

SPECIAL IMMIGRATION APPEALS COMMISSION

Field House
Breams Building
London

Tuesday, 11th May 2010

BEFORE:

MR JUSTICE MITTING

BETWEEN:

SHOAIB KHAN, ABDUL WAHAB KHAN AND TARIQ UR REHMAN

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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M A MALIK (of Amjad Malik Solicitors) appeared on behalf of the Appellants.

MR A O'CONNOR (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

MS C McGAHEY and MR B RAWAT (instructed by the Special Advocates Support Office) appeared as Special Advocates.

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JUDGMENT

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MR JUSTICE MITTING:

1. Ms McGahey supported by Mr Malik for Abdul Wahab Khan and Tariq Ur Rehman submit that substantial parts of the judgment should be redacted and that the outcome of the appeals of Abdul Wahab Khan and Tariq Ur Rehman should not be announced, save, perhaps, in a form which is confidential to the parties.
2. The basis for that submission is as follows. Publication of the judgment adverse to them creates the risk that they would be detained and tortured or, at least, ill treated by the ISI. Accordingly, Ms McGahey submits that the Commission should do nothing to give rise to or to increase the risk of such an eventuality. She draws attention to the fact that, when the Operation Pathway arrests were made, they attracted a fair amount of publicity and that publicity included reference to both appellants by one or other or both of their names - although in the material which she has shown to me, it is little more than the fact of their arrest that has been reported.
3. As the Commission intends to observe in its open judgment, in paragraph 41, the two appellants decided that it was in their interests to waive the anonymity that would have been afforded to them in these proceedings, to return to Pakistan and to do so in a blaze of publicity. The fact that they have appealed is known both in the United Kingdom and in Pakistan. It is likely that, when the Commission's judgment is handed down, there will be some publicity, at least, in the media of the United Kingdom and in that of Pakistan. To accede to the course which Ms McGahey proposes would, therefore, very obviously result

in an outcome that would be odd even to the casual reader and very curious indeed to the reader who had been following the proceedings or had had anything other than a passing interest in them, for it would be known that the appeals of the two appellants had been heard by SIAC, but the outcome would not be known. It would be known that the appeal of one of the three residents of 51 Cedar Grove, Liverpool, Faraz Khan, had been dismissed and that certain events had taken place at that address and, in the redaction that is proposed by Ms McGahey, that those events had involved individuals described by Naseer in an email to Sohaib as "his mates in other city".

4. Evidence has been given by both appellants over the television link in fully open session. The press has been represented when that evidence has been given. UK media and the Government of Pakistan know the Secretary of State's open case against the two appellants as against other appellants. Ms McGahey's suggestion, that, in effect, we suppress the outcome of the two appellants' appeals and the reasons for our decision rejecting them, attempts, in my view, to put back into a private domain matters that are already largely fully public. The attempt to do so would be likely to attract as much, or more, attention from UK and Pakistani media as publication of the outcome of their appeals and the reasons for it. Any suggestion that the ISI would not rapidly put two and two together, in my view, is entirely fanciful.
5. Accordingly, and even if I were to be persuaded that it was right to adopt the course proposed by Ms McGahey, in principle, I am satisfied that it would be futile in practice.
6. I do not, however, wish to leave the question of principle

unresolved. There is a legitimate and very important public interest in the outcome of appeals before SIAC being made public and, in so far as it is permissible without infringing Rule 4 of our Procedural Rules, the reasons for the outcome. Lord Roger's words in *Ahmed and Her Majesty's Treasury* [2010] UKSC 1, paragraph 71, apply, by analogy, to the circumstances here: "It is unusual, to say the least, for individuals to enter a debate using highly-charged language and accusing the Government of dishonouring a pledge, but at the same time to insist that they should have the right to hide behind a cloak of anonymity. It is also unusual for someone to assert the need for the press to respect his private and family life by not reporting his identity, while, simultaneously, inviting them to report his version of the impact of the freezing orders on himself and members of his family. The public can hardly be expected to make an informed assessment of the argument if they are prevented from knowing who is making these points and, therefore, what his general stance is." Of course, the analogy is imperfect. In *Ahmed* the court was balancing two qualified rights, Articles 10 and 8. Here the balance is between a qualified, though important, right, Article 10, and a right not included in the Convention at all in relation to those who are not within the jurisdiction of a UK court, such as these appellants, for reasons which we have explained in the open judgment.

7. The Commission would have afforded to each of the appellants all of the procedural protections which it could have given to them, by anonymity principally, if they had wished to avail themselves of those protections. They chose not to do so. If - and I emphasise "if" - as a result of the publication of our open judgment, they find themselves in a predicament which is uncomfortable or

worse for them, that predicament arises not as a result of any decision of the Commission, save to determine the facts of their case which they had invited the Commission to do, but from their own decision, taken at a time when they had legal advice, to waive anonymity. Although the issues for them may be more stark than those faced by the appellants in *Ahmed and HM Treasury*, the principal is, in fact, the same. Those who conduct cases with the benefit of publicity must expect them to be publicly decided, whether in their favour or against them. Shoaib took that risk, it has redounded to his favour. These two appellants took the risk and it did not redound to their favour. It is a choice with which, ultimately, they must live.

8. Secondly, the procedures under which SIAC makes its decisions already give rise to entirely legitimate concerns expressed across a wide variety of opinions. It is important that the public should understand to the maximum extent possible how SIAC functions, what its decisions are and what are the reasons for those decisions. It is important to maintain public confidence in the Commission that that should be so. If we were to adopt the course proposed by Ms McGahey, the informed public and, in particular, the press, would rightly wonder what was going on. The adoption of a futile attempt to try to conceal the outcome of these two appeals would, in my judgment, undermine public confidence in the Commission. That is not a step that I am prepared to take.

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