

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13267 of 2016 (O & M)
Date of decision: 17.01.2017

H.C. Arora Advocate and another

....Petitioners

Vs.

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Petitioner H.C. Arora, Advocate in person.

Mr. Satya Pal Jain, Senior Advocate/Additional Solicitor
General of India with Mr. Dheeraj Jain, Senior Counsel
for Government of India and Mr. Gautam Mittal,
Advocate for respondent No.1

Ms. Ritu Punj, Addl. AG, Punjab for respondents No.2
and 3.

S.S.SARON,J.

Mr. Satya Pal Jain, Senior Advocate, has submitted in
Court today a letter dated 13.12.2016 from the High Commission
of India, India House, Aldwych, London, addressed to the Foreign
and Commonwealth Office of the Government of United Kingdom,
London requesting the latter for change of policy of the United
Kingdom Government regarding weapons or other items used in
evidence in crime of this nature, i.e. relating to the act
committed by Shaheed Udham Singh, for avenging the
Jallianwalla Bagh Incident are not returned. The letter is taken
on record.

Copies of the petition were given to Mr. Satya Pal Jain, Senior Advocate/Additional Solicitor General of India appearing with Mr. Dheeraj Jain, Senior Counsel for Government of India and Mr. Gautam Mittal, Advocate; as also to Mr. P.P.S. Thethi, Additional Advocate General Punjab so as to enable them to seek instructions in this case whereby the return of the articles of Shaheed Udham Singh have been sought.

Heard learned counsel for the parties.

The Public Interest Litigation has been filed by the petitioner seeking appropriate directions to the respondents i.e. the Union of India; State of Punjab, through its Chief Secretary and Secretary, Government of Punjab, Ministry of Cultural Affairs to take up the matter with the Government of United Kingdom (UK) for bringing back to India the belongings of Shaheed Udham Singh also known as Shaheed Mohammed Singh Azad. These items include a revolver, ammunition, cobbler's knife and diaries which it is stated are in the possession of the Metropolitan Police, London.

According to the petitioner, the return of the articles of Shaheed Udham Singh has been sought on the ground that it is the fundamental duty of all citizens of India individually as well as collectively, under Article 51-A of the Constitution of India, including that of Government of India, to take requisite steps to seek return of such items so that the citizens of India may cherish the memory of the martyr Shaheed Udham Singh, who

was executed in London on 31.7.1940 for committing a murder so as to avenge the Jallianwalla Bagh massacre at Sri Amritsar Sahib.

In response to a formal letter dated 17.2.2004 (Annexure P6/2) from the High Commission of India to the South Asian Department, Foreign and Commonwealth Office, London, a similar request had earlier been declined by the latter vide letter dated 12.3.2004 on the ground that the policy of the UK Government had been that weapons or other items used in evidence in a crime of this nature were not returned.

The petitioner submitted that the said request could now be reiterated when relationship between the two Governments were at their best. Mr. David Cameron, Hon'ble Prime Minister of UK during his visit to Jallianwala Bagh, Sri Amritsar Sahib had made a statement on 20.2.2013, that the 1919 Jallianwala Bagh massacre was a deeply shameful event in British history. Therefore, according to the petitioner, it would not be a vain expectation that now the Government of UK may accept the request of the Indian Government to return the belongings of Shaheed Udham Singh.

The South Asian Department of the Foreign and Commonwealth Office had in fact in its reply to the Indian High Commission on 12.3.2004 (Annexure P6/3) submitted that it had the honour to reply to the Indian High Commission note dated 17.2.2004 and inform that from the items on the list attached to

the Note Verbale, only the diaries, the cobbler's knife, the revolver and the ammunition were in possession of the Metropolitan Police, London. These items were used in evidence in the trial of Udham Singh. The policy of the UK Government was that weapons or other items used in evidence in a crime of this nature were not returned. Accordingly, it was mentioned that it would not be possible to meet the request of the Government of Punjab to return these items. It had also mentioned that the Metropolitan Police, London did not hold the other personal effects listed and their whereabouts were not known.

According to the learned Counsel for the State of Punjab the matter was taken up by the Punjab Government in pursuance to letter (Annexure P5) of the Government of Punjab addressed to the Director General, National Archives of India, Janpath, New Delhi. However, it was submitted that the belongings of Shaheed Udham Singh were in Britain and could not be secured by the Punjab Government.

It may also be noticed that a letter dated 8.6.2016 (Annexure P6/1) was written by the Government of India, Ministry of External Affairs, Europe West Division in response to an application under the Right to Information Act, 2005. In terms of the said letter (Annexure P6/1), it was informed to the applicant seeking the information that Shaheed Udham Singh's diaries, the cobbler's knife, revolver and ammunition were in the possession of Metropolitan Police, UK. The correspondences done

between the High Commission of India in London and UK Foreign Commonwealth Office were enclosed.

A perusal of the communication which has been enclosed shows that a letter dated 17.2.2004 (Annexure P6/2) was addressed by the High Commission of India in London in terms of which compliments were presented to the Foreign and Commonwealth Office and it was with honour stated that the Government of Punjab wished to set up a museum in memory of Udham Singh (also known as Mohammed Singh Azad) who was executed in London on 31.7.1940. It was understood that the articles (list enclosed) belonging to him, which were seized at the time of his arrest were in possession of the relevant agencies of the British Government. The High Commission had the honour to convey a request for return of these items to India.

Therefore, it is quite evident that there has indeed been correspondences going on between the two Governments for the return of the articles of Shaheed Udham Singh.

Mr. Satya Pal Jain, Senior Advocate/Additional Solicitor General of India submitted that though the matter had been closed earlier, however, fresh attempts were being made with the British Government. He has today submitted in Court a copy of letter dated 13.12.2016 addressed by the High Commission of India, India House, Aldwych, London to the Foreign and Commonwealth Office of the Government of United Kingdom requesting the esteemed Foreign and Commonwealth Office for

change of the policy of the UK Government which has been to the effect that "weapons or other items used in evidences in crime of this nature are not returned" as these articles belonging to Shaheed Udham Singh are important part of India's history and their return is of immense value for the country.

However, in view of the earlier letter dated 12.03.2004 (Annexure P6/3), it is quite difficult to perceive as to how a writ could be issued to the Government of UK to return these articles.

A Division Bench of this Court in **Singh Legal Foundation v. Union of India**, CWP No.16584 of 2005 decided on 30.07.2007 held that the writs and orders issued by the Courts are subject to the territorial restraints and, therefore, nothing can be said about the controversy raised by the petitioner in the said case as the laws of sovereign countries have to be tested before the Courts which are subject to such sovereign domain.

The controversy in the said 'Singh Legal Foundation case' (Supra) related to the protection of fundamental rights of Indian citizen in France which had prohibited the use of conspicuous religious symbols in Government funded schools. A circular dated 06.12.2005 had been issued disabling the wearing of turbans while being photographed for issuance of a driving license. This Court held that the jurisdiction of a sovereign State connotes, "essentially the extent of each State's right to regulate conduct on the consequences of events". A State may regulate

its jurisdiction by legislations or by taking recourse to the executive or administrative action and its jurisdiction concerns both international law and internal law. The power to exercise jurisdiction includes, both the power to prescribe rules and power to enforce them. On the basis of the same, no merit was found in the prayer of the petitioner in the said case and it was dismissed.

Mr. H. C. Arora, Advocate appearing in person has laid emphasis on the letter dated 12.03.2004 (Annexure P-6/3) from the South Asian Department, Foreign and Commonwealth Office, London to contend that no fresh efforts had been made by the Government of India. It is in fact in the said circumstances, Mr. Satya Pal Jain, Additional Solicitor General of India was requested to see whether fresh attempts could be made in this regard and also whether further steps could be taken for the return of the articles in question of Shaheed Udham Singh.

In terms of the letter dated 13.12.2016 that has been submitted in Court today, the Government of India has made a fresh request to the Foreign and Commonwealth Office of the Government of U.K. at London for change of the policy of the UK Government which is to the effect that weapons or other items used in evidences in crime of this nature are not returned. It is mentioned that these articles belonging to Shaheed Udham Singh are important part of India's history and their return is of immense value for the country.

Mr. Satya Pal Jain, Additional Solicitor General of India has further submitted that the Government of India will and would continue to explore ways and means for obtaining a satisfactory and amicable solution to the issue with the U.K. Government.

Therefore, in view of the assurance given, for the present it would be just and expedient to close the writ and we hope that the Government of India continues in its endeavour for return of the articles of Shaheed Udham Singh. It is hoped that something positive is achieved at least by the time the centenary of the Jallianwalla Bagh tragedy is to be remembered i.e. on 13th April, 2019.

In the circumstances, the present petition is disposed of.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

17.01.2017
A.Kaundal

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes