

Durga Prasad Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Apr-10-2013

Appellant : Durga Prasad

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. D.D.Bhargava

Judgement :

1 W.P.No.6050/2013 10/4/2013: Shri D.D.Bhargava, learned counsel for the petitioner.

Shri Vivek Agrawal, learned Govt.Adv.for the respondent-State on advance notice.

Challenging the order dated 4.3.2013 Annexure P/1 passed by the Law Department rejecting the mercy petition filed by the petitioner under Article 161 of the Constitution, petitioner has filed this writ petition.

Petitioner has been convicted for an offence under Section 452, 302, 323, 148 and 149 of IPC by the Appellate Court and is undergoing imprisonment.

Petitioner at the relevant time completed the total sentence of 10 years and thereafter filed mercy petition under Article 161 of the Constitution.

Mercy petition was forwarded by the State Government but the law Department has rejected the same under Rule 775 of the M.P.Jail Manual.

It is the case of the petitioner that power under Section 161 of the Constitution can be exercised only by the Governot and State Government by usurping the power under Rule 775 of M.P.Jail Manual cannot reject the same.

It is argued by learned counsel that right available to the petitioner under the Constitution cannot be taken away in the said manner.

Even though Shri Vivek Agrawal, learned Govt.

Advocate tried to emphasize that the State Government has acted in accordance with law, the fact remains that the petitioner was exercising his constitutional right available under Article 161 of the Constitution and has sought intervention of the Governot of the State and when the 2 application was filed under Article 161 of the Constitution, the mandate of the Constitution has to be followed and the State Government under law was duty bound to place the matter before the Governot of the State and proceed in the matter in accordance with law.

By not doing so and treating the same to be an application under Rule 775 of the M.P.Jail Manual, the State Government has acted in an arbitrary and unjustified manner and has infringed with the constitutional right available to the petitioner.

Under such circumstances, it is a fit case where the impugned action should be quashed and the State Government directed to place the matter before the Governor.

In view of the above, the petition is allowed, the order Annexure-P/2 dated 4.3.2013 passed by the State Government under Rule 775 of the Jail Manual is quashed.

The mercy appeal of the petitioner filed under Article 161 of the Constitution be placed before the Governot of the State for a decision in the matter in accordance with law.

With the aforesaid, the petition stands allowed and disposed of.

Certified Copy as per rules.

(Rajendra Menon) Judge Mrs.mishra

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