

Mehandi Hasan Vs. the State of U.P. and ors.

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Court : Allahabad

Decided On : May-08-1995

Reported in : 1996CriLJ687

Judge : K.C. Bhargava and ;I.S. Mathur, JJ.

Acts : Uttar Pradesh Prisoners Release on Probation Act, 1938 - Sections 2; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 433A; [Constitution of India](#) - Article 14; Uttar Pradesh Prisoners Release on Probation Rules

Appeal No. : Writ Petn. No. 506(H/C) of 1994

Appellant : Mehandi Hasan

Respondent : The State of U.P. and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Deepak Srivastava, Adv.

Disposition : Petition allowed

Judgement :

I.S. Mathur, J.

1. Arbitrariness in State action, in consideration and disposal of matters relating to premature release under Section 2 of the U. P. Prisoners Release on Probation Act, 1938, hereinafter referred to as Probation Act, and the rules, continues unabated. Neither the clear provision of the Act and the rules nor numerous judgments of Hon'ble Supreme Court and of this Court, authoritatively interpreting these provisions and categorically laying down the guidelines seem to persuade, far less to compel, the authorities to act in accordance with law. The categorical directions of Hon'ble Supreme Court and of this Court that the reports of the concerned authorities, the Probation Officer, Superintendent of Police, District Magistrate and the Board as also the order passed by the State Government, must be based on reasons continue to be violated. Perhaps, these authorities are under a misunderstanding that the law laid down by Hon'ble Supreme Court or by this Court is binding only between the parties. They will do well to understand the established legal position that law laid down by Hon'ble Supreme Court is not only binding between the parties but it is equally binding on all the authorities in India. Likewise the law laid down by this Court is binding not only between the parties but on all the authorities amenable to the jurisdiction of this Court (see *Amrit Lal Berry v. Collector of Central Excise, New Delhi*, : (1975)ILLJ144SC , *Devi Das Madho Prasad, Agra v. Commr. of Income-tax, Lucknow*, AIR 1967 All 414.

2. The present case is another example of such arbitrary action. The petitioner was convicted for offence under Section 302 I.P.C. vide order dated 11-3-1977, in S.T. No. 572 of 1976, by the Addl. Sessions Judge, Sitapur and was sentenced to imprisonment for life. He had undergone 16 years 4 months and 2 days imprisonment as on 11-3-1994. He moved an application in Form-A for his premature release under Section 2 of the Probation Act. This prayer was refused by order dated 24-8-1989. The petitioner challenged this order by way of writ petition, being writ petition No. 124(H/C) of 1992. By an order dated 4-8-1993, this writ petition was allowed holding that, since the petitioner has served a sentence of 14 years with remission, he was entitled for release on Form-A. It was further directed that the State Govt. shall decide the Form-A afresh after obtaining proper reports. The Court also noticed that, in their affidavit, filed in the writ petition, the son and the wife of the deceased stated that there is no dispute in between them and they have no objection if the petitioner is prematurely released on Form-A. It

was further observed that the report of the Probation Officer shows that there is no dispute and the guardian of the petitioner has very good reputation in the society. The State Govt. has reconsidered this matter but. has again rejected Form-A of the petitioner.

3. On our direction, the record of the case was produced by the learned Additional Government Advocate. The Probation Officer has reported that the conduct of the petitioner in jail was satisfactory, work and conduct previous to conviction was satisfactory and, according to the neighbours report, the petitioner is likely to lead peaceable life. In the column 'Probable attitude of prisoner after release'. the following report is given :-

^orZeku esa 'kkfUriw.kZ thou ;kiu dh IEHkkoukizrhr gkrh gS**

It is further reported by the Probation Officer that the proposed guardian of the petitioner has good reputation and he will be in a position to control the prisoner. In view of these facts, the Probation Officer has given the following recommendation:

^mijksDr of.kZr rF;ksa ds vk/kkj ij rFkk canh}kjk dkVh x;h ltk dks n`fVxr j[krs gq, m- iz- fiztulZ fjiht vku izksks'ku,DV dh /kkjk&2 ds vUrxZr vof/k iwoZ fjkkbZ dh laLrqfr dh tkrh gS A

The report of the Superintendent Police reads as follows:

^le; ls iwoZ NksM+s tkus gsrq laLrqfr ugha dh tkrh gS A**

The report of the District Magistrate reads:

^canh us vius xkao ds cdjnhh dk dRy fd;k Fkk]e`rd ds yMds o ifjokj ds yksx ekStwn gS] cnys dh Hkkouk vHkh O;klr gS] iqfyl v/kh{k dus NksM+s tkus dh laLrqfr ugh dh gS iqfyl vk[k ds vk/kkj ij NksM+s tkus dh laLrqfr ugh dh tkrh gS A**

On the basis of the reports of the Police Superintendent and the District Magistrate, the Probation Board has also opposed premature release. The Board has made following recommendation :

^^fytK eftLVsV rFkk iqfyl v/kh{k d nksuks usle; iwoZ fJgkbZ dk fojks/k fd;k gS A vLohr fd;s tkus dh laLrqfr dh tkrh gS A**

4. The State Government considered the reports and has passed the following order:

^^fytK eftLVsV ds vuqlkj cUnh us vius xkao dscdjnhh dk dRy fd;k Fkk] e`rd ds yM+ds o ifjokj ds yksx ekStwn gSaa] cnys dhHkkouk vHkh O;klr gS A bl dkj.k eqDrkSijkUr cUnh ds 'kkfUr iwoZd thou ;kiu dhEHkkouk ugha gS A vr% 'kklu }kjk fopkjsijkUr cUnh esganh glu dh izksks'ku ,DVds vUrxZr eqfDr fnukad 3&12&93 dks vLohdkj dj nh x;h gS A**

5. It is quite apparent from the perusal of the above record that the Superintendent of Police, District Magistrate and the Probation Board have not given any reasons for their opinion that the feeling of revenge is still existing. The State Government has not taken into consideration the report of the Probation Officer or any other objective fact in this regard and has passed the order of rejection merely on the basis of vague reports of the Superintendent of Police, the District Magistrate and the Probation Board.

It has been repeatedly laid down by Hon'ble Supreme Court and by this Court that the reports of such authorities must be informed with reason and the order passed by the State Government must also contain objective reasons for rejecting Form-A. In fact, it is well established legal position that an order, whether judicial, quasi judicial or executive, adversely affecting any person must be based on reason.

6. In R.D. Shetty International Airport Authority : (1979)ILLJ217SC , Hon'ble Supreme Court has observed :

'The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decision of this Court in *E.P. Royappa v. State of Tamil Nadu*, : (1974)ILLJ172SC and *Maneka Gandhi v. Union of India*, : [1978]2SCR621, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by an extraneous or irrelevant considerations because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. Mathew, J. in *V. Punnithan Thomas v. State of Kerala*, : AIR1969 Ker81 (FB) observed :

The Government is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.' - The Supreme Court has further observed in the said case :-

'It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the Executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege. . . . The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will.'

In *Maru Ram v. Union of India*, : 1980 CriLJ1440 the view taken by the Supreme Court in the case of International Airport Authority has been reiterated and it has been observed :

'Article 14 is an expression of the egalitarian spirit of the Constitution and is a clear pointer that arbitrariness is anathema under our system. It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law up to itself but must be informed by the finer canons of Constitutionalism.'

The Supreme Court has further observed in the said Maru Ram's case :-

'It is the pride of our constitutional order that all power, whatever its source, must, in its exercise, anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power. From this angle even the power to pardon, commute or remit is subject to the wholesome creed that guidelines should govern the exercise even of presidential power.'

7. In Bhagwat Saran v. State of U.P., : (1983)1SCC389 , the State Government rejected the prayer for release on licence observing that 'after considering their cases sympathetically, keeping in view the law and order situation, they cannot be released.' Hon'ble Supreme Court has held the order to be bad in law and observed :

'A bald statement like that without any attempt to indicate how law and order is likely to be adversely affected by their release cannot be accepted.'

Hon'ble Supreme Court, therefore, directed the release of the detenu in that case.

8. In Shiv Kumar v. State of U.P., writ petition No. 814 of 1990, decided on 8-3-1991, a Division Bench of this Court has observed :-

'It cannot be said that the State after obtaining the report from the different authorities can pass an order rejecting Form A of the convict without considering the said reports. The order passed by the State must appear that the order is neither arbitrary nor capricious and has been passed after complete application of mind. Suffice it to say that all factors required to be considered have been taken into consideration. In our, opinion, it is rightly pointed out by the petitioner's counsel that despite favourable reports the order of the State Government

rejecting Form A of the petitioner without giving any cogent reasons clearly shows the arbitrariness as well as the fact that the order was passed without application of mind.'

In regard to the report of the District Magistrate opposing release on licence the Bench has observed :-

'The District Magistrate has not mentioned any basis as to how he reached the conclusion that the petitioner can commit crime again after release on licence. On the other hand, it is not disputed that the petitioner was released four times on parole and during this period there had been no adverse report against him. There is no allegation also that the petitioner had abused his parole. It is also not disputed that the petitioner's conduct in jail is also satisfactory. In fact no foundation has been laid to substantiate this allegation of the District Magistrate that the petitioner can commit offence again if released on licence.'

9. In *Dunna v. The State of U.P.* Writ Petition No. 125(H/C) of 1992, decided on 3 I-I-1995, a Division Bench of this Court has observed :

'The reports and recommendations of the concerned authorities including the District Magistrate and the Probation Officer etc. must be based on objective facts and not merely on conjectures and surmises. Such opinions or recommendations must clearly indicate the reasons for forming the opinion or making a particular recommendation and it could not be a bald statement opposing release on licence. The State Government must also indicate the reasons for accepting or not accepting the opinion....'

The Division Bench has further observed :

'It may be noticed that it is from the antecedents and conduct in prison only that the opinion has to be formed regarding the convict leading a peaceable life and is being likely to abstain from crime. Abstaining from crime and leading peaceable life are not matter of a separate consideration. The opinion thereto has to be formed only on the basis of antecedents and conduct in jail. The antecedent is not an abstract concept. It is relative to actual facts of antecedents. In *Stroud*.

Judicial Dictionary, Volume I, it is mentioned that antecedent 'refers primarily to the offender's previous history and past record.' This previous history and past record are obviously ascertainable facts. If any earlier crime has been committed or reports have been lodged against the convict or there are occasions where he has not acted as a responsible member of society may all come within the definition of antecedents. But, and it may be emphasised, there will be distinctly ascertainable facts and not merely vague assertions and allegations without back up facts. In other words it will not be a vague opinion of the Superintendent of Police or the District Magistrate but will necessarily be the opinion or recommendation based on ascertainable facts. Therefore, if an adverse opinion regarding prisoner's abstaining from crime or leading peaceable life is formed, it must be shown to have been formed on some actual facts or incidents and not on vague feelings or unconfirmed reports. The District Magistrate or the Superintendent of Police and the Probation Officer as also the Board must indicate as to what conduct, if any, of the petitioner disentitles him from being released on licence. Merely stating that he will not lead a peaceable life or will not abstain from the crime or that the crime committed by him for which he is undergoing sentence is heinous one is not sufficient.'

After considering the entire law on the point, the Division Bench has summarised the legal position thus :-

(1) Section 433A of the Code of Criminal Procedure will not be attracted for release on licence under Section 2 of the U.P. Prisoners Release on Probation Act, 1938 and it is not necessary for being eligible for release under the said Act that the person concerned should have undergone 14 years of actual imprisonment mentioned in Section 433A.

(2) The opinion and recommendation of the Superintendent of Police, the District Magistrate, the Probation Officer and the Board must be based on some objective facts and reasons must be indicated for opposing the release on licence. The jail authorities will mention the conduct of the prisoner as ascertainable from the jail records. The Superintendent of Police, the Probation Officer and the District Magistrate must mention all those facts on the basis of which they are of the

opinion that on release on licence, the convict will not lead peaceable life or will not abstain from crime.

(3) The formation of the opinion by the State Government as to whether or not the convict shall abstain from crime or lead peaceable life after release from prison must be based on the consideration of the ascertainable facts relating to the antecedents and conduct in prison and not on mere opinion of the District Magistrate, Superintendent Police, Probation Officer.

(4) The antecedents will, no doubt, include the crime committed for which the concerned convict is undergoing jail sentence but that will not be sole factor, not even the most important factor. For forming an opinion against release on licence, there must normally be some more ascertainable facts besides the fact of committing the offence for which the convict is undergoing sentence.

(5) In considering the conduct in jail, mere award of some punishment will not be sufficient for holding opinion against the convict's release on licence. The State Government must, in addition, consider the nature of offence and the nature of the punishment awarded.

(6) The orders passed by the State Government must contain broad reasons indicating application of mind. The order must be based on facts and not on mere opinion of the concerned authorities.

(7) Last but not the least, the State Government and the concerned authorities must always keep in mind the salutary object of the Probation Act and the rules as indicated in the body of the judgment and that consideration must always guide them in the formation of the opinion.'

10. It is thus obvious that no State action can be sustained if it suffers from arbitrariness. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State Action, whether it be under authority of law or in exercise of executive power. Every, action of the executive government must be informed with reason. That is. the very essence of

the rule of law and its bare minimal requirement.

11. In this connection, we may also observe that in deciding the matter of premature release, the concerned authorities must always keep in mind the object behind Section 2 of the Probation Act. In *State of U.P. v. Sadhu Saran Shukla*, 1994 SCC (Cri) 553, Hon'ble Supreme Court has observed:

'Section 2 of the Act was enacted with a view to encourage people in prison to lead a peaceable life and to give them the opportunity of hospitality and return to the main stream of the society. The same is clear from the objects and reasons of the enactment.'

Indeed, the object of the Probation Act is reformation of the offender. Section 2 is capable of no other meaning. It contemplates giving to the fallen man a chance of getting himself reformed and rehabilitated. The whole intention of this provision is humanitarian. It accepts the principle that the criminal law for the purpose of penology, deals primarily with the individual and does not concern itself with the offence for which he is lodged in jail. We may also, at this stage, usefully extract the following observation of Supreme Court in *Maru Ram's case*, (1980 Cri LJ 1440) (*supra*):

'We find the rise of enlightenment in penological alternatives to closed prisons as the current trend and failure of imprisonment as the universal lament. We, heart-warmingly, observe experiments in open jails, filled by lifers, liberal paroles and probations, generosity of juvenile justice and licensed release or freedom under leash a la. The Uttar Pradesh Prisoners' Release on Probation Act, 1938. We cannot view without gloom the reversion to the sadistic superstition that the longer a life-convict is kept in a cage the surer will be his redemption. It is our considered view that, beyond an optimum point of say, eight years-we mean no fixed formula-prison detention benumbs and makes nervous wreck or unmitigated brute of a prisoner. If animal farms are not reformatories, the Remission Rules and short-sentencing schemes are a humanising wheel of compassion and reduction of psychic tension.'

12. Considering the background, the object of the Probation Act and the observation of Hon'ble Supreme Court and also of this Court, the inevitable inference will be that the premature release on licence under the Probation Act and the Probation Rules should be considered rather liberally with a reformative zeal. As a corollary of this principle, the concerned authorities and the State Government need not take technical view of the matter but must apply their mind keeping in view the broad objects of such premature release. If, for example, a person has conducted himself satisfactorily in jail and there is nothing adverse, by way of tangible fact, against his antecedents, apart from the offence for which he has been convicted, if he is considered to be fit enough to be sent to the model jail or to the open farms or on home leave without any adverse report against him and family members of the deceased state no objection to such release, it would do violence to commonsense if a report were to come from the Superintendent of Police or the District Magistrate that, if released, he may create law and order problem or his release on licence will not be in the interest of the habitants of the village or that, if released he may wreck vengeance or vengeance may be wrecked against him.

13. In the present case, it is not disputed that the conduct of the petitioner in jail was satisfactory. As has been noticed by this Court while deciding the earlier writ petition, Writ Petition No. 124(HC) of 1992, the son and the wife of the deceased have filed affidavit that there was no dispute in between them and they had no objection if the petitioner is prematurely released on Form-A. The Probation Officer has reported that the petitioner is likely to lead peaceable life after release and the neighbours have assured that he will do so. The Probation Officer has also reported that the proposed guardian is a man of repute and he will be in a position to control the petitioner. He has accordingly recommended premature release. In face of these facts, it is not understandable as to how the Superintendent Police, the District Magistrate or the Probation Board could give an opinion that feeling of revenge is existing in the village. By whom or against whom this feeling is existing The son and the wife of the deceased who are the persons, who could have objected to such release, have not only not objected but have clearly stated in their affidavit that they have no objection to the premature release of the petitioner. The contrary opinion, recorded by the Superintendent Police, does not contain any

reason for such an opinion. It does not state any fact which could lead to that conclusion. The District Magistrate and the Probation Board have blindly and mechanically endorsed that opinion without giving any additional facts or reasons for their opinion. The State Government has done likewise. The record placed before us does not disclose and facts which could have persuaded the State Government to reject Form-A of the petitioner. In fact, what appears from the record is that the State Government did not take into consideration the relevant facts recorded in the report of the Probation Officer and also appearing from the affidavit of the son and wife of the deceased. The State Government had a clear notice of the affidavit as that fact was mentioned in the decision of the earlier writ petition of the petitioner. It is settled law that any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts appearing on a decision is bad in law see *Baldev Raj Chaddha v. Union of India*, : (1980)IILLJ459SC .

14. The opinion regarding release on licence has to be formed by the State Government. That can be done by the State Government only on a consideration of facts relevant to formation of opinion and not on the basis of mere certificate or opinion of other authorities which do not disclose facts.

15. In the present case, it is quite obvious that the State Government has based its decision on irrelevant facts, i.e., on the mechanical opinion of the Superintendent Police, the District Magistrate and the Board and has not taken into consideration the relevant facts appearing in the report of the Probation Officer and the affidavit of the son and the wife of the deceased. Such an order cannot be sustained.

16. No facts have been placed before this Court for coming to the conclusion that the conduct in jail or antecedents of the petitioner did not warrant his premature release. The only fact placed before the Court is that the petitioner is guilty of an offence under Section 302 I.P.C. That, in our opinion, is not sufficient for rejection of Form-A. We have already indicated above that according to the report of the Probation Officer, the petitioner was likely to lead peaceable life. His conduct in jail was satisfactory. Accordingly, there is nothing adverse to the petitioner which may come in his way of premature release.

17. We would have normally directed the State Govt. to reconsider the matter. However, we feel compelled to pass an order of premature release directly as we find that in spite of the orders passed in the earlier writ petition, being writ petition No. 124(HC) of 1992, decided on 4-8-1993, the State Government has failed to consider the matter of premature release of the petitioner in the light of the relevant facts and has based its decision on irrelevant facts. There is no legal hindrance in doing so. [See Bhagwat Saran v. State of U.P., : (1983)1SCC389 , Shiv Kumar v. State of U.P., Writ Petition No. 814 of 1990 decided on 8-3-1991].

18. We accordingly allow this writ petition. The order dated 3-12-1993, rejecting Form-A of the petitioner, is hereby quashed and the State Govt. is directed to release the petitioner on licence under Section 2 of the U.P. Prisoners Release on Probation Act, 1938 and the rules on furnishing bond, with such conditions as the State Government may impose, within seven days of the communication of this order.

19. Let a copy of this judgment be given to the learned counsel for the parties on payment of usual charges within three days. Learned counsel for the petitioner shall be at liberty to serve this copy on the State Government. The Addl. Government Advocate shall also communicate this order to the concerned authority in the Government for immediate compliance. A copy of this judgment shall also be sent to the Principal Secretary, Home Department, Government of U. P. for compliance.