

**The Government of Andhra Pradesh and ors. Vs. E. Kumar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/430449](http://sooperkanoon.com/430449)

**Court :** Andhra Pradesh

**Decided On :** Aug-01-1996

**Reported in :** 1999(4)ALD225; 1996(2)ALD(Cri)603; 1996(4)ALT259; 1996CriLJ4420

**Judge :** Prabha Shankar Mishra and ;Syed Saadatulla Hussaini, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 106 and 118

**Appeal No. :** Writ Appeal Nos. 725, 735 and 740 of 1996

**Appellant :** The Government of Andhra Pradesh and ors.

**Respondent :** E. Kumar and ors.

**Advocate for Def. :** N. Guru Gopal, ;D. Kedanda, ;Rami Reddy and ;S.R. Sanku, Adv.

**Advocate for Pet/Ap. :** Addl. Advocate General

**Judgement :**

**Syed Saadatulla Hussaini, J.**

1. These writ appeals are preferred under Clause-15 of the Letters Patent against the judgment of the learned single Judge in proceedings under Art. 226 of the Constitution of India.

2. As the point involved in these appeals is common, they are disposed of by a common judgment.

3. The learned Additional Advocate General questions the correctness of the judgment of the learned single Judge in these appeals and submits that there is no material on record to show that the life convicts-respondents are between the age of 16 to 21 years. In the absence of enquiry as to the determination of the age by the Authorities as per the provisions of the A.P. Borstal School Act, 1925 (for short 'Act'), the learned single Judge erred in issuing directions to the appellants to send the respondents, who are undergoing imprisonment for life in different prisons of the State, treating them as adolescent offenders for detention in the Borstal school. Next, he contended that the learned single Judge failed to take notice as it is the discretion of the State Government, the Inspector General of Prisons and the Judge who passes the sentence, and, therefore no mandamus can be issued directing the exercising of discretion in a particular manner.

On the contention of the learned Additional Advocate General that the life convicts-respondents were not adolescent offenders within the meaning of sub-section (1) of Section 2 of the Act on the date of conviction, on 4th July, 1996, we directed the appellants to produce the respondents for determination of their ages before the Superintendent, Osmania General Hospital, who was directed to get them thoroughly examined for determination of their ages and submit a report to this Court.

4. In compliance with the directions of this Court, the Professor, Forensic Medicine, Osmania Medical College issued certificates on 10-7-1996 opining on the basis of their physical, dental and radiological examination as follows :

'1. E. Kumar, the respondent in W.A. 725 of 1996, is aged about 21 years;

2. I. Nageswararao, son of respondent in W.A. 735 of 1996 is aged about 25 years;

3. G. Praveen Kumar, the respondent in W.A. 740 of 1996 is aged about 21 years.'

4. Sub-section (1) of Section 2 of the Act defines adolescent offender as under :

'Adolescent offender' means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security (under Section 106 or Section 118) of the Code of Criminal Procedure has failed to do so and who at the time of such conviction or failure to give security is not less than 16 years nor more than 21 years of age.'

Section 8 of the Act deals with regard to the committal to the Borstal school, which is as under :

'Where it appears to a Court having jurisdiction under Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with person of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it should be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal school for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date on which the adolescent offender will, in the opinion of the Court, attain the age of twenty-three years.'

6. By virtue of the powers conferred under Sections 10 and 10A of the Act, Appellant Nos. 1 and 2, viz., State Government and the Inspector General of Prisons are vested with the powers to transfer the adolescent offenders for detention in Borstal school, and, under Section 11 of the Act, a duty is cast upon the Court for determination of the age before passing a sentence under Section 8 of the Act, with regard to the age of the adolescent offenders.

7. It is to be noted that the intentment of the Legislature in passing the Act, is regulatory and beneficial for the adolescent offenders for it provides the detention and training to them, to reform the criminal habits or tendencies or association with persons of bad-characters and they are subjected to discipline their lives, which will be conducive to their reformation and repression of crime and lead life as good citizens. To achieve the object of social reformation, it is made lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal school for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date on which the

adolescent offender will, in the opinion of the Court, attain the age of twenty-three years. When the Legislature has conferred a right on the adolescent offenders and an obligation is cast on the State to transfer the adolescent offenders for detention in a Borstal school, they cannot be deprived of the enjoyment of beneficial and reformatory rights.

8. A Division Bench of this Court in *State of A.P. v. Komalla Krishnaiah*, (1992) 1 Andh LT 644 : (1992 Cri LJ 2446) has held that in the interest of justice, this Court can issue directions to the State Government to transfer an adolescent offender to a Borstal school under the powers vested in this Court under Art. 226 of the Constitution of India.

9. We have before us the certificates of age issued by the Professor, Forensic Medicine, Osmania Medical College on 10-7-1996, according to which, E. Kumar respondent in W.A. 725 of 1996 is aged about 21 years; I. Nageswararao, son of respondent in W.A. 735 of 1996 is aged about 25 years and G. Praveen Kumar, respondent in W.A. 740 of 1996 is aged about 21 years as on 10-7-1996. E. Kumar, respondent in W.A. 725 of 1996 was convicted on 21-1-1994; T. Nageswararao, son of respondent in W.A. 735 of 1996 was convicted on 8-12-1991 and G. Praveen Kumar, respondent in W.A. 740 of 1996 was convicted on 7-5-1993.

10. It is clear that the respondents in Writ Appeal Nos. 725 and 740 of 1996, were, at the time of conviction, aged about 18 years 6 months and 18 years respectively and they have not attained the age of 23 years as on today. In so far as T. Nageswararao, the son of respondent in Writ Appeal No. 735 of 1996 is concerned, though he was aged about 20 years 5 months on the date of conviction, but he is now more than 23 years; thus he is not entitled to the benefits under the Act.

11. We are fully satisfied that the authorities have failed to exercise the discretionary powers vested in them under the Act in not transferring the adolescent offenders for detention in Borstal school. We do not see any illegality in the learned single Judge issuing mandamus directing the appellants to transfer the adolescent offenders to the Borstal school under the provisions of the Act.

12. We accordingly dismiss the appeals W.A. 725 of 1996 and W.A. 740 of 1996 and direct the appellants to transfer the respondents to the Borstal school in the State taking into consideration the ages determined by the Professor, Forensic Medicine, Osmania Medical College, and allow the Writ Appeal 735 of 1996 and dismiss the writ petition.

13. Order accordingly.

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