

1984 SIKH GENOCIDE CASE – US COURT TO HEAR ARGUMENTS ON MAY 01

CONGRESS (I) TAKES DEFENSES OF “BURDEN ON AMERICAN TAX PAYERS” AND “IMMUNITY”

A law firm engaged by the Congress (I) to represent it in a US court, about a case pertaining to Sikh killings of November 1984, has strongly opposed entry of a default judgment against it. The opposition filed in the court has held that the 1984 Sikh Genocide case "involves significant issues of public international law that should not be decided by a default judgment."

Citing several authorities of superior courts of the US and invoking several law points the defending law firm, Jones Day has argued that since all happenings took place in India, the US court had no jurisdiction over it. The papers filed on behalf of the Congress said: "All the individuals and property purportedly harmed by the INC was located in India. Any witnesses or documents that the INC may have relating to the alleged events are located in India. The cost, effort and time required to conduct discovery, nevertheless trial, of this dispute would be significant. Moreover, the administrative difficulties this court would face in hearing these claims would be burdensome, local interest in this action is nil, and imposing jury duty on American citizens to hear this entirely-Indian dispute would be inappropriate."

It has sought dismissal of the petition filed against the Congress by Sikh For Justice (SFJ), a US-based advocacy group.

The class action filed by the Plaintiffs "Sikhs for Justice" (SFJ) and others is "against a foreign political party for alleged acts occurring entirely abroad more than twenty-seven years ago", said Congress' lawyer Thomas E Lynch in his reply submitted in the court. "The magnitude of the issues at stake, the public international and foreign nature of the lawsuit, the fatal deficiencies in plaintiffs' claims, and the longstanding principle that cases should be resolved on the merits all preclude entry of a default judgment against the INC," the opposition further states.

The opposition papers have also argued that the case was time barred as the matter was more than 25 years old.

Questioning the jurisdiction of the court it has also argued that this court recently dismissed defendant Kamal Nath based on similar personal jurisdiction arguments. "The INC may have even fewer contacts with New York and the United States than does Nath, and would also be entitled to dismissal for lack of personal jurisdiction," it has argued.

Judge Robert W Sweet of the US federal court who is presiding the 1984 Sikh Genocide case has now set the case for arguments on May 1, 2012.

SFJ had filed motion for entry of default judgment against Congress (I) for its failure to defend the charges of conspiring, aiding, abetting, organizing and carrying out attacks on Sikhs in November 1984.

As the plaintiff has alleged that Government of India, controlled by Congress, acted as a perpetrator of the wrongful acts, the Congress's counsel has also taken the ground that the Act-Of-State Doctrine and Principles of International Comity bar Plaintiffs' claims.

"The claims necessarily require this court to pass upon the validity of India's official acts undertaken within its borders," it said while arguing that under the act-of-state doctrine: "The courts of one state will not question the validity of public acts (acts jure imperii) performed by other sovereigns within their own borders, even when such courts have jurisdiction over a controversy in which one of the litigants has standing to challenge those acts."

According to attorney Gurpatwant Singh Pannun, legal advisor to SFJ, the Congress's defense that Sikh Genocide case should be tried in India is preposterous because Congress (I) remained in power during majority of the time since November 1984 and has successfully shielded the killers of Sikhs in India. This claim by the Congress (I) comes at a time when CBI in Sajjan Kumar's trial has directly implicated police and administration of deliberate failure to investigate and prosecute those who organized and perpetrated the killing of Sikhs. By taking the defense of "burden on American Tax Payers", Congress (I) is misleading the US Court into believing that 1984 victims can get justice in India. The real motive is to shield Congress leaders involved in November 1984 killings even in the international courts, added attorney Pannun.