

SYNOPSIS

1. That 17 Indian were given death penalty by Sharjah court of U.A.E. on the allegations that they had killed one Pakistani youth. The incident had created ripples in the Indian media and the hue and cry of the public and families, forced the Ministry of External Affairs on the intervention of Prime Minister's office to make arrangements for providing of legal aid to the victims.
2. That the petitioner organization committed to upholding of human rights and also campaigning against death penalty around the world sent a team to U.A.E. which met the lawyers on 13.4.2010 and the prisoners on 14.4.2010 and the meeting with the 17 prisoners disclosed that they were tortured in police custody and were forced to make confession, which they denied and no opportunity of fair trial was provided to them. The petitioner organization released a detailed report on 20.4.2010 and on the basis of the said report the Amnesty International a Human Rights Organization of Landon has issued urgent action.
3. That it is failure of the Consulate of India at U.A.E. which was duty bound to take care of its citizens and to ensure about their welfare. This is specified under the duties and functions of the Consulate.
4. That the petitioner organization is filing the present public Litigation Petition to ensure that the citizens of India are taken care of by the Consulate and Embassies abroad, so that the citizens of India and their rights under the International Law and Domestic Law is protected.
5. That the organization is filing the present petition to make the Ministry of External Affairs responsible for the welfare and human rights of the Indian citizens and so the present Public Interest Litigation.

(NAVKIRAN SINGH)

(RUBINA N.SINGH)(GURSIMRAN SINGH)(SANJEEV K.BANGA)

CHANDIGARH: A D V O C A T E S

DATED:29.04.2010 COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. _____/2010

(Public Interest Litigation)

Lawyers for Human Rights International (Regd.)

through Tejinder Singh Sudan Advocate, President Chandigarh Unit, resident of H.No.1727, Phase-5, Sector 59, S.A.S.Nagar, Mohali.

.... Petitioner

Versus

1. Union of India through its Secretary,
Ministry of External Affairs, South Block,
New Delhi.

2. Indian Consulate U.A.E. through Consulate General of India, New Delhi.

.... Respondents

Petition under Articles 226/227 of the Constitution of India for issuance of a writ of Mandamus or any other writ, order or direction directing the respondents in the below terms:-

- i) That the respondent No.1 be directed to ensure that the Indian Consulates/Embassies should ensure that whenever any Indian citizen is taken in custody on a foreign land, where an Indian Mission is available, the Consulate/ Embassy of India should ensure of protection of rights and welfare of its citizens in police custody or in judicial custody.
- ii) That the respondent No.2 should ensure that the citizens of India are protected of their rights in U.A.E. and the respondent No.2, should ensure adherence to its functions as enumerated on its website under the heading labour and welfare.
- iii) That the respondent No.2 should ensure that on the arrest of every Indian citizen, the U.A.E. States should ensure that the information should be supplied to the Indian Consulate and the Indian Consulate should ensure protection of their life and liberty and rights as per the International and Domestic Law.
- iv) That the respondent No.2 be directed to make available details of the Indian citizens in police custody as well as judicial custody in the various states of U.A.E.
- v) That the respondent No.2 should ensure that every arrest and detention of Indian citizen in police station or jail should be supervised by the respondent No.2 and sufficient staff is available at its disposal to ensure proper guidance and supervision for ensuring proper legal aid to the people who are arrested.
- vi) That as interim measure the petitioner organization prays that this Hon'ble Court may direct respondent NO.2 to provide necessary assistance to the petitioner body in ensuring that proper legal aid is provided to all the 50 Punjabi prisoners who are detained in Sharjah jail of U.A.E.

Respectfully showeth:-

1. That the petitioner organization is comprised of Lawyers who are practicing in this Hon'ble court as well as the Districts Courts of Punjab, Haryana and Chandigarh. Though the organization has membership throughout the world, however the units of Punjab, Haryana and Chandigarh are actively involved in upholding of Human Rights and rule of law through Public Interest Litigations and by providing free legal aid to the persons who are unable to afford litigation. The organization also trains and disseminates Human Rights knowledge through seminars and workshops. The organization does not accept any grants nationally or inter-nationally and the members of the organization make expenditure from their own earnings. So the petitioner organization is competent to move this Hon'ble Court by way of the **Public Interest Litigation** under Articles 226/227 of Constitution of India.

2. That the petitioner organization is part of an International movement, which is campaign against death penalty and is spear heading a campaign in India to secure release and relief to the victims of the Death Penalty in India and also to ensure that no prisoner of death penalty is confined in solitary confinement.

That in June 2009, the petitioner organization was elected on the steering committee of a World Organization by the name of World Coalition against Death Penalty in its General Assembly held at Rome in Italy and now the petitioner organization is running an international campaign against death penalty alongwith other world acclaimed organizations like Amnesty International.

3. That the news of 17 Indians being sentenced to death by a Shariat Court of Sharjah, U.A.E. spread like a wild fire and there was a great hue and cry in India and resultantly the Prime Minister's office had to instruct Ministry of External Affairs to ensure that effective legal counsel is made available to the victims at the expense of the Indian Government. It appeared in the news papers that the law firm of a senior lawyer namely Mohammad Salman has been engaged by the Indian Government and after finding the details of the law firm from the internet, the petitioner organization contacted the lawyers on telephone and verified about the facts of the case.

4. That the petitioner organization after talking to the lawyers about the said incident in which the 17 youth were given death penalty due to the killing of one Pakistani youth decided to visit Sharjah to meet the lawyers and the prisoners. The petitioner organization decided to send a fact finding mission to Sharjah and the organization was represented by its General Secretary Mr. Navkiran Singh a Lawyer practicing at High Court of Chandigarh and another lawyer of District Courts Chandigarh namely Mr. Gagan Aggarwal who is also a office bearer of the Chandigarh Unit of the organization.

5. That the lawyers of the petitioner body met the lawyers of the 17 youth who have been sentenced to death. The lawyers namely Mohammad Salman and Mrs. Bindu Suresh disclosed to the LFHRI team on 13.4.2010 in their Dubai office, that though the judgment of conviction was delivered on 29.3.2010 and the appeal was also filed on 4.4.2010, however they did not have any copy of the judgment or other records with them. The next day on 14.4.2010 the team went to meet the 17 prisoners in Sharjah jail which is in the State of Sharjah one of the seven States of U.A.E. and met the prisoners for around 2 hours.

6. That the meeting with these 17 prisoners revealed that 16 of these prisoners belonged to State of Punjab and one belonged to State of Haryana. One more prisoner namely Mr. Sharma met the team and also reported that there are around 50 Punjabi youths detained in the said jail and besides these 17 youth, there is another young person who has been given death penalty in another case and he alongwith 7 other Punjabi youth are facing murder charges, in which there are chances of being given death penalty.

7. That these 17 Punjabi youth disclosed horrendous tales of torture by the Sharjah police of C.I.D. Branch for 9 continuous days, in which they were given electric shocks and beatings with golf sticks and plastic pipes and they being forced to make confession of the crime. They also reported that their religious symbols of Sikhism were degraded and there were disrespected to their religion being other than Islam. They also reported humiliation and ill-treatment in the jail. The most startling fact was that throughout the police custody and almost till they were convicted i.e. around one year no body from the Indian Consulate ever visited them.

8. That the petitioner organization released a detailed report to press and media on 20.4.2010 which contained the details of the 17 prisoners condemned to death and also how the investigation was done in a biased manner and how evidence was manufactured to prejudice the court and how the human rights and religious rights of these individuals were violated. It also revealed that the whole court process took place in Arabic language which is not understood by these individuals and the translator provided to them was translating the court proceedings from Arabic to Hindi, which was partially understood by these rural based Punjabis. The report also highlighted the callous attitude of the Indian Consulate and its also highlighted what remedial actions could be taken to ensure future occurrence of such arbitrary and discriminatory judicial processes against the citizens of India on foreign soil. The report dated 20.4.2010 running into five pages is being appended herewith as **Annexure P-1**.

9. That the report was widely circulated internationally and the facts revealed in the report forced the Amnesty International a Human Rights Watch Dog Organization based in London to release a urgent action in the matter and the said urgent action has brought this incident to the International Attention. A copy of the said urgent action dated 22.4.2010 is being appended herewith as **Annexure P-2**.

10. That the report of the petitioner organization and the urgent action of the Amnesty International was transmitted by the petitioner organization to the Ministry of External Affairs India, Consulate General of India U.A.E. and Minister of Justice U.A.E.

11. That after hearing the gory treatment given to these youth who are in their prime age between 22 to 30 years and the indifferent attitude of the Indian Consulate at U.A.E. evoked the petitioner organization to find solutions to the problem on permanent basis.

12. That the petitioner went through the website the Indian Consulate of U.A.E. and also had a talk with the Consul General of India Mr. Sanjay Verma and discussed the whole issue with him and also requested the Consulate General to ensure that all the Indians detained in various police stations and jails of U.A.E. are provided with help from the Indian Consulate.

13. That the website of the Consulate General of India U.A.E. disclosed that under the heading of Labour and Welfare the Indian Consulate was claiming to be conducting functions of labour and welfare and in the said functions it was specifically mentioned that the Indian Consulate was coordinating and liaisoning with local police and jail authorities, besides visiting prisons to ascertain the welfare of the Indian inmates and to take up their problems with the concerned authorities and other functions. The detail functions being performed by the Consulate office of India in U.A.E. are contained in **Annexure P-3**.

14. That however the factual position is that either the Indian Consulate is never informed about the arrest or detention of its citizens in U.A.E. police stations or jails and in case such information is given or the Indian Consulate comes to know of it, they fail to meet the prisoners on a regular basis. The 17 prisoners informed the team of the LFHRI that the prisoners are not visited by

any official from the Indian Consulate for several months together. This Hon'ble Court can seek information from the Indian Consulate to know the veracity of these allegations. However it is a fact that the Indian Consulate was unaware of such legal proceedings taking place in U.A.E, against its citizens which could attract death sentence and its ignorant about other cases which are pending in U.A.E. which might result in death sentence.

15. That everybody is interested in the welfare of the Indians who are living abroad, but have retained their Indian citizenship. The Indian government and specially the Indian Consulates and Embassies should be also interested in the welfare of its citizens. The citizens who are not looked after by its government are unfortunate. We have to devise methods to ensure that rights of our citizens living abroad are protected to the maximum. Our Consulates and Embassies do not have the only function to maintain diplomatic relationships or economic relationships. Human lives are equally important and our nation is fastly moving into the categories of self sufficient and self reliant nations and we need to also change our attitude towards our citizens and start giving them more respect. The present petition is an effort in that direction.

16. That Article 21 of Constitution of India enshrines every citizen of India a right to life and liberty and that protection and protection of human rights as per the International Conventions and declarations are binding on the nations which have signed the same. Right to fair trial and protection against torture are fundamental rights, which are even protected under the U.A.E. Constitution. However the Indian Consulate and Ministry of External Affairs themselves claim to be conducting functions as enumerated under the heading Labour and Welfare, which the Indian Consulate has failed to do so and so has given a cause of action to the petitioner organization which is a human rights organization, committed to protection of the rights of citizens of India and others throughout the world. The organization comprising of lawyers only are also professionally under an obligation to uphold the rule of law and so the present petition.

17. That the main questions of law are involved in this writ petition are as under:-

- i) As to whether the Ministry of External Affairs through its Consulate and Embassies are duty bound and under an obligation to protect the rights of its citizens and to ensure their welfare.
- ii) As to whether the Indian Consulate of U.A.E. has failed to perform its functions as per its mandate, rules and regulations.
- iii) As to whether the situation warrants remedial actions to be taken to ensure protection of life and liberty and human rights of the Indian citizens abroad as per the International and Domestic Laws.

18. That there is no other remedy either by appeal or revision is available with the petitioner except to approach this Hon'ble Court by way of filing the present writ petition.

19. That no such or similar petition has earlier been filed by the petitioner in this Hon'ble Court or in the Hon'ble Supreme Court of India.

20. That the documents attached with the writ petition are true copies of the originals as required under Rule 22 of the Writ Jurisdiction Rules.

In the light of the above given circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ order or direction, directing in below terms :-

- i) That the respondent No.1 be directed to ensure that the Indian Consulates/Embassies should ensure that whenever any Indian citizen is taken in custody on a foreign land, where an Indian Mission is available, the Consulate/ Embassy of India should ensure of protection of rights and welfare of its citizens in police custody or in judicial custody.
- ii) That the respondent No.2 should ensure that the citizens of India are protected of their rights in U.A.E. and the respondent No.2, should ensure adherence to its functions as enumerated on its website under the heading labour and welfare.
- iii) That the respondent No.2 should ensure that on the arrest of every Indian citizen, the U.A.E. States should ensure that the information should be supplied to the Indian Consulate and the Indian Consulate should ensure protection of their life and liberty and rights as per the International and Domestic Law.
- iv) That the respondent No.2 be directed to make available details of the Indian citizens in police custody as well as judicial custody in the various states of U.A.E.
- v) That the respondent No.2 should ensure that every arrest and detention of Indian citizen in police station or jail should be supervised by the respondent No.2 and sufficient staff is available at its disposal to ensure proper guidance and supervision for ensuring proper legal aid to the people who are arrested.
- vi) That as interim measure the petitioner organization prays that this Hon'ble Court may direct respondent NO.2 to provide necessary assistance to the petitioner body in ensuring that proper legal aid is provided to all the 50 Punjabi prisoners who are detained in Sharjah jail of U.A.E.
- vii) with a further prayer that this Hon'ble Court may kindly pass any other appropriate writ, order or direction which deem fit and proper in the facts and circumstances of the case;
- viii) advance notice of the writ petition to the respondents may kindly be dispensed with;
- ix) filing of the certified copies/ double space of the Annexures P-1 to P-3 may also be dispensed with,
- x) with a further permission to place on record photocopy of Annexure P-1 as the same is quite legible for readily purpose.
- xi) the writ petition may be accepted as prayed for;

(PETITIONER)

T H R O U G H

(NAVKIRAN SINGH)

P/786/1986

(RUBINA N.SINGH)(GURSIMRAN SINGH)(SANJEEV K.BANGA)

P/71/1988 P/1509/2009 P/490/2008

CHANDIGARH: A D V O C A T E S

DATED:29.04.2010 COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No._____/2010

Lawyers for Human Rights International

... Petitioner

Versus

Union of India and another

Respondents

Affidavit of Tejinder Singh Sudan Advocate, President Chandigarh Unit, resident of H.No.1727, Phase-5, Sector 59, S.A.S.Nagar, Mohali.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the contents of paras 1 to 16 and 18 to 20 of the writ petition are true and correct to my knowledge and that of para 17 is believed to be true as per advice of the counsel. No part of it is false and nothing has been kept concealed therein.

Chandigarh

Dated:29.04.2009

(DEPONENT)

VERIFICATION:-

Verified that the contents of above affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

Chandigarh:

Dated:29.04.2009

(DEPONENT)

'A'

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No._____/2010

(Public Interest Litigation)

Lawyers for Human Rights International

... Petitioner

Versus

State of Punjab and another ...

Respondents

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Total court fee : 58.50

- I) The main law points are in mentioned in para No.17 at page 16 of the writ petition.
 II) Relevant statutes/Rules: Article 21 of Constitution of India.
 III) Similar case: NIL
 IV) No caveat has been received.

(NAVKIRAN SINGH)

P/786/1986

(RUBINA N.SINGH)(GURSIMRAN SINGH)(SANJEEV K.BANGA)

P/71/1988 P/1509/2009 P/490/2008

CHANDIGARH: A D V O C A T E S

DATED:29.04.2010 COUNSEL FOR THE PETITIONER

'B'

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No._____/2010
(Public Interest Litigation)

Lawyers for Human Rights International

...

Petitioner(s)

Versus

State of Punjab and another ...

Respondent(s)

Total amount of court fee affixed

(NAVKIRAN SINGH)

P/786/1986

(RUBINA N.SINGH)(GURSIMRAN SINGH)(SANJEEV K.BANGA)

P/71/1988 P/1509/2009 P/490/2008

CHANDIGARH: A D V O C A T E S

DATED:29.04.2010 COUNSEL FOR THE PETITIONER