

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
I.A. NO. \_\_\_\_\_ OF 2013**

**IN  
SPECIAL LEAVE PETITION (CIVIL) NO. 33436 OF 2012**

**IN THE MATTER OF:**

Birendra Kaur & Anr. ...Petitioners

Versus

Union of India ...Respondent

**AND IN THE MATTER OF:**

1. International Sikh Confederation,  
Head Office Plot No. 1,  
Sector-28 A,  
Chandigarh
2. Institute of Sikh Studies  
Gurdwara Singh Sabha, Kanthala  
Industrial Area,  
Phase II,  
Chandigarh 160002
3. Kendri Sri Guru Singh Sabha  
Head Office, Sri Guru Granth  
Sahib Vidya Kender,  
Sector 28/A,  
Chandigarh

**APPLICATION FOR IMPLEADMENT**

To

Hon'ble The Chief Justice and his  
Hon'ble Companion Justices of the  
Hon'ble Supreme Court of India

The humble Application of  
the Applicants above named –

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicants are filing the present application to be  
impleaded as a Party Respondents. It is stated that the

Applicants are vitally interested in the outcome of the aforesaid Special Leave Petition. Vide the impugned Judgment dated 03.10.11 passed in C.W.P No. 18634 of 2011 the Hon'ble High Court declined to address and advert to an issue of grave public interest and in particular to the Sikh community. The aforesaid Special Leave Petition was listed before this Hon'ble Court on 15.10.2012, wherein this Hon'ble Court was pleased to direct the issuance of notice. A copy of the order dated 15.10.2012 is annexed hereto and marked as **Annexure A-1**

2. The Applicant No. 1 International Sikh Confederation (in Short 'ISC') is duly registered as a Society under Societies Registration Act (XXI of 1860) and amended by Punjab Amendment Act 1957 on 14<sup>th</sup> Dec 2005. It aims to provide guidance and direction in the Sikh Community's march towards its ordained mission to spread the effulgent message of the Gurus for Human Welfare and Development without distinction of caste, creed, colour or religion and to ensure a rightful place for the Community nationally as well as internationally. One of the major objectives of the ISC is to lift Sikh Society to a very high level of education with special reference to rural areas, create avenues of decent employment in all spheres and reform social ethos as per Guru's teachings. This would

directly help in eradicating social evils such as the drug and liquor menace, female feticide, and increasing crime. The ISC has kept a close eye on religious matters of importance and has not hesitated in taking a unified stand whenever Sikh traditions and rights have been violated or ignored. The ISC aims to help resolve and work towards settlement of all philosophical and other issues affecting the Sikhs. The pending SLP is in the nature of a public interest petition in which the ISC has a vital and full interest. The ISC passed a unanimous resolution on 6.3.2013 for being impleaded as a party in the SLP, therefore, it is authorized to file the present application and pursue the litigation. The applicant ISC has the necessary funds to pursue the SLP for which sanction has also been accorded. Besides, it is pursuing a public interest to safeguard the interest and hurt caused to the Sikh community at large for its independent and distinct entity within the framework of the Constitution of India and the Union of India. Therefore, the ISC has the *locus standi* to file the present application and be impleaded as a party by virtue of having an inherent interest in the outcome of the present petition. Similarly the Institute of Sikh Studies (IOSS) and the Kendri Sri Guru Singh Sabha are also welfare associations working for the betterment and upliftment of the Sikh society and therefore have an inherent

interest in the outcome of the above noted Special Leave Petition and therefore intend to be impleaded as a party. A copy of the Resolution Dt. 06.03.2013 passed by the ISC, Resolution Dt. 11.03.2013 passed by the Institute of Sikh Studies and the resolution Dt. 10.03.2013 passed by the Kendri Sri Guru Singh Sabha are marked as **Annexure A-2 'Colly' (Pg-**

3. The organizers of the ISC are individuals who have attained high status in public life having patriotically served India in various National/ International organizations. Their sole aim is now to return to society what life has bestowed on them with God's grace. To name just a few Organizers of the ISC:

(a) Late Dr Kharak Singh Mann, Ph.D. (Agri. Eco), Jt. Dir., Agriculture Punjab, Mg. Dir., SFCL, Govt. of India, Advisor, FAO (UN), Rome (**Founder Convenor**).

(b) Dr Sardara Singh Johl, Padma Bhushan, Noted Agro Economist, ex-VC, Punjabi University, Patiala, ex-Dy. Chairman Punjab Finance Commission and now **Convenor, ISC** and Chancellor Central University, Bathinda.

(c) Lt Gen Kartar Singh Gill, PVSM (retd), M.Sc, Dir. General Military Training and Education, Mil. Advisor to various peace talks with Pakistan, **Secretary General, ISC**.

(d) Dr Gurcharan Singh Kalkat, Padma Vibhushan Ph.D., Ex-VC, PAU, now **Chairman Punjab Farmers' Commission and Member, PM's Agriculture Board**.

(e) S Gurdev Singh, IAS (retd), President Sikh Education Society, Patron, IOSS, **Co-Convenor ISC**.

- (f) Sardarni Raj Mohinder Kaur, (w/o Late Dr Kharak Singh Ji), **Patron.**
- (g) Dr Kirpal Singh, M.A., Ph.D., ex- Head of Dept, Punjabi University, Patiala, and Noted Historian, Professor Emeritus.
- (h) Lt Col J S Multani, BE (retd), Post Graduate in Management, formerly General Secretary Baba Makhan Shah Lobana Foundation, **Secretary, ISC.**
- (i) Dr Gurbax Singh, Ph.D., ex-Dean PAU, Ludhiana, Trustee, Baru Sahib.
- (j) S Kulbir Singh Sidhu IAS (retd), Commissioner Ferozpur Division, Author of various books on heritage and cultural affairs.
- (k) Bibi Baljit Kaur, noted Human Rights Activist and ex-President, Institute Of Sikh Studies (IOSS).
- (l) S Inderjit Singh Jaijee, ex-MLA, President MASR, Philanthropist looking after destitute farmers' families.
- (m) S Pritam Singh Kohli, IAS (retd), ex-Advisor to Governor Punjab, ex-President, IOSS, Chandigarh.
- (n) S Jagdev Singh Sodhi, Chief Engineer (Retd), Chandigarh.

4. The contribution of the Sikhs to the freedom struggle of India is immense and monumental: The well-known upsurges against the British, the *Kuka* Rebellion and the *Ghadar* Rebellion, were almost entirely manned by the Sikhs.
5. Though the Sikhs account for less than 2% of the Indian population, yet:
  - Out of the 2175 martyrs for Indian's Freedom, 1,557 were Sikhs;

- Out of the 127 freedom fighters sent to the gallows by the British, 92, i.e., about 80%, were Sikhs;
  - Of the soldiers who in the early forties, fought under Subhash Chandra Bose in the Indian National Army, 60% were Sikhs.
6. After Independence, Sikhs have (till 1999) won 5 Param Vir Chakras (PVCs), 40 Maha Vir Chakras (MVCs) and 209 Vir Chakras (VrCs) – a total of 253 medals for their bravery in the defence of their motherland.
  7. Sikhism is a distinct religion and its followers too are a distinct people, adorning a distinct Identity. [Bhai Ashok Singh's Article has many references and is marked as **Annexure A-3 (Pp-**
  8. Sikhism is also recognized to be an independent religion by the Constitution of India. Further, the Constitution also provides certain safeguards for the Minorities, such as:
    - Article 25 of the Constitution of India gives all religions of India the 'right freely to profess, practice and propagate' their religion. Explanation I of this Article makes specific reference to the Sikh religion by way of an example [Explanation I. – The wearing and carrying of *kirpan* shall be deemed to be included in the profession of the Sikh religion.]

- 42<sup>nd</sup> Amendment of the Constitution in 1976, has specifically added the word 'Secular' to the very Preamble of the Constitution.
- The Preamble secures to all its citizens Dignity [FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;]
- Articles 29 and 30 of the Constitution of Part III [Fundamental Rights] grant to Minorities, whether based on religion or language, the right to conserve their language, script, or culture as well as establish and administer educational institutions of their choice.
- The National Commission for Minorities, an Organization to safeguard the Constitutional, and Legal Rights of the Minorities recognizes Sikhs as a Minority Religion.
- The Constitution (One Hundred and Third Amendment) Bill, 2004, is before Parliamentary Standing Committee for giving a Constitutional status to the National Commission for Minorities, so as to inspire greater confidence amongst the Minorities and to make the National Commission more effective in safeguarding their interests.
- In 2006, on the 29<sup>th</sup> January, the Government of India set-up a new Ministry called the Ministry of

Minority Affairs to focus a special attention/ thrust on the issues relating to the Minorities.

9. Yet, the Sikhs have, since Independence, been hurt and experienced a loss of Identity and have been seeking an appropriate amendment of Article 25 of the Constitution of India. A simple claim and demand of merely rewording a sub-clause [2(b)] of the Article has fallen on deaf ears for the last sixty five years – so much for all the steps being taken ‘to safeguard the Constitutional and Legal Rights of the Minorities’ and ‘to inspire greater confidence amongst the Minorities’.
10. The Loss of Sikh independent entity and identity has been felt in view of Article 25 of the Constitution of India. The demand of the Sikhs, since then, is minor changes in the Article, which do not affect the spirit of the Constitution at all, nay, rather conform to it. The struggle of the Sikhs for an Independent Identity continues to date, as their demand has gone unheeded so far. The said Article 25 it is felt has clubbed the Sikhs with Hindus even though they are distinct and independent of them. The wording of the Article is liable to be so modified as to bring about clear and distinct identity of the Sikhs. In pursuance of the said Article, the personal laws for the Sikhs have been framed, which are applicable to them. These *inter alia* include the Hindu Marriage Act, 1955; the Hindu Adoption and

Maintenance Act, 1956; the Hindu Succession Act, 1956; and the Hindu Minority and Guardianship Act, 1956; etc. In the said legislative enactments, in addition to the word “Hindu” being used as the name of a religion, the same [word “Hindu”] has also been defined as those professing the Hindu, Sikh, Buddhist and Jain religion, etc. This results in clubbing of the Sikhs as part and parcel of “Hindus” whereas the Sikhs are distinct, separate, and independent of them. This has, therefore, affected the rights of the Sikhs. The headings of these enactments are liable to be so modified by giving a different name, say for example, “Indian” or “Native” and these enactments be called the Indian Marriage Act or Native Marriage Act, and so on; besides, the word “Indian” or “Native” for the purposes of these enactments shall include a Hindu, Sikh, Buddhist, Jain, and some others. In this manner, Sikhs will not be clubbed with or be inclusive of Hindus and they would be able to enjoy a distinct and independent identity guaranteed to them in the Constitution. Therefore, the ISC seeks quashing of the expression “Hindu” insofar as it clubs the Sikhs and makes them inclusive of Hindus. This in fact would provide a separate and distinct entity to Sikhs, and also go towards providing for a uniform civil code, which is the avowed object of the directive principles of the State policy provided for in Article 44 under the

Constitution. As all the religions are recognized to be equal by the Constitution, therefore, till such time that the uniform civil code is adopted, all of these must enjoy equal and independent status, so as to ensure that the spirit of the Constitution is not negated.

11. Several moves have been made by the Sikhs for an Independent Identity under the Indian Law:

- The Shiromani Akal Dal demanded withdrawal of Article 25 of the Constitution in 1983.
- A National Commission was formed to review the working of the Constitution [NCRWC] in 2000. The Akali Dal (Badal), the Sarv Hind Shiromani Akali Dal and an MP Atinderpal Singh represented, in their individual capacities, against the above provisions to this Commission. The Commission accepted the Sikh view, and has recommended amendment to the Article 25 [rewording of sub-clause (b) of clause (2) and omission of Explanation II], to the satisfaction of the Sikhs, in its Report of 2002.
- In 2005, Sardar Tarlochan Singh, MP, moved Private Member's Bill in the Parliament to amend Article 25 of Indian Constitution where the Sikhs have been described as part of Hindus. In 2007, he also moved a Bill seeking an amendment in the Anand Marriage Act, 1909, to provide for registration of Sikh marriages.

- In 2012, Dr Rattan Singh Ajnala, MP, moved a Private Member's Bill in the Lok Sabha for the long-pending demand of the Sikhs to amend Article 25 of the Constitution that clubs Sikhs with Hindus.
12. As recently as 2012, the Government amended the Anand Marriage Act, 1909 [now called Anand Marriage (Amendment) Act, 2012] to provide for registration of Sikh marriages under an Act titled in the name of their wedding ceremony, thus officially recognizing an Independent status of the Sikh religion under the Indian Law, for the first time. [But this provision addresses only the registration of marriages, leaving all other aspects of Family Law, such as, adoption, guardianship, succession, divorce, etc., outside its purview.] The entire community has received this Minor step introducing a legislation providing for registration of Sikh Marriages with great enthusiasm.
  13. The National Commission for Minorities Act, 1992 was brought on the statute book in order to constitute a Commission to evaluate the progress of the development of Minorities under the Union and States as its primary function.
  14. The Government of India vide Notification of Minority Communities: 1993- SO No. 816 (E) F. No. 1/11/93-MC (D) Dt. 23.10.1993, in exercise of powers conferred in

clause (c) of Section 2 the National Commission for Minorities Act, 1992, notified the Sikhs as a Minority Community. A Copy of the Notification Dt. 23.10.1993 is marked as **Annexure A-4**

15. The proportion and growth rate of population for religious communities from 1961 to 2001 indicates that the Sikh community forms about 2.0% of the total population of India. The Sikhs are present in each and every state of the Country as borne out from the census conducted in 2001. A copy of the chart indicating the proportion and growth rate of population for religious communities from 1961 to 2001 is marked as **Annexure A-5**

16. The Government of India although being conscious of its obligations under the Constitution and in particular Articles 29 and 30 of the Constitution of Part III [Fundamental Rights] that grants Minorities, whether based on religion or language, the right to conserve their language, script or culture as well as establish and administer educational institutions of their choice, issued a notification Dt. 18.01.2005 through the Ministry of Human Resources Development (Department of Secondary Education & Higher Education) whereby for the purposes of the Minority Education and Institutions Act, 2004, the Sikhs were notified as a Minority Community. A Copy of the

Notification No. F. 7-5/2005- MC (P) Dt. 18.01.2005 is marked as **Annexure A-6**.

17. The Sikh Community seeks to its legitimate right as enshrined under the Constitution. The various Acts relating to Successions, Marriage, Adoption and Maintenance, Minority and Guardianship all use the expression "Hindu" although they also apply to Sikhs, Buddhists and Jains amongst others – which is against the very basis and structure of the Constitution. In view the findings of the National Commission to Review the Working of the Constitution (NCRWC) may also be accepted and implemented, and wherever the word "Hindu" is used as an 'expression' to include all separate, distinct religions, constitutionally recognized to be so, should be amended and replaced with the appropriate connotation.

### **P R A Y E R**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) allow the Applicants to be impleaded as a party respondents in the above Special Leave Petition (C) No. 33436 of 2012;
- b) pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

Filed by:

(Advocate for the Applicants)

New Delhi

Dated: \_\_\_\_ September, 2013