AS TO THE ADMISSIBILITY OF

Application No. 27724/95
by Kulvinder Singh DHALIWAL
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 6 March 1995 by Kulvinder Singh DHALIWAL against the United Kingdom and registered on 26 June 1995 under file No. 27724/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Indian national, born in India in 1964 and presently detained in H.M. Prison Ashwell, Leicestershire. He is represented before the Commission by Mr. G.S. Kang, a solicitor. The facts as submitted by the applicant may be summarised as follows.

The applicant's father died in 1969. In the same year his mother left the applicant and his two brothers in the care of his paternal grandparents in India. In 1976 the applicant's uncle took responsibility for the children and brought them to the United Kingdom where they went to live with his family.

After leaving school at 16, the applicant attended technical college and then started work as a general labourer at a foundry. He was employed for one year before the foundry was closed in 1983 when he was made redundant. In the same year his paternal grandfather died in India. The applicant suffered severe depression relating to the events in his family and his lack of employment and in March 1983 he attempted suicide. He made a further suicide attempt a few months later and was then kept in hospital for a period of six weeks. On release from hospital he went to live in an area he did not know, relations between him and his uncle having become strained.

On 20 January 1984, the applicant was convicted of murder by

Stafford Crown Court and sentenced to life imprisonment. The applicant pleaded not guilty. The trial judge recommended a tariff of 12 years with which the Lord Chief Justice agreed. The Secretary of State decided that the tariff should be 15 years. No recommendation for deportation was made by the Court. The applicant only became aware of these tariff periods in February 1994 after the change in policy resulting from the judgment in the House of Lords in R v Secretary of State for the Home Department ex parte Doody ([1993] 3 All ER 92).

On 6 June 1990 the Secretary of State took a decision to make a deportation order against the applicant pursuant to section 3(5)(b) of the Immigration Act and to make directions for his removal to India. The Home Office Explanatory Statement of 27 September 1990 set out the applicant's history and details of the crime. It concluded:

> "The [applicant] is 25 years old and has spent the latter half of his life in the United Kingdom. The only relatives the [applicant] has in the United Kingdom are his 2 brothers and their families and his uncle with whom he is not on good terms. However, in India he has a paternal grandmother, with whom the United Kingdom family maintain contact and 2 married aunts. The [applicant] himself is unattached.
>
> The [applicant] was specifically asked by the Immigration Officer at an interview on 1 March 1990 to put forward any compassionate factors he wished to be considered. He said that he was young when he committed the crime and had never been in trouble before. He was in good health. He would have nowhere to live in India. There appeared to be no reason to believe however that the [applicant] could not adapt to life in India, where he had a number of relatives, upon his release.
>
> In view of the extreme seriousness of the offence of which the [applicant] had been convicted, and having regard to all the relevant circumstances, including those set down in paragraph 164 of HC 388, the Secretary of State did not consider that circumstances of a sufficiently compassionate nature prevailed in the [applicant's] case. He therefore decided it would be conducive in the public good to deport the [applicant] .....and to give directions for his removal to India."

On 8 November 1991, the applicant's appeal from that decision was heard by the Immigration Appeal Tribunal. The Tribunal considered inter alia the Social Enquiry Report of the applicant's probation officer who had been involved in the applicant's case since his trial and heard evidence from her. She considered that the applicant should be permitted to stay in the United Kingdom for the following reasons:

a) at the time of the murder the applicant had just been discharged from hospital and was vulnerable;
b) he was now significantly older and his emotions appeared stable,
c) he had made good use of his time in prison,
d) he had lived in the United Kingdom, initially with his aunt and uncle and more recently in prisons, since the age of 12 and had adopted the way of life in the United Kingdom and had very little knowledge of an Indian lifestyle other than childhood memories,
e) in view of his history of suicide attempts, deportation could seriously undermine his progress and leave him in a very vulnerable position,
f) he had been reunited with the members of his extended family in the United Kingdom and would be able to work with his brothers in their business in Scotland,
g) on release he would be subject to life licence and there would be no difficulties enforcing the requirements of the licence.

She and the Governor of the prison both expressed the view that the chance of the applicant re-offending was remote and that the

applicant would not be a risk in the future. Further, she specifically disagreed with the emphasis in the Home Office Explanatory Statement placed on the number of relatives the applicant had in India. She stated that apart from his aged grandmother there were only two aunts who were both married and with whom it would not be appropriate for him to go and live since, according to Sikh community rules, they had become part of their husbands' families.

On 31 January 1992, his appeal was rejected. The Tribunal found that when the public interest was balanced against the compassionate circumstances of the case, deportation was the right course on the merits.

An application for judicial review was lodged in August 1992 and leave was granted in November 1992. On 13 April 1994 the application was refused. The Court found that the Immigration Tribunal's findings were not inappropriate or inadequately expressed, that it had come to the conclusion that, in view of the crime that the applicant had committed, his deportation was appropriate and that its reasoning process was not flawed.

On 1 March 1995 the Court of Appeal refused leave to appeal.

Relevant domestic law

Section 3(5) of the Immigration Act 1971 provides

> "(b) A person who is not a (British citizen) shall be liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good."

An appeal from that decision can be brought before the Immigration Appeal Tribunal under section 15(7)(a) of the Immigration Act 1971 and must be determined in accordance with section 19(1)(a)(ii). That provision provides that the appeal is to be allowed where it is found that:

> "...the decision or action involved the exercise of a discretion by the Secretary of State [and]....that the discretion should have been exercised differently."

The Immigration Appeal Tribunal considered the appeal in the light of paragraphs 167 and 164 of HC 251 (1990) which provide as follows:

> "167. The Secretary of State has the power to deport a person if he deems it conducive to the public good. General rules about the circumstances in which deportation is justified on these grounds cannot be laid down, and each case will be considered carefully in the light of the relevant circumstances known to the Secretary of State including those listed in paragraph 164.
>
> 164. In considering whether to give effect to a recommendation for deportation made by a court on conviction the Secretary of State will take into account every relevant factor known to him, including:
>
> - age;
> - length of residence in the United Kingdom;
> - strength of connection with the United Kingdom;
> - personal history, including character, conduct and employment record;
> - domestic circumstances ;
> - the nature of the offence of which the person was convicted;
> - previous criminal record;
> - compassionate circumstances;
> - any representation received on the person's behalf."

COMPLAINTS

1. The applicant complains about the decision of the Secretary of State to increase his tariff period by three years, which he only became aware of in February 1994. He claims that it was arbitrary and/or perverse, in that the Secretary of State increased the tariff without the benefit of the relevant psychiatric and medical evidence and that this rendered his detention unlawful under Article 5 para. 1(a) of the Convention.

The applicant further claims that he is detained for the purposes of deportation as laid down in Article 5(1)(f) and therefore has a right under Article 5 para. 4 of the Convention to have the lawfulness of his detention determined by a court.

2. The applicant complains that his deportation would constitute a violation of his right to respect for his family and private life as guaranteed by Article 8 of the Convention. He claims that he has no immediate relations to turn to in India whereas he has two brothers and an uncle in the United Kingdom.

3. Finally the applicant complains that he is being deprived of the full benefit of a vocational training whilst in prison because the prison authorities feel that such training would be of no use to him in India. He invokes Article 2 of Protocol No. 1 of the Convention.

THE LAW

1. The applicant complains about the decision of the Secretary of State to increase the tariff period that he has to serve before he can be released from 12 years to 15 years. He claims that his detention cannot be lawful within the meaning of Article 5 para. 1(a) (Art. 5-1-a) since the tariff period was increased arbitrarily. He further complains that he is now detained under Article 5(1)(f) (Art. 5-1-f) and is therefore entitled to certain guarantees, such as the right to a review by a court.

Article 5 (Art. 5) provides so far as relevant:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Commission recalls that under English law, in cases of mandatory life-sentences, the release of the prisoner is entirely a matter within the discretion of the Secretary of State who is not bound by the judicial recommendation as to the length of the tariff period. The guarantee of Article 5 para. 4 (Art. 5-4) of the Convention is considered to be satisfied by the original trial and appeal proceedings and confers no additional right to challenge the lawfulness of continuing detention (see Eur. Court H.R. Wynne judgment of 18 July 1994, Series A no. 294A, pp. 14-15 paras. 35-36).

The Commission recalls that the applicant was convicted of murder and sentenced to mandatory life imprisonment and that he is still serving that sentence. Accordingly, there are no new circumstances that entitle the applicant to a review of his continued detention under the original mandatory life sentence.

In view of the above, the decision of the Secretary of State to increase the tariff period cannot render the applicant's continued detention under the original mandatory life sentence unlawful.

Insofar as the applicant claims that he is now being detained for the purpose of deportation and not pursuant to his conviction for murder, the Commission does not consider this to accord with the facts as submitted by the applicant. The applicant was convicted in 1984 and sentenced to life imprisonment, the judge set a tariff period of 12 years and the Secretary of State increased it to 15 years. The earliest date for discharge would therefore be 1999, (or 1998 as the applicant has himself in fact submitted). The Commission concludes that the applicant is still being detained pursuant to his conviction for murder, and that the detention is therefore lawful within the meaning of Article 5 para 1(a) (Art. 5-1-a) of the Convention.

It follows that this part of the application must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that his expulsion from the United Kingdom would constitute a violation of his right to respect for his private and family life guaranteed by Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that while Article 8 (Art. 8) of the Convention does not in itself guarantee a right to enter or remain in a particular country, issues may arise where a person is excluded or removed from a country where his close relatives reside or have the right to reside (see Eur. Court H.R. Moustaquim judgment of 18 February 1991, Series A no. 193, p. 18, para. 36, No. 9478/81, Dec. 8.12.81, D.R. 27, p. 243, No. 27275/95 Dec. 28.6.95, (unpublished)).

In view of the approach taken below, the Commission does not find it necessary to determine whether there has in fact been an interference in the applicant's private or family life and for the purposes of this decision will assume that to be the case.

The Commission recalls that an interference in an applicant's right to respect for his private or family life can be justified if it is in accordance with the law, pursues a legitimate aim, is necessary in a democratic society and proportionate.

The deportation order was made pursuant to section 3(5) of the Immigration Act 1971. The legality of the expulsion has been reviewed by the Immigration Appeal Tribunal and the High Court in Judicial Review proceedings. There is no indication, nor is it alleged, that the deportation order is not in accordance with the law.

The Commission considers that the expulsion pursued the legitimate aim of public safety, the prevention of disorder or crime or the protection of the rights and freedoms of others, within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission considers that the nature of the offence committed and the severity of the penalty imposed are essential elements to be taken into account when determining whether the decision to expel the applicant was proportionate (see Bouchelkia v. France, Comm. Report 6.9.95, para. 52).

The Commission recalls that the applicant was convicted of murder and that the Secretary of State gave significant weight to the severity of the crime when deciding whether to deport him. The Immigration Appeal Tribunal and the High Court considered that the Secretary of State had been justified in giving such weight to the severity of the crime and did not consider that compassionate circumstances raised by the applicant outweighed that factor. The Commission further notes that the penalty imposed for the crime was mandatory life imprisonment and that the tariff period was first set at 12 years and then increased by the Secretary of State to 15 years, an indication that there were few, if any, mitigating factors in the applicant's favour as regards the circumstances of the crime.

The Commission further recalls that the applicant only arrived in the United Kingdom from India at the age of 12 years and appears to still be able to speak the language of his childhood. Further, while he has two brothers in the United Kingdom, he has an aged grandmother and two aunts in India. He is single and has no children.

Taking into account the margin of appreciation accorded to States in the area of immigration (see Berrehab judgment of 21 June 1988., Series A no. 138, p. 15, para. 28.) the Commission considers that, in view of the extreme seriousness of the crime and the weakness of his family ties in the United Kingdom, the deportation of the applicant can be considered as a proportionate measure and so necessary in a democratic society for the prevention of disorder or crime and public safety (see Chorfi v. Belgium, Comm. Report 21.12.95, para 49, Bouchelkia v. France, Comm. Report 6.9.95, para. 52).

This part of the application must therefore also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that he is being deprived of a right to vocational training whilst in prison and invokes Article 2 of Protocol No, 1 (P1-2). That Article provides:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Commission notes that the applicant has merely alleged that he is being deprived of the full benefit of a vocational training whilst in prison because the prison authorities feel that such training would be of no use to him in India. No details of what courses have been applied for or which have been refused have been given. Even assuming therefore that Article 2 of Protocol No. 1 (P1-2) could apply to education in prisons and that there are no domestic remedies to exhaust, the complaint is entirely unsubstantiated.

It follows that this part of the complaint must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber