



United Kingdom - R. v Governor of Durham Prison Ex p. Singh

The Home Office was not authorised to detain an individual subject to a deportation order for longer than the period reasonably required to “*enable the machinery of deportation to be carried out*”, nor for any other purpose.

The applicant, M. Singh, applied for release from detention on the basis that he was being held unlawfully whilst his deportation was delayed. The judge found that the powers within the Immigration Act 1971 (the “1971 Act”) contained implied limitations, such that unless the Home Office could prove to the court, within three days following the hearing, that Mr Singh’s deportation was imminent, he should be released on the basis that the implied limitations on the exercise of the power to detain had not been complied with.

Case name (in original language) : R. v Governor of Durham Prison Ex p. Singh, [1984] 1 W.L.R. 704 (1983)

Case status: Decided

Case number: [1984] 1 W.L.R. 704 (1983)

Citation: [1984] 1 W.L.R. 704 (1983)

Date of decision: 13/12/1983

State: United Kingdom

Court / UN Treaty Body: England and Wales High Court (Queen's Bench Division)

Language(s) the decision is available in: English

Applicant's country of birth: India

Applicant's country of residence: United Kingdom

Key aspects: Deportation and removal, Detention, Passport restoration

Relevant Legislative Provisions:

Immigration Act 1971 (c.77)

Facts

The applicant, M. Singh, is an Indian national who entered the United Kingdom lawfully in 1977, committed two crimes of burglary and, as a result, was sentenced to prison with his release date being 20 July 1983.

Before his release from prison, the Home Office decided that the applicant should be deported back to India on the grounds that his deportation was conducive to the public good, and validly made a deportation order against the applicant on 16 June 1983 (against which the applicant did not appeal).

The Home Office had begun considering the deportation in January 1983, and it had soon emerged that the applicant had lost his passport. The matter of the lost passport was left in the hands of Durham police, who did not find the passport and reported, in September 1983, that they could not proceed with the deportation as a result. In October 1983, Durham police reported that the Indian High Commission was making enquiries as to the applicant's identity and, on 24 October 1983, the first direct communication between the Home Office and the Indian High Commission took place, followed by a letter from the Home Office to the Indian High Commission on 10 November 1983. There was no further communication before the hearing.

The applicant was being detained under paragraph 2 of Schedule 3 of the 1971 Act, which allows for detention of an individual either (i) pending the making of a deportation order against him, or (ii) pending his removal.

The applicant asked the court to assess the legality of his detention (by way of a *writ of habeus corpus*) on the grounds that the Home Office was taking too long to deport him, and could no longer rely on the 1971 Act as grounds for his detention.

Decision & Reasoning

The court was satisfied that the power to detain given to the Secretary of State under the 1971 Act is "*impliedly limited*" despite not containing express words of limitation as to time. Firstly, the power can only authorise detention where a deportation order is pending, or actual removal of the individual pursuant to a deportation order is pending. Second, the court said that the power of detention is "*impliedly limited*" to the time period necessary to "*enable the machinery of deportation to be carried out*", and that it would be "*wrong for the Secretary of State to exercise his power of detention*" in circumstances where it is "*apparent to [him]*

that he is not going to be able to operate the machinery provided in the [1971] Act for removing persons who are intended to be deported within a reasonable period".

The court considered the fact that the issue of the applicant's deportation had been under consideration since January 1983, yet the Home Office had not taken any direct action until October 1983 (when it directly contacted the Indian High Commission for the first time), finding that *"the Home Office have not taken the action they should have taken nor have they taken that action sufficiently promptly"*. The court also took into account (a) the fact that the applicant's solicitors had made it clear to the Secretary of State that if no action was taken they would be applying to the court, and (b) the applicant had become distressed by his continuing detention and had made an attempt to take his own life.

The court concluded that this was a case in which the applicant should be released because *"the implicit limitations imposed on the power of detention contained in the Act had not been complied with"*. However, the Home Office asked the court to adjourn the hearing on the basis that they had further evidence available as to the status of the documentation requested from the Indian High Commission. The court granted a three-day adjournment, saying that *"if it is shown to this court that the applicant is due to be removed within a very short time indeed, then it would be proper for him to remain in detention for that time"*; otherwise, the applicant should be released.

The judgment in this case led to the set of principles now known as the *"Hardial Singh principles"*, which now constrain the exercise of the power to detain under the Immigration Acts (*Ali v Home Office [2022] EWHC 866 (QB), para 35*). The *Hardial Singh principles* have been endorsed by the Supreme Court, and are as follows (as first summarised by Lord Dyson in *Lumba (WL) v Secretary of State for the Home Department [2011] UKSC 12 (23 March 2011)*):

- (i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
- (ii) The deportee may only be detained for a period that is reasonable in all the circumstances;
- (iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention; and

(iv) The Secretary of State should act with reasonable diligence and expedition to effect removal.

Decision documents

[Judgment: R. v Governor of Durham Prison Ex p. Singh, \[1984\] 1 W.L.R. 704 \(1983\)](#)

Outcome

The Home Office was not authorised to detain an individual subject to a deportation order for longer than the period reasonably required to “*enable the machinery of deportation to be carried out*”, nor for any other purpose. The Home Office did not take the correct action, and the action they did take was not taken promptly enough. As a result, the applicant would be released if the Home Office could not show, within 3 days, that deportation was due imminently.

The court first set out the limitations on the power to detain under the 1971 Act in this case. Although the principles set out in the judgment were initially in relation to the 1971 Act only, they have since been expanded to virtually all administrative powers of detention regarding deportation of immigrants.

The court’s approach – to not order release immediately but to grant a short adjournment for the Home office to produce evidence of immediately imminent deportation – has also since been commended and adopted in subsequent cases.

Caselaw cited

Reg. v. Governor of Pentonville Prison, Ex parte Sital Singh (unreported), 8 July 1975, D.C.

Reg. v. Governor of Richmond Remand Centre, Ex parte Asghar [1971] 1 W.L.R. 129, D.C.