

J. Moses and ors. Vs. Govt. of A.P., Home and Prisons Dept. and ors.

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Court : Andhra Pradesh

Decided On : Apr-10-1998

Reported in : 2000(4)ALT373

Judge : N.Y. Hanumanthappa and ;Neelam Sanjiva Reddy, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 433 and 433A; Indian Penal Code (IPC) - Sections 120B, 121 to 130, 359 to 402; [Constitution of India](#) - Articles 14 and 21

Appeal No. : Writ Petition Nos. 21697 of 1997

Appellant : J. Moses and ors.

Respondent : Govt. of A.P., Home and Prisons Dept. and ors.

Advocate for Def. : Adv. General in W.P. 31943/97

Advocate for Pet/Ap. : K.R. Prabhakar, ;D. Kodanda Rami Reddy, ;B. Konda Reddy, ;K. Sesharajyam and ;Kamaleswari, Advs.

Judgement :

ORDER

N.Y. Hanumanthappa, J.

1. As common questions are involved in all these writ petitions, they were heard together and are being disposed of by this common order.
2. The petitioners in Writ Petition Nos. 21697 and 24501 of 1997 seek a writ of Habeas Corpus declaring the action of the respondents in continuing to confine the life convicts, i.e., the petitioners, who have completed the sentence of 10 years including remissions as on 15-8-1997 as illegal, arbitrary and unjust, and to direct the respondents to set the petitioners at liberty, the petitioners in Writ Petition Nos. 24844 and 31943 of 1997 seek Writ of Habeas Corpus declaring the continued confinement of the petitioners who have completed 7 years of imprisonment including remissions as on 15-8-1997 as illegal, improper and arbitrary and to direct the respondents to set the petitioners at liberty forthwith; and Writ Petition No. 27753 of 1997 is filed seeking a direction to the respondents to produce the petitioners, who are lodged in Central Prison, Chanchalaguda, and set them at liberty after striking down Clause 4(3) of G.O. Ms. No. 192, dated 11-8-1997 issued by Home (Prisons-C) Department as it is violative of Articles 14 and 21 of the [Constitution of India](#).
3. The brief facts in all these writ petitions are as follows;- The petitioners in W.P. Nos. 21697, 24501, 24844 and 31943 are the life convicts and undergoing imprisonment in Rajahmundry Central Jail, whereas the petitioner in W.P. No. 27753/97 is the life convict undergoing imprisonment in Chanchalaguda Central Jail, Hyderabad. The 1st respondent issued G.O. Ms. No. 193, dated 11-8-1997 granting remissions as on 15-8-1997 to certain categories of prisoners and ordering for their release. The grievance of the petitioners in all the writ petitions is that their request for release was not considered by the Government on the ground that they have not completed the actual sentence of seven years eventhough they have completed ten years sentence. The petitioners contended that the so called benefit given to the prisoners under the above said G.O. cannot be worked out and practically no benefit can be given as the two conditions stipulated in Clause 2 (a) and (b) cannot go together. According to them that even if a person is in jail actually for 7 years, he cannot earn remission period of 3 years in his 7 years of imprisonment. The convicts are given five days general remission per month which comes to 60 days in a year and a discretionary remission of 20-

30 days in an year is given by the Superintendent of the concerned Central Prison under two categories of remission i.e., (1) good conduct remission of maximum 20 days in an year and (2) special remission of 10 days in an year. Even if the prisoner is in jail for 7 years, the maximum possible remission he gets will be only about 20 months. Hence even if a prisoner is inside for 7 years of sentence including remission. Thus, the petitioners attack the impugned G.O. in so far as it relates to the extent that who have undergone an actual sentence of 7 years and total sentence of 10 years as on 15-8-1997 and seek direction to the respondents to release them forthwith. It is further stated that in similar circumstances, this Court in W.P. No. 2422/95, dated 16-2-1995 wherein release of life convicts who have completed ten years of imprisonment including remission is ordered. It is further submitted that the Government is committed itself by making announcement on the floor of the Assembly to release the prisoners who have completed 7 years including remissions and this news was published in several reputed newspapers also. The petitioner in W.P. No. 27753/97 is the life convict and he challenges the G.O. Ms. No. 192, dated 11-8-1997 in imposing restrictions that the said G.O. shall not apply to the prisoners convicted for the offences Under Sections. 120-B, 121 - 130, 359 - 377 and 395 - 402 on various grounds.

4. In order to appreciate the question involved in these writ petitions, it is necessary to extract Clause (2) of G.O. Ms. No. 193, which reads as follows:

'2. In exercise of the powers conferred by Article 161 of the [Constitution of India](#), the Governor is pleased to remit the unexpired residue of sentence of the following categories of prisoners in the State who have been convicted by Civil Courts of criminal jurisdiction:

(a) All the convicted prisoners sentenced to imprisonment for life and governed by Section 433-A Cr. P.C. and who have undergone an actual sentence of 7 years and total sentence of 10 years on 15-8-1997, and

(b) All convicted prisoners sentenced to imprisonment for life and governed by Section 433-A Cr. P.C. aged more than 65 years and have undergone an actual sentence of 5 years and total sentence of 7 years as on 15-8-1997.'

Section 433 of the Criminal Procedure Code (for short 'Cr. P.C.') deals with the power of the Government to commute the sentence while Section 433-A Cr. P.C. imposes a restriction on powers of remission or commutation in certain cases. Thus Section 433-A prohibits granting of any remission to those prisoners, who were convicted for an offence punishable under Section 302 I.P.C., which means other than those convicted for an offence under Section 302 I.P.C. may seek for remission in view of G.O. Ms. No. 193, Home (Prisons-C) Department, dated 11-8-1997.

5. It is a concession given to the prisoners, which is in the nature of a reformatory one, who behave properly and maintain good conduct- Because of this concession the prisoners will be entitled to go out from the prison earlier to the actual sentence of imprisonment ordered by the competent Courts. In its wisdom the Government have laid down certain guidelines viz., who are those entitled to be released. In the first category it is stated that one should have completed (sic.7) years of actual sentence and total sentence of 10 years as on 15-8-1997 which includes remission. In the latter category, where the convicted prisoners are aged more than 65 years and have undergone the actual sentence of 5 years and total sentence of 7 years as on 15-8-1997, which includes remission, were ordered to be released.

6. The grievance of the petitioners in these writ petitions is that the Government while extending the benefit to the prisoners ought not to have imposed such a condition of 7 years and 10 years or 5 years and 7 years as the case may be, which is impracticable. It is nothing but a clear case of arbitrariness. It is also contended on behalf of the petitioners that it is violative of Article 14 of the [Constitution of India](#) and it is more oppressive in nature. Apart from these contentions, Smt. K. Sesharajyam, learned Counsel appearing for the petitioners in W.P. No. 24844 of 1997 made a special submission that the jail authorities, wherever a prisoner is sent on parole, if he overstays for a day, are imposing a cut of 5 days remission earned earlier. According to her, such a remission earned cannot be reduced without notice to the prisoner.

7. As far as the submission made by Smt. K. Sesharajyam is concerned, there is some force in her contention. The first submission that the Government ought not to have placed restriction of 5 or 7 years on the ground that it is impracticable and thus a direction be issued to the Government to correct the same, cannot be accepted for the simple reason that the petitioners have not shown how the Government is duty bound to reduce the sentence already ordered by the competent Court. On the other hand, after all G.O. Ms. Nos. 193 and 192 are a mere concession given by the Government to the prisoners and it is for the prisoners to avail of such benefit. If such a concession was not there, there would have been no right for them to complain. In other words, the said G.Os have not conferred any right on the petitioners/prisoners, All that they can say is when maximum is said fixing the minimum is incorrect. Though it stands to reason, it is not for us to suggest what type of guidelines the Government should make. Regarding the validity of G.O. Ms. Nos. 193 and 192 dated 11-8-1997, in our view the petitioners cannot challenge the same as the petitioners have not shown what right has been accrued to them and the same has been deprived of and how those G.Os. are unconstitutional or the State failed in discharging its duty. It is well settled principle of law that a writ does not lie against the Government to extend a concession that has been ordered by the State in a particular manner as suggested by a citizen as concession will not confer any right.

8. It is for the petitioners herein to make a representation to the Government to retain only the maximum sentence of imprisonment served which includes remission and delete the sentence which is minimum. If such a representation is given, it is for the Government to consider the same. It is ordered that, wherever the prisoners have already served ten years and more as on the cut-off date which includes actual sentence and remission, the jail authorities shall calculate the remissions, etc., and if they are satisfied that they completed ten years or seven years of sentence including remission, then to pass an order of release. This exercise can be taken up by the jail authorities on a representation made by the prisoner. Further whenever there is a representation that before cutting the remission earned in case of prisoner overstaying during the parole period, the jail authorities shall hear such a prisoner and pass appropriate order as to reducing the remission earlier earned.

9. The writ petitions are, accordingly, disposed of with the above observations. No costs.

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