast on Al-Jazeera, there was no evidence that any members of his family had been adversely affected in any way. The Court concluded that there never had been the slightest justification for making an anonymity order in HAY's case (**para 20**) and named him as Mr Hani El Sayed Sabaei Youssef (or Hani al-Seba'i).

M

M feared that, if his designation as a suspected terrorist was revealed, this might lead to loss of contact, for himself and his children, with the local Muslim community. He also feared that publication of his name would cause serious damage to his reputation in circumstances in which he had not been charged with any criminal offence and so had no opportunity to challenge the substance of the allegations against him. M argued that an anonymity order was needed to protect his rights under article 8 of the European Convention on Human Rights to respect for his private and family life (**para 21**).

As a preliminary point, the Court considered that a press report identifying M would engage article 8 (**paras 37-42**). As the press were founding their case for setting aside the anonymity order on their article 10 Convention rights to freedom of expression, this was a case where both articles 8 and 10 were in play. Having examined relevant case law, the Court considered that the question was whether there was sufficient general, public interest in publishing a report which identified M to justify any resulting curtailment of his right and his family's right to respect for their private and family life (**paras 48-52**).

When answering that question, the Court noted that perhaps the main argument in favour of the anonymity order was that, unlike in the case of a criminal charge, M would not have an opportunity to challenge the Treasury's allegation, in making the freezing order, that M was facilitating terrorism (**paras 61-62**). Arguments against the anonymity order included the following: (a) if newspapers could identify the people concerned, they might be able to give a more vivid and compelling account which would stimulate discussion about the use of freezing orders (**paras 63-65**); (b) by concealing the identities of the individuals subjected to freezing orders, the courts were helping to foster an impression that the mere making of the orders justified sinister conclusions about these individuals (**para 66**); (c) concealing M's identity ran counter to the entire thrust of M's challenge to the whole system of freezing orders (**para 67**); (d) revealing M's identity would contribute to showing how the freezing-order system was affecting different people in different situations (**para 69**); (e) M had himself sought to enter the debate about the merits of freezing orders through press releases issued by his solicitors. The public could hardly be expected to make an informed assessment of the argument if they were prevented from knowing who was making these points (**paras 70-71**); (e) the apparent lack of reaction to the naming of G was relevant since it suggested that the impact of identifying an individual on relationships with the local community was not likely to be as dramatic as might have been anticipated (**para 74**). In these circumstances, when carrying out the ultimate test of balancing all the factors relating to both M's article 8 rights and the article 10 rights of the press, the Court came to the conclusion that there was a powerful general, public interest in identifying M. The Court accordingly named him as Mr Michael Marteen (formerly known as Mohammed Tunveer Ahmed) (**paras 76-77**).

A and K

A and K have left their addresses in London. They have not been in touch with their solicitors, who do not know their whereabouts. Counsel for A and K was therefore unable to put forward any compelling submissions as to the effect which identification of them as parties in these proceedings

would have on them or their families. In that situation, A and K did not appear to have any substantial article 8 interest to counteract the interest of the press in publishing a full report of the proceedings (**para 17**). The Court therefore named A and K as Mr Mohammed Jabar Ahmed and Mr Mohammed Azmir Khan respectively.

NOTE

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. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html