

ITEM NO.1

COURT NO.10

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO(s). 310 OF 2005

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln.(s) for permission to intervene in the writ petition and c/delay in filing detailed affidavit in pursuance to the direction of this Hon'ble Court dated 20.04.2007 and modification of court's order and and modification/clarification and c/delay in filing counter affidavit and clarification/modification of court's order and office report)

WITH

W.P. (CRL.) NO. 82 of 2010

Date: 24/01/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE H.L. GOKHALE

Counsel for the parties

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Mr. Javed Mahmud Rao,Adv.
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Mr. N.N. Singh, Adv.

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State of J & K

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Ms. Astha Sharma, Adv.

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State of Punjab

Mr. Rupinder Singh Khosla, Sr. AAG
Mr. Anil Grover, AAG
Ms. Noopur Singhal, Adv.
Mr. Kuldip Singh, Adv.

State of Haryana

Mr. Manjit Singh, Addl. Adv. Gen.
Mr. Tarjit Singh, Adv.
Mr. Kamal Mohan Gupta, Adv.

UPON hearing counsel the Court made the following
O R D E R

We have heard these matters for some time and we are pained to observe that the Union of India has failed to see the concern and urgency that is called for by the prisoner's right to personal liberty.

The matter has been lingering for repatriation of large number of foreign prisoners on one ground or the other although they have served out their respective sentences awarded to them.

From the Annexure 'C' annexed with the Additional Affidavit filed by Payingatterry Venkiteswaran Sivaraman, Director (Foreigners) in the Ministry of Home Affairs, Government of India, on November 28, 2011, it transpires that large number of foreign nationals have completed their sentences but their deportation has been mainly withheld because of delayed Special Consular Access. In Clause (iv) of the Agreement dated May 21, 2008 entered into between the Government of the Republic of India and the Government of
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the Islamic Republic of Pakistan on Consular Access, it is provided that each Government shall provide Consular Access within three months to nationals of one country of arrest or detention or imprisonment in the other country. From the above Annexure 'C', it transpires that Consular Access, which ought to have been provided within three months of the arrest or detention of the Pakistani nationals, has not been done in time. In most of the cases, Consular Access has been provided only on completion of the sentence. This is apparently not in conformity with the Agreement on Consular Access between the two Governments (Government of the Republic of India and the Government of the Islamic Republic of Pakistan). Because of this reason, there has been delay in verification of national status of the prisoners who have served out their sentences.

It transpires from the above Annexure 'C' that the exercise of verification of national status of many of these foreign nationals who have served out their sentences has not been completed resulting in delay in their repatriation. Then, there are few in this list who have served out their sentences and their national status has also been identified, yet they have not been repatriated to their country.

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Mr. Vivek Tankha, learned Additional Solicitor General, submits that he would need some time to submit the latest status report in respect of the prisoners referred to above.

It is only under the orders of this Court that repatriation of many of these foreign nationals has taken place by now. We disapprove of the off hand and ad hoc manner in which the whole exercise has been done by the Government of India concerning foreign nationals who have served out their sentences awarded to them following the procedure established by law in our country. The protection provided by Article 21 of the Constitution of India requires that the foreign nationals who have served out their sentences are deported to their respective country with utmost dispatch and without any delay.

We, accordingly, direct that the Pakistani nationals who have served out their sentences and whose national status has been established and are otherwise not required for any offence in the country, are repatriated as early as may be possible but in no case later than one month from today.

The concerned authority in the Ministry of Home Affairs, Government of India, shall also request Pakistan

High Commission for expeditious completion of the process of
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verification of national status of the prisoners mentioned in Annexure 'C' who have completed their sentences.

We also direct the Government of India to repatriate those prisoners in list Annexure 'C' annexed with the Additional Affidavit dated November 28, 2011 who have completed their sentences and whose national status other than Pakistan has been established. The repatriation of these prisoners needs to be done as early as may be possible

but in no case later than one month from today.

The compliance report and the latest status report along with the affidavit shall be filed by the Director (Foreigners), Ministry of Home Affairs, Government of India, before February 28, 2012.

Let these Writ Petitions come up for further consideration on February 28, 2012.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master