

State of M.P. and Another Vs. Anil

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Court : Madhya Pradesh

Decided On : Feb-16-2001

Reported in : 2002CriLJ318; 2001(3)MPHT30; (2005)12SCC213

Judge : Mr. Bhawani Singh, C.J. and ;A.K. Mishra, J.

Acts : Madhya Pradesh Prisoners' Release on Probation Rules, 1964 - Rule 6(5) and (6); [Constitution of India](#) - Articles 226 and 227; [Industrial Disputes Act, 1947](#)

Appeal No. : Letters Patent Appeal No. 303/2000

Appellant : State of M.P. and Another

Respondent : Anil

Advocate for Def. : Shri D.D. Bhargava, Adv.

Advocate for Pet/Ap. : Shri V. Awasthy, Govt. Adv.

Judgement :

ORDER

Bhawani Singh, C.J.

1. L.P.A. 302/2000 (State of M.P. and another v. Anil), L.P.A. 304/2000 (State of M.P. and another v. Jagdish); L.P.A. No. 305/2000 (State of M.P. and another v. Jashir Mohammad); L.P.A. 307/2000 (State of M.P. and another v. Rarndin); L.P.A. 309/2000 (State of M.P. and another v. Harishchandra); L.P.A. 338/2000

(State of M.P. and another v. Premchand Agrawal); L.P.A. 343/2000 (State of M.P. and another v. Rajendrasingh and another); L.P.A. 351/2000 (State of M.P. and another v. Makhtan); L.P.A. 352/2000 (State of M.P. and another v. Rajjusingh and another); L.P.A. 357/2000 (State of M.P. and another v. Ramsingh), L.P.A. 358/2000 (State of M.P. and another v. Sushilkumar Sondhiya and another); L.P.A. 359/2000 (State of M.P. and another v. Ramji); L.P.A. 450/2000 (State of M.P. and another v. Mahadeo). This batch of 13 cases is proposed to be disposed of by this order since they are common in nature and the question for consideration is also similar.

2. Respondents filed writ petitions under Arts. 226/227 of the [Constitution of India](#) for quashing the order of the State Government whereby their cases for release on licence under Rule 6 (6) of the Prisoners' Release on Probation Rules, 1964, have been rejected.

3. Respondents alleged that the State Probation Board should consist of 3 members, but when their cases were considered, it comprised only of two members and the recommendation so made was not in accordance with law, therefore liable to be set aside. State objected to this contention by saying that in the absence of third non official member, the remaining 2 could transact the business. They having considered the cases of the respondents for release on licence, the order of the State Government passed on the recommendation was not vitiated.

4. Learned Single Judge considered the matter and after referring to the provisions of Rule 6 (5) of the Rules, came to the conclusion that in the absence of non-official member, remaining 2 members could not consider the matter, since it was well settled that when a statute requires an act to be done in a particular manner, it has to be done in that manner for that no other mode is permissible. Proper constitution of the Board was not there, therefore, relying on the Apex Court decision reported in case of United Commercial Bank Ltd. v. Their Workmen (AIR 1951 SC 230), the order of the State Government, on the recommendation of the Board, was vitiated and could not be allowed to stand. In Para 6 of the judgment, the learned Single Judge said :

'The State Government is hereby directed to appoint a non-official member to the Board within six weeks from the date of receipt/production of a copy of this order. Cases of the petitioners for release on licence shall thereafter be placed before the entire Board and the State Govt., on consideration of the recommendation of the Board, shall pass orders as it may deem proper in accordance with law. It is made clear that I have not expressed any opinion on the merits of the case of the parties in this regard.'

In the penultimate paragraph, the learned Single Judge ordered :

'In the result, all writ petitions are allowed. Orders of the State Government declining to release the petitioners on licence are quashed and the respondents are directed to proceed in the manner as indicated above. In the facts and circumstances of the case, there shall be no order as to cost.'

5. Shri Awasthy, learned counsel for the appellant assailed the judgment of the learned Single Judge and contended that there is no bar in the rules under which the remaining 2 members of the Committee cannot function. That being the position, the 2 members of the Committee could consider the recommendation made to it for considering the cases of the respondents for release on licence under Rule 6 (6). It was also contended that 2 members constitute majority, therefore, even if third member could be there, no significant result to the contrary could be arrived at. Learned counsel has objection to the reliance placed by the learned Single Judge on the decision of the Apex Court in the United Commercial Bank's case (supra) on the ground that the decision has been rendered under [Industrial Disputes Act, 1947](#), therefore, has no application to this case.

6. Shri Bhargava, learned counsel for the respondents has opposed the submissions and it is pointed out that in the absence of third member, constitution of Board is incomplete and not in accordance with Rule 6 (5); accordingly, constitution of Board is not legal and cases could not be considered by it and the decision of the State Government based on such recommendation, is vitiated. Learned counsel placed reliance on the decision of the Supreme Court in United Commercial Bank's case (supra).

7. Having given our consideration to the matter, we are of the opinion that the judgment of the learned Single Judge is legal and justified. No case for interference is made out.

8. Board consists of 3 members as per Rule 6 (5) of the M.P. Prisoners' Release on Probation Rules, 1964. Two of the members, namely, Secretary Home/any other Officer empowered in this behalf by the Government and Inspector General of Prisons/Deputy Inspector General of Prisons are Government officials associated with the Department, one of the functions of which is relatable to administration of criminal justice in the State including keeping of prisoners, their maintenance and release from time to time, be on Court direction or otherwise. It is only the non-official member who does not belong to any of the Departments of the State Government. His participation for offering independent view is significant, therefore, necessary so that the matter is examined properly, independently and objectively.

9. Contention that majority is already there since 2 members have the same opinion, cannot be accepted in the absence of non-official member whose participation could convince either both or at least one out of 2 and tilt the majority to his side, thereby affecting the ultimate result of consideration. It is the salutary rule that when statute requires an act to be done in a particular manner, it has to be done in that manner for that no other mode is permissible. Statute does not empower the remaining 2 members to function in the absence of non-official member, nor does it provide that the act done by the remaining members in the absence of the third would not vitiate the proceedings. Legislature has not provided for functioning in such circumstances. It can be said that the intention of Legislature was that the Board would consist of 3 members who will jointly/collectively consider the case before them and decide it. Therefore, it is not difficult to concur with the view taken by the learned Single Judge that absence of the third member would vitiate the decision taken by the Board as well as of the State Government on the recommendation of the Board.

10. Pursuant to the direction of the learned Single Judge in Para 6 of the judgment, we are told that the State Government has appointed non-official

member by order dated October 12, 2000. By this appointment, constitution of the Board as per Rule 6 (6) of the Rules is complete. Therefore, there should be no difficulty in referring the cases of the respondents and other similar cases to the newly constituted Board within a period of 2 months and the State Government will take decision on the recommendations of the Board within 15 days thereafter.

11. The petitions are disposed of in terms aforesaid.

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