

No. 278133

Mr. MANN SINGH

Mr. Jean-Philippe Mochon
Rapporteur

The Conseil d'État adjudicating in the Litigation Department
(Litigation section, 5th and 4th sub-sections together)

Mr. Didier Chauvaux
Spokesperson of the Government

On the report by the 5th Sub-section
of the Litigation section

Hearing dated 2nd November 2005
Judgment reading on 5th December 2005

Considering the summary petition and the complementary statement, registered on 28th February and 15th March 2005 respectively, with the secretariat of the Litigation department of the Conseil d'État, presented on behalf of Mr. Shingara MANN SINGH, resident of 20, allée des Geais at Sarcelles (35200); Mr. MANN SINGH requests the Court:

1. to nullify the judgment dated 11th February 2005 by which the Interim Proceedings Judge of the Administrative Court of Cergy-Pontoise rejected his petition requesting that the execution of the decision dated 26th November 2004 taken by the Prefect of Val-d'Oise refusing to issue him a duplicate driving license be suspended and that the Prefect be directed to issue him this duplicate within 8 days from the day of notification of the judgment with a penalty of 500 € per day after the time limit;
2. to settle the case as per the emergency proceedings undertaken, to order the nullification of the decision taken by the Prefect of Val-d'Oise dated 26th November 2004 and to direct him to issue the duplicate applied for;
3. to direct the State to pay a sum of 3000 euros as per article L.761-1 of the Administrative Justice Code;

Considering the other exhibits submitted during the case;

Considering the European Convention for the Protection of Human Rights and Fundamental Freedoms dated 4th November 1950;

Considering the Highway Code;

Considering the order dated 8th February 1999 issued by the Minister of transports pertaining to the conditions for making and issuing a driving license;

Considering the order dated 7th May 1999 issued by the Home Minister, Minister of Equipment, Transports and Lodging and the Secretary of State for the overseas territories pertaining to affixing of identification photographs on identification, travel and stay documents and driving licenses;

Considering Administrative Justice Code;

After having heard during the public hearing dated 12th April 2005;

- the report by Mr. Jean-Philippe Mochon, the rapporteur counsel of the Conseil d'État;
- observations by Advocate Spinosi, counsel for Mr. MANN SINGH;
- Government spokesperson, Mr. Didier Chauvaux's conclusions;

Considering that it appears from the exhibits submitted to the Interim Court Judge of the Administrative Court of Cergy-Pontoise during the case that Mr. MANN SINGH filed an application with the Prefect of Val d'Oise to issue a duplicate driving license following its loss due to theft; that by decision dated 26th September 2004, the Prefect made the issuance of this duplicate subject to submission of photographs of the applicant taken with head uncovered; that Mr. MANN SINGH takes his case to the Court of Appeal against the judgment dated 11th February 2005 by which the Interim Proceedings Judge of the Administrative Court of Cergy-Pontoise refused to suspend this decision on the grounds that none of the arguments raised by Mr. MANN SINGH could cast a serious doubt on its legality;

Considering that in terms of the article L.521-1 of the Administrative Justice Code: "When an administrative decision, even one of rejection; is appealed against in a nullification petition (...), the Interim Proceedings Judge, appealed to for the same, can order the suspension of the execution of this decision (...), when the urgency justifies it and a proper argument has been raised to cast a serious doubt as to the legality of the decision (...);"

Without the need to examine the arguments of the petition:

Considering that as per the clauses of article R.221-9 of the Highway Code "the Minister for Transports determines the conditions in which the driving license must be applied for, made and issued"; that, if the order of the Minister of Equipment, Transports and Lodging dated 8th February 1999, pertaining to the conditions of making, issuing and validity of driving licenses taken in application of this article disposes that the file to be provided by the applicant must consist : "2) Two copies of his photograph corresponding to the norm NFZ 12010 or to official technical norms in force in

one of the member States of the European union or in a State belonging to the European Economic Region”, it does not result from these clauses, in the terms used or from any of the projections of the AFNOR norm NFZ 12010, that it is compulsory for the applicant to produce a photograph where his head is uncovered:

Considering that it is understood from the exhibits submitted during the case to the Interim Proceedings Judge that for refusing to issue a duplicate driving license to the petitioner, the prefect of Val-d'Oise has cited a circular dated 21st June 1999 issued by the Home Minister pertaining to affixing of identification photographs on identity, travel and stay documents and driving licenses which states notably that the photographs must represent the applicant with head uncovered; that however, the Home Minister was not the competent authority for establishing such an obligation in the matter pertaining to driving licenses; that by not considering as serious, the argument presented before him on the illegality committed by the Prefect, by referring to a circular which is marred by non-competency, the Interim Proceedings Judge has committed an error of law which must be removed automatically by the Supreme Court Judge; that Mr. MANN SINGH is hence justified in demanding the nullification of the judgment of the Interim Proceedings Judge of the Administrative Court of Cergy Pontoise dated 11th February 2005;

Considering that there are grounds, in application of article L.821-2 of the Administrative Justice Code, to decide the case as an emergency case filed by Mr. MANN SINGH.

Considering that with regards to the consequences on the personal and professional life of Mr. Mann Singh, resulting from the decision whose suspension is requested, the emergency situation required by article L. 521-1 of the Administrative Justice Code must be considered as fulfilled;

Considering that it follows from the points raised above that there is a serious doubt on the legality of the contested decision; that consequently, there are grounds, in application of the above mentioned clauses of article L. 521-1 of the Justice Administrative Code to suspend the decision of the Prefect of Val d'Oise dated 26th November 2004 refusing to issue a duplicate driving license to the petitioner;

On the concluding statements of Mr. MANN SINGH requesting that the Prefect of Val-d'Oise be directed to issue a duplicate driving license within 8 days with a penalty of 500 euros per day after the time limit;

Considering that as per article L. 911-1 of the Administrative Justice Code: “When his decision necessarily implies that a public corporation or a private organization responsible for the management of a public service takes a procedural measure in a certain direction, the Court, before whom a petition is filed for the same, prescribes, by the same decision, this measure, if necessary, accompanied by a time limit for its execution; that as per article L. 911-3 of the same code: “The court, when a petition for the same has been filed before it, can add, in the same decision, the injunction of a penalty, prescribed as per articles L. 911-1 and L. 911-2, which it pronounces in the conditions stated in this book and for whom it fixes the effective date”;

Considering that this decision necessary implies that the Prefect of Val-d'Oise reexamines the petition of Mr. MANN SINGH in view of the arguments of the present decision within a time-limit of one month from the notification of the same; that there are no grounds to add a penalty to this injunction;

On the application of the clauses of article L. 761-1 of the Administrative Justice Code:

Considering that there are grounds, in the circumstances of this case, to direct the State to pay Mr. MANN SINGH a sum of 3000 euros which he demands as expenses shown by him and not included in the expenditure;

DECIDES:

Article 1: The judgment dated 11th February 2005 by the Interim Proceedings Judge of the Administrative Court of Cergy Pontoise is null and void.

Article 2: The decision of the Prefect of Val d'Oise dated 26th November 2004 is suspended.

Article 3: The Prefect of Val d'Oise is directed to reexamine the application of Mr. MANN SINGH within one month from the notification of this decision.

Article 4: The other points in the conclusions of the petitions of Mr. MANN SINGH are rejected.

Article 5: The State will pay Mr. Mann Singh a sum of 3000 euros as expenses shown by him and not included in the expenditure.

Article 6: This decision will be notified to Mr. Shingara MANN SINGH, to the Prefect of Val d'Oise, to the Minister of State, Minister of Home and Planning and Minister of Transports, Equipment, Tourism and Sea.

with the former student of the Class X (seconde) of the Louise Michel Secondary School in Bobigny, of Sikh faith, reached at the time of school reopening in

September 2004 in the School premises wearing a turban on his head; that the Principal of the Louise Michel Secondary School started a dialogue with him to bring to his notice the obligations resulting from the law dated 15th March 2004 on secularism; that during this period, the petitioner was allowed to sit in the study room and means were put at his disposal for pursuing his studies; that persisting in his refusal to renounce wearing a turban, on 18th October 2004, he filed a petition for Interim Injunction before the Administrative Court of Cergy-Pontoise in order to request for his reintegration on the ground that a disciplinary committee was not held; that by order dated 21st October 2004, the Interim Proceedings Judge of this Court ordered the Principal of the Louise Michel High School of Bobigny to form a disciplinary committee of the institution which, having met on 5th November 2004, proclaimed the petitioner's permanent expulsion without recourse; that Mr. Gurdial SINGH representing his minor son Jasvir SINGH requests for the annulment of the decision dated 10th December 2004, by which the Vice-Chancellor of the Créteil Academy, after having received the opinion of the Academic Appeal Commission in disciplinary matters on 3rd December 2004 upheld the permanent expulsion order proclaimed by the Disciplinary Committee of the Louise Michel Secondary School at Bobigny;

Considering that, as per article L.141-5-1 inserted in the Education Code by the law no. 2004-228 dated 15th March 2004: "In Primary, Secondary and Higher Secondary Schools, wearing of insignia or dress by which the students ostensibly demonstrate a religious affiliation is prohibited. The rules and regulations recall that the putting a disciplinary procedure into practice is preceded by a dialogue with the student"; Considering that it follows as much from the terms as from the legislative provisions that the parliamentary deliberations which have prepared their adoption, that from 1st September 2004, on one hand, wearing of certain religious insignia is considered in itself as ostensibly demonstrating a religious affiliation and can be prohibited even in the absence of proselyte activities which would make them provocative or ostensible, on the other hand, that those insignia and dress are prohibited which when worn lead the person to being immediately recognized by one's religious affiliation such as the Islamic veil, the kippa or a cross of excessive size without these examples having to determine in a definite manner the present or future religions likely to be concerned with it; that in this context, legal prohibition could be proposed against the petitioner when by insisting on wearing the under-turban or the Sikh keski, he opted for an article of clothing which makes him immediately recognizable as belonging to the Sikh religion, and this without the Administration having to question itself on the desire of the concerned person to try to demonstrate his belief or proselytism nor establish if the petitioner's attitude was a cause of concern for the public order;

Considering that the contested expulsion order, issued as per the law dated 15th March 2004, whose conditions of application, it does not disregard, the arguments based on disregard of the provisions of article 10 of the Declaration of Rights of Man and the Citizen of 1789, article 1 of the Constitution dated 4th October 1958 and the fundamental principle of freedom of conscience recognized by the laws of the Republic are inoperative;

Considering that the contested expulsion order, issued as per the prohibition imposed by the law dated 15th March 2004 does not disregard more the stipulations of article 9 of the European Convention on Protection of Human Rights and

Fundamental Freedoms pertaining to the freedom of thought, conscience and religion when the prohibition measure pronounced by the law and applied to the individual decision of the Vice Chancellor of the Créteil Academy does not constitute an excessive attack of this freedom, as regards the objective of general interest pursued which aims to ensure that the principle of secularism is followed within the Secondary School attended by the petitioner;

Considering finally that the contentious expulsion measure does not constitute an attack on the human dignity of the petitioner nor does it constitute a discriminatory measure against the Sikh religion since this measure is the final response foreseen in case the law on secularism is not followed up and that during the discussion phase which preceded it, the National Education proposed to the petitioner that he abandon the under-turban and instead wear a hair net in order to protect and maintain absolute integrity of his hair at the same time respecting rules of hygiene and safety;

Considering that it follows from all of the above that Mr. Gurdial SINGH does not have any grounds to request on behalf of his minor son Jasvir SINGH the annulment of the decision dated 10th December 2004 by which the Vice-Chancellor of the Créteil Academy upheld his permanent expulsion from the Louise Michel Secondary School at Bobigny;

On the conclusions pertaining to the application of article L.761-1 of the Administrative Justice Code:

Considering that as per the provisions of article L. 761-1 of the Administrative Justice Code, the Tribunal cannot order the expenses to be paid to the petitioning or the losing party to be paid by the other party, the expenses which it incurred during the litigation submitted before the judge; that the conclusions presented in this respect by Mr. Jasvir SINGH must hence be rejected;

DECIDES:

Article 1: The petition filed by Mr. Gurdial SINGH representing his minor son Jasvir SINGH is rejected.

Article 2: The present judgment shall be notified to Mr. Gurdial SINGH and to the Minister of National and Higher Education and Research.

A copy of this document shall be sent to the Vice-Chancellor of the Créteil Academy.

Deliberations held at the hearing dated 12th April 2005 presided over by the following judges:

Mr. ROTH, presiding judge

Mrs. JOUHANNAUD, judge

Mrs. ROLLET-PERRAUD, judge

Read at the public hearing dated 19th April 2005

Senior most judge

Presiding Judge – rapporteur

Signed: C. JOUHANNAUD

Signed: G. ROTH

The Republic summons and orders the Minister of National and Higher Education and Research in matters which concern the Minister and all the bailiffs to this petition called upon hitherto in matters pertaining to common remedial action against private parties in power to execute the present judgment.

Signature
Court Clerk
Mr. F. RICHARD

N° 278133

REPUBLIQUE FRANÇAISE

M. MANN SINGH

AU NOM DU PEUPLE FRANÇAIS

M. Jean-Philippe Mochon
Rapporteur

Le Conseil d'Etat statuant au contentieux
(Section du contentieux, 5ème et 4ème sous-sections réunies)

M. Didier Chauvaux
Commissaire du gouvernement

Sur le rapport de la 5ème sous-section
de la section du contentieux

Séance du 2 novembre 2005

Lecture du 5 décembre 2005

Vu la requête sommaire et le mémoire complémentaire, enregistrés les 28 février et 15 mars 2005 au secrétariat du contentieux du Conseil d'Etat, présentés pour M. Shingara MANN SINGH, demeurant 20 allée des Geais à Sarcelles (95200) ; M. MANN SINGH demande au Conseil d'Etat :

1°) d'annuler l'ordonnance du 11 février 2005 par laquelle le juge des référés du tribunal administratif de Cergy-Pontoise a rejeté sa demande tendant à ce que soit suspendue l'exécution de la décision du 26 novembre 2004 du préfet du Val-d'Oise refusant de lui délivrer un duplicata de son permis de conduire et à ce que soit enjoint au préfet de lui délivrer ce duplicata dans un délai de 8 jours à compter de la notification de l'ordonnance sous astreinte de 500 euros par jour de retard ;

2°) réglant l'affaire au titre de la procédure de référé engagée, d'ordonner la suspension de la décision du préfet du Val-d'Oise du 26 novembre 2004 et de lui enjoindre de délivrer le duplicata demandé ;

3°) de mettre à la charge de l'Etat la somme de 3 000 euros au titre de l'article L. 761-1 du code de justice administrative ;

.....
Vu les autres pièces du dossier ;

Vu la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales ;

Vu le code de la route ;

Vu l'arrêté du 8 février 1999 du ministre des transports relatif aux conditions d'établissement et de délivrance du permis de conduire ;

Vu l'arrêté du 7 mai 1999 du ministre de l'intérieur, du ministre de l'équipement, des transports et du logement et du secrétaire d'Etat à l'outre-mer relatif à l'apposition des photographies d'identité sur les documents d'identité, les titres de voyages, les titres de séjour et les permis de conduire ;

Vu le code de justice administrative ;

Après avoir entendu en séance publique :

- le rapport de M. Jean-Philippe Mochon, Maître des Requêtes,
- les observations de Me Spinosi, avocat de M. MANN SINGH,
- les conclusions de M. Didier Chauvaux, Commissaire du gouvernement ;

Considérant qu'il ressort des pièces du dossier soumis au juge des référés du tribunal administratif de Cergy-Pontoise que M. MANN SINGH a sollicité auprès du préfet du Val d'Oise, à la suite du vol de son permis de conduire, la délivrance d'un duplicata de ce document ; que, par décision du 26 septembre 2004, le préfet a subordonné la délivrance de ce duplicata à la fourniture de photographies du demandeur prises tête nue ; que M. MANN SINGH se pourvoit en cassation contre l'ordonnance du 11 février 2005 par laquelle le juge des référés du tribunal administratif de Cergy-Pontoise a refusé de suspendre cette décision au motif qu'aucun des moyens soulevés par M. MANN SINGH n'était de nature à créer un doute sérieux sur sa légalité ;

Considérant qu'aux termes de l'article L. 521-1 du code de justice administrative : "Quand une décision administrative, même de rejet, fait l'objet d'une requête en annulation (...), le juge des référés, saisi d'une demande en ce sens, peut ordonner la suspension de l'exécution de cette décision (...), lorsque l'urgence le justifie et qu'il est fait état d'un moyen propre à créer un doute sérieux quant à la légalité de la décision (...)" ;

Sans qu'il soit besoin d'examiner les moyens de la requête :

Considérant qu'en vertu des dispositions de l'article R. 221-9 du code de la route « le ministre chargé des transports détermine les conditions dans lesquelles doit être demandé, établi et délivré le permis de conduire » ; que, si l'arrêté du ministre de l'équipement,

des transports et du logement en date du 8 février 1999 relatif aux conditions d'établissement, de délivrance et de validité du permis de conduire pris en application de cet article dispose que le dossier à fournir par le demandeur comporte : « 2°) Deux exemplaires de sa photographie répondant à la norme NFZ 12010 ou à des normes techniques officielles en vigueur dans l'un des Etats membres de l'Union européenne ou dans un Etat appartenant à l'Espace économique européen », il ne résulte pas de ces dispositions, dans les termes où elles sont rédigées et quelles que soient les prévisions de la norme AFNOR NFZ 12010, que soit obligatoire la production d'une photographie où l'intéressé apparaîtrait tête nue ;

Considérant qu'il ressort des pièces du dossier soumis au juge des référés que pour refuser au requérant la délivrance d'un duplicata de son permis de conduire, le préfet du Val-d'Oise s'est fondé sur une circulaire du 21 juin 1999 du ministre de l'intérieur relative à l'apposition de photographies d'identité sur les documents d'identité et de voyage, les titres de séjour et les permis de conduire qui prévoit notamment que les photographies doivent représenter le demandeur tête nue ; que, cependant, le ministre de l'intérieur n'était pas compétent pour instaurer une telle obligation en ce qui concerne les permis de conduire ; qu'en ne considérant pas comme sérieux le moyen, invoqué devant lui, tiré de l'illégalité commise par le préfet en faisant application d'une circulaire entachée d'incompétence, le juge des référés a commis une erreur de droit qui doit être relevée d'office par le juge de cassation ; que M. MANN SINGH est par suite fondé à demander l'annulation de l'ordonnance du juge des référés du tribunal administratif de Cergy Pontoise du 11 février 2005 ;

Considérant qu'il y a lieu, par application de l'article L. 821-2 du code de justice administrative, de régler l'affaire au titre de la procédure de référé engagée par M. MANN SINGH ;

Considérant qu'eu égard aux conséquences résultant de la décision dont la suspension est demandée sur la vie personnelle et professionnelle de M. MANN SINGH, la condition d'urgence posée par l'article L. 521-1 du code de justice administrative doit être regardée comme remplie ;

Considérant qu'il résulte de ce qui précède qu'il existe un doute sérieux sur la légalité de la décision attaquée ; qu'il y a lieu, en conséquence, par application des dispositions précitées de l'article L. 521-1 du code de justice administrative, de suspendre la décision du préfet du Val d'Oise du 26 novembre 2004 refusant au requérant de lui délivrer un duplicata de son permis de conduire ;

Sur les conclusions de M. MANN SINGH tendant à ce qu'il soit enjoint au préfet du Val d'Oise de lui délivrer le duplicata du permis de conduire demandé dans un délai de 8 jours et sous astreinte de 500 euros par jour de retard :

Considérant qu'aux termes de l'article L. 911-1 du code de justice administrative : « Lorsque sa décision implique nécessairement qu'une personne morale de droit public ou un organisme de droit privé chargé de la gestion d'un service public prenne une mesure d'exécution dans un sens déterminé, la juridiction, saisie de conclusions en ce sens, prescrit, par la même décision, cette mesure assortie, le cas échéant, d'un délai d'exécution » ; qu'aux termes de l'article L. 911-3 du même code : « Saisie de conclusions en ce sens, la juridiction peut assortir, dans la même décision, l'injonction prescrite en application des articles

L. 911-1 et L. 911-2 d'une astreinte qu'elle prononce dans les conditions prévues au présent livre et dont elle fixe la date d'effet » ;

Considérant que la présente décision implique nécessairement que le préfet du Val d'Oise réexamine la demande de M. MANN SINGH au vu des motifs de la présente décision dans un délai d'un mois à compter de la notification de celle-ci ; qu'il n'y a pas lieu d'assortir cette injonction d'une astreinte ;

Sur l'application des dispositions de l'article L. 761-1 du code de justice administrative :

Considérant qu'il y a lieu, dans les circonstances de l'espèce, de condamner l'Etat à verser à M. MANN SINGH la somme de 3 000 euros qu'il demande au titre des frais exposés par lui et non compris dans les dépens ;

DECIDE :

Article 1 : L'ordonnance du 11 février 2005 du juge des référés du tribunal administratif de Cergy-Pontoise est annulée.

Article 2 : La décision du préfet du Val d'Oise du 26 novembre 2004 est suspendue.

Article 3 : Il est enjoint au préfet du Val d'Oise de réexaminer la demande de M. MANN SINGH dans un délai d'un mois suivant la notification de la présente décision.

Article 4 : Le surplus des conclusions des requêtes de M. MANN SINGH est rejeté.

Article 5 : L'Etat versera à M. MANN SINGH la somme de 3 000 euros au titre des frais exposés par lui et non compris dans les dépens.

Article 6 : La présente décision sera notifiée à M. Shingara MANN SINGH, au préfet du Val d'Oise, au ministre d'Etat, ministre de l'intérieur et de l'aménagement du territoire et au ministre des transports, de l'équipement, du tourisme et de la mer.