

AS TO THE ADMISSIBILITY OF

Application No. 14467/88  
by P.S.  
against the United Kingdom

The European Commission of Human Rights sitting in private on  
11 March 1989, the following members being present:

MM. C.A. NØRGAARD, President  
J.A. FROWEIN  
S. TRECHSEL  
F. ERMACORA  
G. SPERDUTI  
E. BUSUTTIL  
G. JÖRUNDSSON  
A.S. GÖZÜBÜYÜK  
A. WEITZEL  
J.C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
G. BATLINER  
J. CAMPINOS  
H. VANDENBERGHE  
Sir Basil HALL  
MM. F. MARTINEZ  
C.L. ROZAKIS  
Mrs. J. LIDDY  
Mr. L. LOUCAIDES  
  
Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the  
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 15 May 1988  
by P.S. against the United Kingdom and registered on  
13 December 1988 under file No. 14467/88;

Having regard to the report provided for in Rule 40 of the  
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of India, born in 1960 and  
temporarily resident in London. He is a Sikh. He is represented  
before the Commission by Messrs. Singh and Choudry, solicitors,  
London.

The facts of the case, as submitted by the applicant and which  
may be deduced from official documents lodged with the application,  
may be summarised as follows:

The applicant arrived in the United Kingdom by air from  
Baghdad on 26 February 1985, travelling on an Indian passport. He had  
been working in Iraq since 1981. He sought entry for two to four  
weeks to visit a maternal uncle, after which he was to return to  
India, prior to going to live in Canada. The applicant was  
interviewed by an immigration officer, with the aid of an interpreter,

as he does not speak English.

According to a letter from the Minister of State, Home Office, dated 17 May 1985, he had said that he intended to return to India for a year to learn English. He had no job to go to, but would live on his savings. His ambition was to settle outside that country. The maternal uncle was contacted by the immigration service and had difficulty remembering anything about the applicant and was surprised to learn that he was to stay for four weeks. The immigration service also noted that the applicant was unemployed and had no intention of working again in India if possible. Factual discrepancies arose during the applicant's interview with the immigration officer. In these circumstances the immigration officer was not satisfied that the applicant was genuinely seeking entry as a visitor and leave was refused. He was, however, granted temporary admission. After two months the Home Office took steps to remove him from the United Kingdom.

On 23 May 1985 his solicitors, Messrs. Singh and Choudry, applied for political asylum on his behalf on the grounds that the applicant is a relative of a Dr. J.S. Chohan, the leader of the separatist Sikh Khalistan movement and that the applicant himself is involved in that movement. As a young Sikh (then 25 years of age) he feared for his life if returned to India. Dr. Chohan averred that if the applicant were returned to India he would be likely to be arrested, interrogated and harassed because of his association with him and his separatist movement. In making this statement Dr. Chohan relied on the experience of what has happened to his other relatives and close associates who have been arrested, interrogated and tortured.

On 22 November 1985, asylum was refused. The Minister of State informed the applicant's Member of Parliament of his decision in the following terms:

"P.S. has an extensive family of half brothers and sisters yet the closest and only relative actually in detention (in India) is an uncle by marriage who was arrested on an allegedly false charge of murder. He himself claims that he is wanted in connection with a shooting that took place in Amritsar in 1981 though he categorically denies involvement in the incident. He does not appear to be of interest to the authorities since he was readily released on 7 September (1981) after being detained overnight for enquiries, on his return to India from Iraq, along with other Sikhs on the flight.

He alleges that the situation for Sikhs has deteriorated since the assassination of Mrs. Gandhi, yet he can hardly claim to be likely to be singled out for persecution because of the incident, as he himself has stated, and his passport confirms, that he was not in India on the date in question.

He stated that neither he, nor his half brother or his brother-in-law, both members (of) the Indian army, have suffered persecution or harassment in any way. Irrespective of when he claims to have joined the Khalistan Movement he is adamant that he has never held any official position in that organisation.

I have carefully considered Mr. Singh's case in the light of your representations and the further information obtained at the second interview but I am not satisfied that he has a well-founded fear of persecution. I am not therefore prepared to alter my previous decision and the Immigration Service will now contact Mr. Singh to advise him of this decision and arrange for his removal from the United Kingdom."

The applicant originally submitted to the Commission Amnesty International Reports from 1986 on the difficult conditions of detention and proceedings against those Sikhs arrested under the provisions of the Terrorist Affected Areas (Special Courts) Act and the Terrorist and Disruptive Activities (Prevention) Act 1985, and in particular those Sikhs detained since the Indian army's storming of the Sikhs' Golden Temple in June 1984. This material had not been before the Secretary of State at the material time and the High Court, in refusing judicial review on 22 May 1987 because the Secretary of State's decision could not be described as unreasonable, hinted that the applicant should request the Secretary of State to review his decision on the basis of the Amnesty Reports.

On 16 February 1988, the Court of Appeal dismissed the applicant's appeal against the High Court's decision and it refused leave to appeal to the House of Lords on 11 March 1988. The House of Lords itself refused leave to appeal on 24 November 1988. The applicant's removal from the United Kingdom back to India is imminent.

The applicant subsequently submitted to the Commission Amnesty International Reports dated August and October 1988 reviewing human rights violations in India and, in particular, the fate of 324 Sikhs held without trial for more than four years since the storming of the Golden Temple in Amritsar in June 1984. He has received letters from his family describing their various fears about the turbulent situation where they live. According to newspaper reports a fellow Sikh was returned to Delhi and immediately arrested on the basis of computerised information against him. The applicant's activities may similarly be known, for there have been reports about the refusal of his request for asylum in Punjabi newspapers. The applicant claims that the Secretary of State has failed to take this and other relevant material into account.

The applicant claims to fear for his life if he is returned to India. This fear is aggravated by the existence of the National Security Act 1980, which permits detention without charge or trial for two years, by the Terrorist and Disruptive Activities (Prevention) Act, the Terrorist Affected Areas (Special Courts) Act, section 1.1A of the Indian Evidence Act (which places the burden of proof on the accused) and amendments to the Indian Constitution suspending the protection afforded to the right to life.

## COMPLAINTS

The applicant complains of the refusal of political asylum in the United Kingdom and claims to have a well-founded fear of persecution if returned to India.

## PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 15 May 1988 and registered on 13 December 1988.

On 16 December 1988 the Commission refused the applicant's request, under Rule 36 of its Rules of Procedure, to indicate to the respondent Government a stay of the applicant's removal pending the Commission's decision on admissibility.

## THE LAW

The applicant has complained that the United Kingdom Government have unjustifiably refused him political asylum and claims that his imminent removal back to India will expose him to a serious

risk of persecution, because he is a Sikh closely associated with the Sikh separatist Khalistan movement.

The Commission recalls its case-law that, whilst the Convention does not guarantee a right, as such, to political asylum, a person's removal to a country where there are serious reasons to believe that the individual will be subjected in the receiving State to severe ill-treatment may give rise to an issue under Article 3 (Art. 3) of the Convention which provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

However, it is only in exceptional circumstances that such a removal will give rise to an issue under this provision, and the burden lies on the applicant to substantiate his fear that he will be exposed to treatment or punishment falling under the Article (see No 10308/83, Altun v. Federal Republic of Germany, Dec. 3.5.83, D.R. 36 pp. 209-235; No. 10078/82, M v. France, Dec. 13.12.84, D.R. 41 p. 103; No. 10479/83, Kirkwood v. the United Kingdom, Dec. 12.3.84, D.R. 37 pp. 158-191 and No. 8581/79, Dec. 6.3.80, D.R. 29 p. 48).

The Commission has examined the material which the applicant has submitted concerning the protection of human rights in India with particular regard to the Sikh community. It has also examined the applicant's claims concerning his personal situation. However it finds no evidence to cast serious doubt on the Secretary of State's conclusion in November 1985 that the applicant's fear of persecution is not well-founded. Given the applicant's absence from India since 1981, there is no evidence of any close association with the Khalistan movement, or any involvement with Sikh terrorism, or any particular interest in his case being shown by the Indian authorities. In these circumstances the Commission concludes that the applicant's claims are unsubstantiated and that the case discloses no appearance of a violation of Article 3 (Art. 3) of the Convention. It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)