

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Between :

**Sarika Angel Watkins-Singh (A child acting by
Sanita Kumari Singh, her Mother and
Litigation Friend)** **Claimant**

- and -
**The Governing Body of Aberdare Girls' High
School** **Defendant**

And
Rhondda Cynon Taf Unitary Authority **Interested
Party**

Mr. Justice Silber

1. **This is a summary of the judgment which I am about to hand down. It is not part of the judgment and is only being given because of the interest in this case.**
2. The main issue raised on this application is whether on the facts of this case, a particular school, (namely Aberdare Girls High School) was entitled as a matter of public law to refuse to allow a 14 year old Sikh pupil Sarika Angel Watkins-Singh to wear on her wrist at school the Kara. It is claimed that the decision to refuse to allow this has resulted in indirect discrimination against Sarika on the grounds of race and religion.
3. The Kara at the centre of the present dispute is a plain steel bangle which has a width of about 5 millimetres which is about a half of an inch. It is worn by Sikhs as a visible sign of their identity and faith.
4. This judgment is fact-sensitive and it does not concern or resolve the issue of whether the wearing of the Kara should be permitted in our schools. Indeed that is not a question that a court could or should be asked to resolve. Nothing that appears in this judgment seeks to resolve or to throw any light on this problem or the circumstances in which a Kara should be permitted to be worn in other schools. It follows that nothing in this judgment is intended to be any comment on the traditions or the requirements of the Sikh religion or race or any other religion or race.
5. There are a number of exceptional features of this case. First, as I have explained, the Kara is 5 millimetres or ½ inch wide and therefore it is much narrower than a watch strap and many ordinary bangles. Second it cannot be observed if the wearer of it is wearing a long-sleeved garment. Third, this is not a case of a pupil not wearing the school uniform but merely wanting to wear the Kara as well as wearing all her uniform. Fourth, wearing the Kara on a wrist is regarded universally by observant Sikhs as a matter of exceptional importance and it symbolises their loyalty to the teaching of their Gurus. Fifth, Sarika readily agrees to cover the Kara for physical education sessions and any activity in which the wearing of the Kara could cause health and

safety issues. Finally there are many schools in which the wearing of the Kara is permitted.

6. Sarika is a 14 year old Sikh schoolgirl of Punjabi-Welsh heritage who challenges a decision made last year by her school which is Aberdare Girls High School which has prevented her from wearing a Kara at her school. The school is a maintained girls' non-denominational school in Wales and its governing body is the defendant in the action.
7. The school defends its decision by saying that it has a uniform policy which on the topic of jewellery only allows its pupils to wear ear studs and wrist watches but no other jewellery. The case for Sarika is that the school erred in making this decision because first to her as an observant Sikh wearing the Kara was matter of exceptional importance for religious and racial reasons and second that the school's decision amounts to indirect discrimination on the grounds of race and religion in the light of the provisions of the Race Relations Act 1976 as amended and the Equality Act 2006
8. Sarika entered the school in September 2005. Her father was Welsh but he died when she was a year old and when Sarika was 5 years old her mother married her step-father who is an observant Sikh and who she regards as her father. Sarika was given a choice as to which religion, if any, she wishes to follow and she has selected the Sikh religion which has become particularly important to her since her visit to India in March 2005. There is no dispute that she is an observant Sikh
9. Sarika's school reports have been good and she was a prefect .On 4 May 2007 the Head Teacher of the school wrote to the parent of Sarika stating the school was:

“very pleased with Sarika's progress and she should be congratulated for her achievements”.
10. In April 2007, a teacher at the school observed Sarika wearing a bangle, which was her Kara. The teacher asked Sarika to remove it because it contravened the school's uniform policy which permitted only one pair of plain ear studs and a wrist watch to be worn by pupils.
11. When Sarika refused to remove it, she sought an exemption from the uniform policy because she stated she was wearing her Kara as something which was central to her ethnic identity and to her religious observance as a Sikh. The school deferred making a decision on Sarika's request to wear the Kara pending receipt by the school of some unspecified national guidance. The governing body at a meeting on 30 June 2007 at which it again decided to postpone making the decision. In the meantime, Sarika's mother was asked not to allow Sarika to wear the Kara but that she should carry it in her bag. Sarika's mother said that she would let Sarika decide but she did not return to school because of the continuing prohibition on her wearing the Kara until 12 July 2007 after the intervention of the local education authority's welfare officer.
12. When Sarika returned to school, she was interviewed by the Head Teacher and she was told that she was not permitted to attend the school wearing the Kara but that she would be taught in isolation and that she would be kept socially segregated from all the other pupils. The segregation was strictly

enforced and she was kept socially segregated from other pupils. Sarika was even accompanied to the toilet by a member of staff who waited outside.

13. By a letter dated 20 July 2007 which was about 3 months after Sarika had first requested an exemption, the governing body eventually refused her request for an exemption. Sarika's parents appealed against that decision.
14. When Sarika returned to school at the start of the autumn term 2007 and when she wore the Kara, she was immediately placed in seclusion. Sarika's request for an exemption was finally refused on appeal by the Appeals Committee of the governing body on 26 October 2007. The reasoning of the appeals committee was merely that "*Article 9 of the ECHR does not require that one should be allowed to manifest one's religion at any time and place of one's choosing*". Surprisingly no reference was made to the provisions of the Race Relations Act or the Equality Act both of which should have been of crucial importance to the governing body in reaching its decision but which were not of such importance.
15. When Sarika returned to school after the half-term break on 5 November 2007 wearing the Kara, she was the subject of fixed-term exclusions first on 5 November 2007 for one day and second on 6 November 2007 for 5 days. Sarika was not formally told of her right of appeal but her mother indicated by a letter dated 8 November 2007 that she wished to exercise her right to make representations. On 13 November 2007, notwithstanding this request Sarika was told that she was being excluded for a fixed term by the Head Teacher of the school.
16. After 5 days of exclusion in the academic term, a pupil is formally entitled to appeal and on 15 November 2007 which was a day after Sarika's sixth day of consecutive fixed term exclusions had ended, she was told by Miss Rosser the Head Teacher in a letter first that she would not be permitted to attend the school wearing the Kara but second that this was not an exclusion because Sarika could attend school if she was dressed compatibly with the school's uniform policy that is without wearing the Kara. In answer to a request the Head Teacher said that she had not decided for how long this exclusion of Sarika would last.
17. Sarika felt unable because of her identity as a Sikh to remove the Kara and the present proceedings were commenced. On 22 January 2008, the defendant's disciplinary committee held a meeting to consider Sarika's fixed term exclusion on 5 and 6 November 2007. The following day the school rejected Sarika's appeal on the grounds of Sarika's "*open, deliberate and persistent defiance of the school's authority*". The school accepted that the way in which it conducted this appeal was unfair.
18. The position is that since 21 February 2008 pending the outcome of the present proceedings Sarika is being educated at a different school which permits her to wear a Kara. She remains determined to return as a pupil at Aberdare Girls High School but provided of course that she can wear the Kara.
19. The claim of Sarika that she has been subjected to unlawful indirect discrimination has to be considered against the background of the importance to an observant Sikh like Sarika of wearing the Kara. Professor Eleanor Nesbitt a Professor in Religion at the University of Warwick has explained

that Sikhs have to adopt the 5 Ks which have been part of their religion since 1699. The 5 Ks are outward signs of a Sikh and they include not only Kesh which is uncut hair but also the Kara which is the bangle. In Professor Nesbitt's extensive experience of working and studying Sikhs, she has concluded that of the 5 Ks, the Kara is the symbol most commonly worn by Sikhs as an external identification of Sikhism even though it is not an actual requirement for people not being initiated like Sarika to wear it.

20. Professor Nesbitt explained that the Kara is a circle that reminds Sikhs of God's infinity and it shows that they are linked in other words, they are handcuffed by it to God. Her evidence was that it is important for Sikhs continue to wear the Kara on his or her right arm or wrist.
21. The main claim of Sarika is that the continuing decision of the school not to allow her to wear the Kara at school amounts to discrimination on grounds of religion and race. The first issue was whether when compared with pupils whose religious beliefs or racial beliefs were not compromised by the uniform code on the issue of the Kara or any other similar item of jewellery Sarika was placed in the words of the statutes "*at a particular disadvantage*" or suffered a "*detriment*" by not being allowed to wear the Kara.
22. Although it was not a requirement of Sarika's religion or race to wear a Kara, I am quite satisfied that it would be a "*particular disadvantage*" or "*detriment*" for an observant Sikh like Sarika to be forbidden for wearing an item which she genuinely believes for reasonable grounds was a matter of exceptional importance to her racial identity or her religious belief and that the wearing of this item can be shown objectively to be of exceptional importance to her religion or race as a Sikh.
23. In this case there is very clear evidence which has not been disputed that the Kara was not a piece of jewellery but to Sarika it was and remains "*one of the defining physical symbols of being a Sikh*" and "*a constant reminder to do good with the hands*". Sarika stress that wearing the Kara was "*extremely important to her*".
24. Obviously the views of a pupil would not and should not be of definitive importance especially if they were not supported by objective evidence showing the exceptional importance to Sarika of wearing the Kara. As I have explained Professor Nesbitt provides this supporting evidence. Indeed the significance of the wearing of the Kara to Sikh pupils in schools is recognised in the guidance issued by other education authorities.
25. I must stress two points. First there was no evidence adduced of any other bracelet or other religious jewellery which would fall into this very exceptional category in which the Kara falls
26. Second the school's attitude in refusing to allow Sarika to wear the Kara was explained by one of their governors when he said that wearing the Kara was seen as "*roughly similar*" to displaying the Welsh flag because "*that is something which engenders emotion and perhaps strong emotion but is not something which either Sarika's religion or culture requires her to wear*". I am afraid I regard this as a seriously erroneously comparison because it totally ignores the critically important *religious* significance of a Kara which is not shared by the Welsh flag.

27. The school sought to justify its decision to prevent Sarika from wearing the Kara because of its general uniform policy. It pointed to decisions of this court which enabled schools in support of their uniform policy to prevent girls wearing the Moslem niqab which is the veil which covers the vast majority of a pupil's face and the jibab which is a long coat like garment.
28. I have concluded that there is an enormous difference between these very noticeable garments and the unostentatious Kara which is very small and still permits the wearer to wear every other aspect of the uniform policy. Again I reject the attempt of the school to justify its decision to prohibit Sarika from wearing the Kara on the grounds that the wearing of the Kara might be seen as a symbol of affluence but its cost must be minimal when compared with the cost of the watches which all pupils are allowed to wear.
29. Another form of justification put forward by the school was that if Sarika was allowed to wear the Kara it would be widely misunderstood in the school. Even if that were the case, the school has a clear obligation as is indeed set out in its own racial equality policy which includes being committed to "*fostering respect for people of all cultural backgrounds*" and having a curriculum which "*celebrates diversity and educates against racism*".
30. I have concluded that none of these justifications succeeded and that the claim for indirect discrimination on grounds of race and religion succeeds.
31. There were other claims made by Sarika . Of those I found that the school failed to comply with its very important obligations under section 71 of the Race Relations Act 2002 which required it in considering its uniform policy to have "*due regard*" to the need to end unlawful racial discrimination and promote equal opportunity and good relations between persons of different racial groups. In addition I dismissed the claim brought under the Human Rights Act that Sarika's rights under Article 8 of the European Convention on Human Rights had been infringed.
32. Thus at the end of the day Sarika's claim for discrimination on grounds of race and religion succeeds. After the draft judgment was circulated the School agreed to allow Sarika to return as a pupil in September and to wear her Kara. She will then be entering year 10 and starting her preparations for her GCSE courses. I very much hope that the school will take all possible steps to ensure first that Sarika can become quickly assimilated again within the school and secondly that there will be no bullying of her for racial or religious reasons. By the same token, I hope that Sarika and her friends will not boast over their success in this action.
33. I have refused an application by the defendant for permission to appeal but the Governors of the School have intimated that they will consider making a further application for permission to appeal. I very much hope that if they do make such an application or reach a decision not to do so, they do so speedily as it is clearly in the interests of the claimant that she knows as soon as possible if this litigation is finished or if it is continuing..
34. Finally I must express my sympathy for all parties in this case Sarika deserves great sympathy for the problems that have been caused to her education by the unlawful decisions. The decision-makers at the school sought to act fairly and they are entitled to some sympathy as they could not

have been instructed properly on the effect of the Race Relations Act and the Equality Act.

35. I stress again that what I have just said is not part of the judgment which I now hand down