

Nainaram and anr. Vs. State of Madhya Pradesh and anr.

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SooperKanoon Citation : sooperkanoon.com/504949

Court : Madhya Pradesh

Decided On : Feb-10-1986

Reported in : 1987CriLJ1981; 1987MPLJ685

Judge : T.N. Singh and; Ram Pal Singh, JJ.

Appellant : Nainaram and anr.

Respondent : State of Madhya Pradesh and anr.

Judgement :

T.N. Singh, J.

1. Two lifers, brothers, were released on bail by this Court by an order passed on 8-11-1983 in Misc. Petition No. 426 of 1983 pending consideration of their case for 'premature release' by the State Government. They are suffering incarceration since 19-8-1975 though their conviction took place on 26-2-1976 in Sessions Trial Nos. 161, 162 and 163 of 1975. Bail, because the State Government had failed to render a decision on the question within the period of three months, was allowed for the purpose by the Court. Eventually, on 20-9-1984, by a communication addressed to the Inspector-General of Prisons (Annexure P/1), the State Government conveyed to him its decision that his 'recommendation for premature release of the petitioners under '14 years Rule' was found unacceptable'. Thereafter, the petitioners found themselves lodged again in the Gwalior Central Jail, from where they have moved this Court.

2. State has filed return to refute, in particular, petitioners' contention that the impugned order (Annexure O/I) was bereft of reasons and was, therefore, liable to be struck down. What is surprising; is that the contents or the correctness of Annexure P/I is not denied. Indeed, State has filed Annexure R/2, which is a verbatim copy of Annexure P/I. On the other hand, what is contended with the aid of Annexure R/1 is that the grounds of rejection of petitioners' case for 'premature release' do appear in the 'note-sheet paper of the Special Secretary Law and Legislation, Madhya Pradesh Government, Bhopal dt. 2M1-1984'. In the return, it is also admitted that the petitioners are in Jail since 19-8-1975 and they have undergone more than 15 years of sentence including remissions. But, it is further contended in the return, refuting petitioners' grievance of discriminatory treatment vis-a-vis one Mansukh Jatav, that the latter was released in virtue of 'Central Order' (dt. 14th Aug., 1984), which wa/given effect from 15tty Aug., 1984. Thus, therefore, Mansukh was not treated preferentially though his case for 'premature release' was also similarly rejected. What, however, could not found in the return is the ground for non-consideration of petitioners' case of release under the same General Order.

3. We must at once notice the fatal flaw which vitiates beyond redemption the action of the State as the facts are vocal. What value we can be asked to attach to Annexure R/I, which is of a later date, in the face of Annexure R/2 If the 'recommendation' was already rejected on 20-9-1984, how could consideration take place subsequently on 20-11-1984. If these facts show anything, they positively indicate one thing very clearly. There was no consideration at all in any manner of the petitioners' case and an arbitrary decision was rendered earlier, as manifested in Annexure R/2 and the later endeavour, projected in Annexure R/2, was a desperate bid to holify and legalise an unholy and illegal venture.

4. Whatever may be the wprth of ingenuous device manifested in Annexure R/2, we may still notice legality, otherwise of the unholy enterprise. We were invited by Shri Sinha, State Counsel, to read the notes dt. 20-11-1984 and 21-11-1984, which appear in Annexure R/I. Both notes, indeed, do not speak even a single word about the 'recommendation' and no reference thereto is to be found in the notes. Indeed, we find it very difficult to read any material in the said notes, on the

basis of which, the conclusions are recorded. True, there is reference only in the second note to the fact that the District Magistrate, Gwalior did not rightly support petitioners' case for 'premature release' and did not make any recommendation in that regard (ANUSHANSHA). Beyond that, nothing else is referred to, or mentioned as the basis of the conclusions reached. In the first note, the Under Secretary, Law Department observed that the petitioners have been convicted for the murder of three innocent persons, which is a very heinous crime, He also observed that murder of three innocent persons was per se a barbaric as and that the prisoners 40 not belong to either scheduled castes or scheduled tribes and they have not undergone adequate measure of the sentence. That much is all what we read in the first note. The second note is equally terse, but refers paradoxically to the reformative trend of penal justice, while observing still that in a case in which three persons have been murdered, a liberal approach was not warranted as would create an adverse effect on the society and encourage the criminals.

5. Now, the law. this Court had an occasion in the recent past to analyse and discuss the import and purpose of the relevant Prison Rules, enacted by the State Government under Section 59 of the Prisons Act, 1894, to be found in the compilation called 'Jail Manual - Volume I'. A Bench of this Court, of which one of us (Dr. T. N. Singh) was a party, examined elaborately the question of 'premature release' in Hari Singh (Misc. Civil Case No. 80 of 1985, decided on 5-9-1985). Because, petitioner's case for 'premature release' under Rule 358 of the Prison Rules, for short, 'Rules', did not receive proper consideration, this Court directed the same to be considered in accordance with the prescribed procedure. However, a direction was also made to investigate the factual position to as certain if the petitioner was entitled to be released in terms of General Order, dt. 14th Aug., 1984, and to effect release within a month if the investigation established petitioner's entitlement. The decision of the apex Court in Maru Ram AIR 1980 SC 2147 was invoked to hold that even when 'constitutional' power under Articles 72 and 161 of the Constitution was exercised in the matter of 'premature release', in doing so, 'irrelevant, irrational and discriminatory considerations' must be eschewed. Whenever there exists any guidelines in the nature of any statutory rules, those must be strictly adhered to, it was also held, because of what was said

by the apex Court in Maru Ram (supra).

6. We propose to extract in extenso R. 358(1) of the Prison Rules, aforesaid, which finds place in Section III of Part IV of the Rules, which deals with 'Release of Prisoners' :

358. (1) When a prisoner has been sentenced to imprisonment for life whether or not he has also been sentenced to a term of imprisonment, or term of imprisonment exceeding 14 years, he shall be considered for release as soon as the term already undergone (together with any remission earned under the rules) and such other special remission if any, as have been granted by the Government in celebration of any public event amounts to fourteen years. His case shall be reported to the State Government through the Inspector-General with full information regarding the character of his crime, his conduct in prison and the probability of his reverting after release to criminal habits or instigating others to commit crime, in order to enable the State Government to decide whether he should be released and if so, whether he should be subjected to police supervision or other suitable conditions. If the State Government decides that he should not be released, then after two years from the State Government's order his case shall be reported again for further consideration.

(Emphasis supplied).

From what is to be found in the succeeding R. 359, we entertain no doubt at all that the 'Advisory Boards' contemplated thereunder and the exhaustive procedure prescribed therein, postulate the manner in which the 'report' contemplated under R. 358(1) comes up for consideration of the State Government. The Inspector-General of Prisons, who is made the Chairman of the different Advisory Boards, required to be constituted under R. 359, makes the 'report' on behalf of the Board. The Superintendent of the concerned jail is required to obtain necessary information from the District Magistrate of the District in which the prisoner was residing before his conviction and material information bearing on the case and the latter is also required to give his opinion as to the effect of the prisoner's release upon law and-order in the District, giving reasons, in brief, if he opposes release on the ground that it will affect law and order adversely. The District Magistrate is

also required to supply for the information of the Boards particulars of the convict in the form appended to the rules, history ticket and a copy of the judgment. The primacy of Sub-rule (12)(a) obligates us to extract the same in extenso :

12- (a) The Board after a full consideration of the case shall make a recommendation to the State Government either to postpone the question of the grant of remission for a period not exceeding two years or to release the prisoner prematurely with or without conditions. Good conduct in jail shall be indispensable condition for recommendation by the Advisory Board for premature release in all cases except when the recommendation is made on urgent medical ground. Where the members of a Board are not unanimous, its recommendations shall be in accordance with the opinions of the majority of its members. Where a board makes a recommendation which is in opposition to the opinion of the District Magistrate of the District in which the prisoner was residing before his conviction it shall state the reasons in detail for such recommendations.

7. One thing appears to us crystal clear, reading the Rules. The State Government could not act arbitrarily in dealing with the 'report' emanating from the Board, of which the District Judge also is a member. Valid, weighty and cogent reasons must appear in the decision of the State Government, rejecting the 'recommendation' of the Board. It also appears very clear to us that the State Government cannot render a decision under Rule 358(1) without considering 'report' of the Board, submitted through the Inspector-General of Prisons. The State Government cannot act merely on any 'report' or 'opinion' or 'recommendation' of the District Magistrate. Although the 'recommendation' of the Board must be binding on the State Government, the latter is mandated in specific terms by the provisions of Sub-rule (1) of R. 358 and Sub-rule (12)(a) of R. 359 to direct its attention not only to one, but to the different factors mentioned therein, which may be summed Up as follows :

- (a) Full information regarding the character of the crime,
- (b) Prisoner's conduct in prison,

(c) Probability of his reverting to criminal habits and instigating others to commit crime in the event of his release,

(d) The reasons given by the Board, mentioned in the recommendation in opposition to the opinion of the District Magistrate,

(e) The reasons given by the District Magistrate in rendering his 'opinion' to the Board on the question of effect of prisoner's release upon law and order in the district. In a case in which a decision is rendered by the State Government under R. 358(1) without considering the aforesaid factors, such a decision would be illegal and void. We need not labour hard to establish the legal basis for this view. A Constitution Bench of the apex Court in *Barium Chemicals* AIR 1967 SC 295 speaking through Hidayatullah, J. and Shelat, J., albeit separately, held that any order passed in exercise of discretionary powers granted statutorily must answer the test of reasonableness with respect to the criteria statutorily specified. The same view was expressed later by Hegde and Sikri, JJ. in *Rohtas Industries* AIR 1969 SC 707, wherein it was also held that if there was no material before the authority passing such an order to satisfy the test of reasonableness, the same was liable to be struck down. Later still in *Swadeshi Cotton Mills* AIR 1981 SC 818, the majority, speaking through Sarkaria, J., while approving the decision in *Barium Chemicals* AIR 1967 SC 295 (*supra*) observed that the authority passing the order has to form the requisite opinion 'reasonably like a reasonable person' even in cases in which the discretionary power as to formation of the 'opinion' by the statutory authority is not regulated in terms.' However, the English decision in *Padfield*, (1968) 1 All ER 694, had a direct and startling relevance because, in that case a Minister's 'full and unfettered discretion' to act in the matter was saddled judicially by the requirement that irrelevant matters must be ignored and relevant matters must be considered in so acting so that the object of the statute conferring the power was not frustrated. The decisions above-, referred were considered by a Division Bench of the Gauhati High Court in *Kesharinandan, Srivastava* (1984) 1 Gauhati LR 99 : 1985 Lab IC NOC 19), wherein it was held that the decisions 'lay down the golden rule that statutory discretionary power enabling formation of subjective opinion carry with it the duty to apply objective tests in such matters.' We respectfully agree with this view.

8. Applying the principle afore-stated to the facts of the instant case, we have no hesitation at all to say that the impugned order is wholly illegal, without jurisdiction and void, because it suffers from the serious infirmity of not only non-consideration of the 'report' of the Advisory Board, but also that neither in Annexure R/1, nor in R/2, we could; find any consideration of the enumerated factors. On the other hand, it refers, albeit briefly, to the 'recommendation' of the District Magistrate, which must be deemed to be an irrelevant matter in the context of the statutory provision aforementioned. The District Magistrate had no authority to make any 'recommendation' and the State Government acted illegally in considering the same. What it was required to consider are the factors enumerated above and not to consider merely any 'opinion' that might have been expressed by the District Magistrate, whether independently, or refuting Board's 'recommendation'. We also find it difficult to accept the position that the State Government could refuse to reject the case of the petitioners' 'premature release' on the sole consideration that they were guilty of triple murder and that it was a heinous crime and a barbaric act. State Counsel Shri Sinha's submission that because there exists a provision in Sub-rule (12)(b) of R. 359 for 'reconsideration' of the case after two years, the impugned order is immune to challenge, in our opinion, merits no consideration at all, because the contention is wholly devoid of substance.

9. Shri Sinha placed reliance on Maru Ram AIR 1980 SC 2147 (supra), but, in our view, there is little in the decision to support his contention. Indeed, Maru Ram rather puts the State in the dock. Counsel has also relied on the decision in Nachhittar Singh AIR 1975 SC 118 : 1975 Cri LJ 66 and Gopal Godse, AIR 1961 SC 600 : 1961 (1) Cri LJ 736, but we do not find anything in those decisions which lends support to the action of the State or to the contentions advanced by Shri Sinha. Shri Sinha also relied on M. M. Kochar AIR 1969 Delhi 21: 1969 Cri LJ 45 and Hukam Singh AIR 1975 Punj & Har 148 : 1975 Cri LJ 902 (FB), but we do not read anything therein, which merits discussion. Shri Aneja, appearing on behalf of the petitioner has also drawn our attention to two decisions of this Court in Mohansingh, 1980 Jab LJ 746: 1980 Cri LJ 147 and Karansingh, 1982 Cri LJ 2133 (Madh Pra), but they also do not merit any discussion, lacking relevance to the instant lis.

10. For the foregoing reasons, we have no hesitation to strike down Annexures R/1 and R/2 and to direct reconsideration of the case of both the petitioners in accordance with law in the light of observations herein made. Respondents are directed to render a fresh decision in the matter within a period of three months. However, we also direct, following Hari Singh (supra) consideration of the case of the petitioners for release in virtue of the 'General Order', dt. 14th Aug., 1984 and in this case, the direction is made against the Superintendent, Central Jail, Gwalior, who must ascertain the factual position to find if any one or both of the petitioners are held in confinement on 15th Aug., 1984, for a term of fifteen years including remissions and including also pre-trial detention, following the decision in Hari Singh, (supra). This must be done within one month and should the petitioners, or any one of them, be found to have earned eligibility to release in terms of the 'General Order', by satisfying the fore-mentioned conditions, he or they shall be released from detention at once without further reference to this Court or to any authority.

11. With the above direction, however, the matter does not end. We are of the view that because of the gross illegality, which renders the impugned decision wholly void, on the question of petitioners' entitlement to 'premature release' under R. 358, they are entitled also to interim relief. We direct that both the petitioners shall be released on furnishing bail in the sum of Rs. 5,000/- each with one surety in the like amount to the satisfaction of learned Sessions Judge, Gwalior, pending reconsideration of the case by the State Government, as herein directed. However, should they be found entitled by the Superintendent, Central Jail, Gwalior, to be released in virtue of the General Order, dt. 14th Aug., 1984, they need not surrender to their bail bonds, which would be deemed cancelled.

12. Let the directions contained in this order be communicated at once to the concerned authorities, including, particularly, the learned Sessions Judge, Gwalior, and Superintendent, Central Jail, Gwalior.