

**THE HIGH COURT
JUDICIAL REVIEW**

RECORD No. 2002 234 JR

BETWEEN

DENNIS RIORDAN

APPLICANT

**AND
THE GOVERNMENT OF IRELAND, THE MINISTER FOR THE ENVIRONMENT AND LOCAL GOVERNMENT, THE ATTORNEY GENERAL
AND IRELAND**

RESPONDENTS

Judgment of The Hon. Mr. Justice Carney delivered on the 23rd day of February, 2005

1. From the foundation of the State, there was a requirement that a candidate for parliamentary election in order to be validly nominated had to lodge a financial deposit. From 1923 until 1992 the amount of the deposit was £100. This was increased to £300 by the Electoral Act, 1992. The deposit was returned to the candidate after the election if he or she obtained a certain proportion of the vote. In the event of the candidate not achieving that proportion of the vote the deposit was forfeit. The requirement for the deposit was to inhibit frivolous candidates standing for election and to confine the ballot to those who were serious about seeking to be elected or had a serious chance of being elected.

2. In *Redmond v. Minister for the Environment* [2001] 4 I.R. 61 Herbert J. struck down the deposit requirement and declared that the provisions of s. 47 and s. 48 of the Electoral Act, 1992 to be invalid having regard to the provisions of the Constitution and in particular Article 16.1 and 40.1 thereof.

3. The said judgment and order of Herbert J. was not appealed and the deposit provisions were replaced by new qualification provisions provided for in s. 46 (4A) and (4B) of the 1992 Act as inserted by the Electoral (Amendment) Act, 2002.

4. One regime was introduced for persons who are not members of registered political parties. Their candidature must be assented to by thirty persons excluding the candidate and any proposer who are registered as Dáil electors in the relevant constituency.

5. A completely different regime is provided for candidates of a registered political party. Such candidates do not require assentors but instead must furnish to the returning officer a Certificate of Political Affiliation signed by the authorised officer of the appropriate political party as provided for in part 3 of the Electoral Act, 1992.

6. The justification for this twin track approach is that the party candidate has already battled within his or her party for the party nomination and can be assumed not to be a frivolous candidate but one who has already demonstrated a commitment to the political process.

7. The applicant sought to be a non-party candidate in the 2002 General Election in the Limerick constituency. Pursuant to the statutory provisions already referred to he was required in advance of standing the election to furnish 30 qualified assentors to his nomination. He contends that this requirement is contrary to the provisions of the Constitution. He also contends that there is unreasonable discrimination between party and non-party candidates in that he would have to organise the attendance of the assentors to his nomination to attend at the local authority office to prove their assent to his candidacy. No such burden lies on the party candidate.

8. The applicant further complains that by virtue of s. 46(5) of the Electoral Act, 1993, he cannot be described as an Independent candidate in a General Election. If he is to be described at all he must be described as a non-party candidate.

9. On foot of these complaints the applicant claims –

(a) A declaration that s. 46(4)(4A) of the Electoral Act, 1992, as inserted by s. 1(d) of the Electoral (Amendment) Act, 2002, is repugnant to the Constitution,

(b) A declaration that s. 46(5) of the Electoral Act, 1992, is repugnant to the Constitution, and

(c) A declaration that s. 52(1)(a) of the Electoral Act, 1992, as inserted by s. 1(f) of the Electoral (Amendment) Act, 2002, is repugnant to the Constitution.

10. The constitutionality of the provisions of the Electoral Act, 1992, as amended by the Electoral (Amendment) Act, 2002, which the applicant seeks to impugn were considered in detail in *King, Stack and Cooney v. The Minister for the Environment, Ireland and the Attorney General*, unreported, the High Court, Kearns J., 19th December, 2003. In that case Kearns J., then of this court, emphatically determined the issues now being raised by the applicant against the stand point now being contended for by the applicant. The judgment of Kearns J. not only is one with which I would agree but is a judgment of this court and the principle of *stare decisis* requires that I should not depart from it save in the most exceptional circumstances. No such exceptional circumstances arise.

11. The only contention of the applicant which is not covered by the said judgment of Kearns J. is his contention that he should be entitled to be described as 'Independent'. It is entirely proper that there should be regulation of the description of persons and parties given on ballot papers. We know the ingenuity which is capable of being brought to bear to have causes described and advertised on ballot papers and also to have exotic descriptions given on the ballot paper. In this country we remember Sean Dublin Bay Rockall Loftus and in the neighbouring jurisdiction we remember the late Screaming Lord Sutch of the Monster Raving Looney Party. If a candidate became entitled to describe himself as 'Independent', I have no doubt the next step would be a claim to set forth, no doubt at some length, what he was 'independent' of. The applicant under the law is entitled to be described as a non-party candidate which is a truthful and factual representation of his position. If he chooses he also has the right to opt for no description. No evidence has been adduced that he will be in any way prejudiced or caused damage by not being entitled to have his preferred description of 'Independent' on the ballot paper.

12. I find that in relation to the latter complaint the applicant has failed to persuade me that his rights are in any way being infringed and so far as the balance of the claim is concerned I hold that I am effectively bound by the decision of my respected former colleague, Kearns J.

13. This application is dismissed.