

Narayanan Kutty Vs. State

Narayanan Kutty Vs. State

SooperKanoon Citation : sooperkanoon.com/721941

Court : Kerala

Decided On : Mar-02-1983

Reported in : 1984CriLJ58

Judge : P. Subramonian Poti, Actg. C.J. and; T. Chandrasekhara Menon, J.

Appellant : Narayanan Kutty

Respondent : State

Judgement :

P. Subramonian Poti, Actg. C.J.

1. We have been regularly receiving petitions from prisoners in the various jails in the State sometimes through the grievance boxes maintained in the jails and sometimes direct. The six petitions with which we are dealing here are petitions so received from the prisoners in the various jails in the State. The questions raised in these petitions are same and therefore we have chosen to take up these cases and dispose of them by a common judgment. The questions concern the claim for premature release of the prisoners undergoing sentence of imprisonment in the jails in Kerala State on the strength of advice of the Advisory Board constituted by the State under the Kerala Prison Rules. If the Advisory Board so constituted in the State advises the State Government to release prisoners prematurely taking due account of the fact that they have undergone substantial terms of punishment and their conduct and other circumstances entitle them to seek premature release

the State Government would in the normal course accept their recommendation and release them prematurely. Whether that benefit would be available to prisoners convicted by courts outside the State but transferred to this State is the question that has been raised in these petitions. O. P. No. 4188/82 is a petition by one Kesavan, a prisoner who was convicted by a court in Maharashtra State and transferred to a prison in the Kerala State. O. P. No. 5559 of 1982 is by one Poulouse father of one V.P. Johny who has moved for and on behalf of V. P. Johny to release him prematurely on the strength of the Advisory Board's recommendation. Such recommendation has been sent to the Government of Goa the prisoner has been convicted and sentenced by the Court in the Goa territory. O. P. No. 445/83 relates to the same plea that being a subsequent petition received by us from the prisoner V.P. Johny himself. O. P. Nos. 940/82 and 8953/82 are both by the same prisoner. Narayanankutty evidently .the latter being a reminder of the former and that concerns the premature release of the prisoner Naravanankutty who was court martialled. sentenced and later transferred to a prison in Kerala State. O. P. No. 2476 of 1982 is by one Nandan who was convicted and sentenced in a court in Tamil Nadu State and later transferred to this State. He similarly seeks the benefit of release based on the rules in the Kerala State.

2. When these matters came up earlier we had issued notice to the Maharashtra Government, Government of Goa. Government of Tamil Nadu and the Ministry of Defence in the Government of India so that they may appear and state their cases in answer to these petitions. We had response from the Central Government, Ministry of defence, who instructed the Advocate General. We also heard the Government of Goa and Government of Maharashtra through the Advocate General of Kerala who was instructed by the respective Governments. The Maharashtra Government has filed a counter-affidavit and the Goan Government has filed a statement explaining their respective stands. We have not yet had any response from the Government of Tamil Nadu though the learned Advocate General submitted before us that they have been apprised of the situation. The learned Advocate General contacted the Tamil Nadu Government and he is instructed by that Government that their stand is the same as that of Maharashtra and Goan Governments.

3. We must place on record our thanks to the learned Advocate General who has explained the stand of the Governments in these cases. We should also place on record our thanks to, Shri P. Balagangadhara Menon who as amicus curiae in these cases argued the case and also Shri P. V. Avvappan who appeared in O. P. No. 61/83 which we have chosen to take up for disposal separately. The consequence is that in this case we had the benefit of a thorough discussion as to points of law.

4. It is of course a matter of great concern to a prisoner as to when he will regain his freedom. The date of release of a prisoner depends on various factors such as remissions ordered under the provisions of the Criminal P. C. by the Union Government and by the State Government from time to time, remissions earned under the provisions of the Kerala Prison Rules in regard to prisoners in the Kerala State, the forfeiture of remissions, if any general orders of premature release passed by the Governments on occasions and the application of the relevant orders to the prisoners in appropriate time. Evidently because the prisoners have very little access to the different rules they feel aggrieved that though their time for release has arrived they are not being released. That is reflected in the number of petitions that have come up before us by way of grievances. It is more so in the case of prisoners who are convicted and sentenced by courts outside the State since their releases do not depend merely on the recommendations of the Advisory Board and despite such recommendations the Governments of the States or Union which have to pass the ultimate order of remission decide cases upon norms fixed by those Governments which norms may not be known to the prisoners here.

5. The questions that we have been called upon to examine in these cases really relate to release of the prisoners who though convicted in other States are transferred to this State for undergoing sentence of imprisonment herein We will first deal with the rules relating to premature release and also rules relating to remissions.

6. The Kerala Prison Rules framed under the provisions of the Travancore-Cochin Prisons Act, 1950 and the Prisons Act. 1894 apply to the whole State of Kerala.

Chapter 18 of the Rules deals with remission system in the prisons. Rule 303 deals with ordinary remissions such as remissions for good conduct. Rule 306 deals with additional remission. Rule 307 deals with award of remission for good conduct which is in addition to other remissions. Besides this blood donations also earn remission for a prisoner. Rule 301 deals with forfeiture of remissions. Such forfeiture can only be of remission earned under the Prison Rules and not remissions granted under the Cr. P. C. Rule 317 deals with release of a prisoner taking due note of the remissions which he has earned. The maximum remission that a person could earn under the Kerala Prison Rules is one-third of his sentence subject of course to higher remission with special sanction of the Government That is dealt with in Rule 315. We may also refer in this context to Chapter 32 of the Rules dealing with the Advisory Board. There shall be a Standing Advisory Board to investigate and report on the sentences of prisoners confined in the Central Prisons. Rule 543 provides for this. Rule 545A provides that the case of all life convicts and other prisoners whose aggregate sentence is more than 20 years shall be submitted together with the records specified under Rule 545 for special orders of Government as to their premature release on completion of 14 years of sentence including remission, in each case. In recommending premature release the Advisory Board decides the fitness of a prisoner for release based on full and accurate details of the prisoner's previous history, his prison records and also the opinion of the After Care Association or the District Magistrate of the District to which the prisoner belongs. The prisoner who is released prematurely on the advice of the Board has to conduct himself satisfactorily during the probation period and he is deemed to be finally discharged only on the expiry of the period mentioned in the bond as period of supervision. This is more or less the outline of the scheme under the rules. Each State has its own guidelines for release of prisoners prematurely and Judged by the guidelines in one State a prisoner who may earn premature release in that State may not earn premature release in another State at that time.

7. Remission, the benefit of which a prisoner may be entitled to is that under Article 72 of the Constitution in cases where the person has been awarded any sentence by a court martial or for an offence against any law relating to a matter to which the executive power of the Union extends, apart from cases of sentence of

death. In regard to the State prisoners, namely those who are convicted of any offence under a law relating to a matter to which the executive power of the State extends the power to remit or commute is in the Governor under Article 161 of the Constitution. Section 432 of the Cr. P. C. 1973 enables the appropriate Government to remit the whole or any part of the punishment to which any person has been sentenced. The scope of the expression 'appropriate Government' in Section 432 as also in Section 433 is of some consequence in these cases and therefore we refer to this term as envisaged in Section 432(7) of the Cr. P. C. That reads thus:

432(7). In this section and in Section 433. the expression 'appropriate Government' means-

(a) in cases where the sentence is for an offence against, or the order referred to in Sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government:

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

8. Now we come to the question that has been posed before us, In the case of the prisoner convicted in Goa namely V.P. Johny, the petitioner in O. P. 445/ 83 the Advisory Board of Kerala has considered his case for premature release and has recommended his premature release. This recommendation has been sent to the Goan Government and we are in fact told that the recommendation has been practically accepted and is awaiting the orders of the Lt. Governor in the file. Even so now that the question is common and a decision has to be given we are rendering our decision in that case also.

9. We will first consider the stand taken by the Central Government in regard to prisoners who, are court martialled and sentenced. According to the Central Government the question whether such prisoners must be prematurely released must depend upon a decision by the Government of the Union of India and not by the State Government. The, Advisory Board's opinion or recommendation will certainly be of weight for the Central Government to act upon in considering the

question, of premature release. To the extent that indicates the remissions earned by the prisoner and to the extent it shows the prior history and the conduct of the prisoner in the prison the Central Government will act on the Advisory Board's recommendation. But the norms for premature release by the Union Government in regard to prisoners court martialled being not necessarily the same as that of the Government of Kerala in regard to prisoners sentenced in the State it may or may not be that on the recommendation of the State Advisory Board premature release is ordered. Norms which are fixed for premature release by the Union Government alone will be applied in respect of those prisoners and if on the application of the norms to the facts indicated by the Advisory Board's recommendation the prisoner is entitled for release he will be released. This is the identical stand of the Governments of Goa, Maharashtra and Tamil Nadu. It is only the correctness of this that calls for consideration.

10. A prisoner who is convicted by courts in a State normally undergoes his sentence of imprisonment in the prisons in the State. In, that event he will be entitled to remission according to the Prison Rules in force in the State besides the remissions under Section 432 of the Cr. P. C. that are made available to him by that State. Under the 'Transfer of Prisoners Act the prisoners convicted in courts in a State may be transferred to another State. We are concerned in these cases with prisoners so transferred.

11. The claim for premature release in the Kerala State depends on ' recommendation of the Advisory Board as adverted to earlier. This recommendation depends upon factors such as the previous history of the convict, his conduct in the jail the term to which he has been sentenced, the remission he has earned under the Kerala 'Prison Rules and the remissions that he has earned under Section 432 of the Cr. P. C. or Article 161 of the Constitution. Remissions earned under Kerala Prison Rules are so earned not only by prisoners who have been convicted by the Courts, in; the State but also by those who have been transferred to the State. Entry 4 in List II of the Seventh Schedule to the Constitution enables the State to legislate on Prisons, reformatories. Borstal institutions and other institutions of a like nature and on persons detained therein. It is in delegated exercise of this power that the Kerala Prison Rules are framed. It

is within the domain of the State Legislative power to deal with prisoners detained in prisons. It is as a matter of promoting discipline in the prisons and as an incentive to the prisoners to behave and work well in the prisons that a system of remission is conceived in the Kerala Prison Rules. Necessarily therefore the remissions under the Kerala Prison Rules must be available to all those who are detained in the Kerala Prisons irrespective of whether they are prisoners transferred to the State from other States or those convicted by courts in this State. Such remissions which are taken into account by the Advisory Board of the State in recommending premature release should necessarily weigh with the Governments other than the Kerala Government, We are called upon to consider the question of premature release of prisoners convicted by courts in the respective States and transferred to this State later.

12. Remissions under Article 161 of the Constitution stand on a different footing. The Government of a State has power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. It is not every prisoner in a State that would be subject to the Governor's power under Article 161 of the Constitution. The prisoners in the Kerala Prisons could be dealt with by the Governor of Kerala under Article 161 of the Constitution if and only if such prisoner has been convicted of any offence against any law relating to a matter to which the executive power of the State extends. In all cases where punishment of such prisoner is for an offence against any law relating to a matter to which the executive power of the Union extends it is only the President that has power to grant remissions and that under Article 72 of the Constitution. This idea is reflected in Section 432 of the Cr. P. C. That enables the appropriate Government to remit the whole or any part of the punishment to which a person has been sentenced. The appropriate Government is defined in Sub-section (7) of Section 432. to which definition we have already adverted. There again the Central Government would be the appropriate Government where the sentence is for an offence against any law relating to a matter to which the executive power of the Union extends. In other cases the Government of the State within which the offender is sentenced or the order is passed would be the appropriate Government.

13. While the three Lists in the Seventh Schedule deal with the distribution of powers between the States and the Union Article 73(1)(a) of the Constitution provides that subject to the provisions of the Constitution the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. Article 162 provides that subject to, the provisions of the Constitution the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. In respect of matters listed in List I of the Seventh Schedule to the Constitution the executive power is to be exercised by the Union Government while in respect of matters in List II such executive power is to be exercised by the Government of the State. Naturally a question may arise whether in respect of items listed in List III the executive power could be exercised by the Union Government as well as the State Government. That will naturally, lead to conflicts. Provision has been made in proviso to Article 73(1) of the Constitution that the executive power referred to in Sub-clause (a) shall not save as expressly provided in the Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. In other words while the Union Government could legislate on matters comprised in entries in List I as well as List III and the State Government could similarly legislate on matters in List II as well as List III subject of course to the restrictions mentioned in the Constitution the executive power of the Union extends only to matters covered by List I while the executive power of the State extends to matters covered by entries in List II as well as List III. While in respect of matters enumerated in List III legislative power is concurrent, executive power is not. Naturally it cannot be. The executive power in respect of such matters vests in the State the only exception being where there is express provision in the Constitution that executive power in respect of any matter should be in the Union Government or where any law is made by Parliament vesting such power in the Union. Except in these two cases the executive power is exercised only by the State in respect of matters in the concurrent list. It necessarily follows that the term 'appropriate Government' as defined in Section 432(7) of the Code of Criminal Procedure would take in the Government of the Union of India in regard to matters mentioned in List I of the Seventh Schedule while the 'appropriate Government' will take in the Government

of the State in regard to all matters enumerated in List II and List III of the Constitution subject of course to the two exceptions noted earlier.

14. It may, be appropriate in this context to refer to Article 246(4) of the Constitution. Article 246(1) defines the exclusive power of the Parliament to make laws with respect to matters enumerated in List I in the Seventh Schedule. Clause (2) defines the power of the Legislature of the State also to make laws with respect to any of the matters enumerated in List III. Clause (3) defines the exclusive power of the Legislature of the State to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule. Clause (4) deals with making laws for the territory of India which is not included in a State. The Parliament has power to make laws with respect to any matter in relation to such territory notwithstanding that such matter is a matter enumerated in the State List. Article 1(3) of the Constitution provides that the territory of India shall comprise (a) the territories of the State. (b) the Union territories specified in the First Schedule and (c) such other territories as may be acquired. When the legislative, powers of the States and the Union are defined, necessarily there must be a provision in regard to the legislative power in regard to the territory other than the State and that is what is dealt with in Article 246(4) of the Constitution. In respect of the territories which are not part of the States but are Union territories even in matters included in the State list the power to legislate is in the Union Government. Necessarily therefore the Union Government's executive power extends to all such matters in such Union territories. Article 73 of the Constitution which extends the executive power of the Union in matters with respect to which Parliament has power to make laws has therefore to be read as including the executive power in respect of Union territories in regard to matters not only falling within List I but also in Lists II and III. That being the case the 'appropriate Government¹ in regard to Union territory would be the Union of India and not the State Government.

15. 'Criminal law, including all matters included in the Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces of any other armed forces of the Union in aid of the civil

power' is entry 1 in the Concurrent List. By virtue of Article 162 read along with the proviso to Article 73(1) of the Constitution the executive power in regard to matters in the above entry, namely entry 1 in List III is in the State Only to the extent the offences are against any law with respect to any of the matters specified in List I or List II there is exclusion. Such are for instance laws in respect of matters specified in the entries Nos. 36 and 93 in List I of the Seventh Schedule. If the offence be one falling under the Indian Penal Code that is an offence in respect of a matter to which the executive power of the State extends. The 'appropriate Government' would therefore be the State, But that would not be so if the offence is committed not in the State but in the Union territory in which case with regard to the matters falling within any of the Lists the executive power of the Union extends. Section 432(7) specifies the Central Government as 'appropriate Government' in cases falling within clause(a) Clause (b) is the residuary clause In the sense if any case does not fall within Clause (a) it would fall within Clause (b) To determine whether Clause (a) stands excluded one would have to consider for what offence the sentence is passed. Is it for an offence against any law relating to which the executive power of the Union extends? That will be so in the case of an offence committed in Union territory irrespective of whether the offence is in relation to a law falling within any of the three entries. If Clause (a) does apply the 'appropriate Government' would be the Government of the State (sic). The power of remission can therefore be exercised in cases falling within Clause (b) to Section 432 only by the State Government concerned. If the case falls within Clause (a) of Section 432 such power could be exercised by Central Government.

16. When a person is convicted for offences committed in a Union territory or when a person is convicted for an offence against a law falling within the legislative power of the Central Government such as when a person is court martialled the appropriate Government would be the Union Government. In other cases it would be the State Government. This is irrespective of whether the person has been transferred to the territory of a State for the purpose of undergoing the sentence of imprisonment

17. A question which has relevance to the controversy before us had arisen before the Supreme Court in *State of M.P. v. Ratan Singh* : 1976 CriLJ1192 . In that case

the State of Madhya Pradesh took the matter in appeal to the Supreme Court against the judgment of the High Court in a writ petition filed by the respondent a prisoner, who had been convicted by a Sessions Judge in the State of Madhya Pradesh and sentenced to imprisonment for life but had been subsequently transferred to the jail in the Punjab State. At the time the question of his premature release arose he was in such jail. According to him he was entitled to be released judged by the provisions of the Punjab Jail Manual and his representation was forwarded by the Government of Punjab to the Government of Madhya Pradesh But the Madhya Pradesh Government rejected the request of the respondent for his release. Thereupon he filed a writ petition in the High Court of Punjab and Haryana on the ground that he having served the sentence for more than 20 years was entitled to be released as a matter of course under the provisions of the Punjab Jail Manual and the Rules framed under the Prisons Act. According to him the appropriate Government to order his release was the Punjab Government and not the Government of Madhya Pradesh and therefore the request made by the Punjab Government to the Madhya Pradesh Government was not warranted in law. The High Court did not issue notice to the State of Madhya Pradesh. All the same it held that the Punjab Government was the appropriate Government to release the prisoner. It is that matter which came up before the Supreme Court. The provisions of Sections 401 and 402 of the Cr. P. C. 1898 corresponding to Sections 432 and 433 of the 1973 Code were relied on as enabling the Government of Punjab to remit the remaining part of the sentence and order release of the prisoner. The Supreme Court noticed that rules framed under the Act do not affect the total period which the prisoner has to suffer. These rules merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time. The remission of the entire sentence or part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Cr. P. C. Considering the scope of the expression 'appropriate Government' in Section 401(corresponding to Section 432 of the 1973 Code) the court observed that:

It is obvious that only that Government can call for the opinion of the presiding Judge of the Court which has control over the said presiding Judge or the Court which is situated within the jurisdiction of the said Government. As a logical

corollary of the interpretation of Sub-section (2) of Section 401 it is the State where the accused was convicted which alone has the power to grant remissions of the sentence.

It further held thus :

Any such transfer of the accused from a jail situate in one State to a jail in some other State has absolutely no bearing on the question as to the application of Section 401 of the Cr. P. C. because this is merely an executive matter and an executive decision taken to meet convenience of the accused.

18. We may advert in this context also to the decision of the Supreme Court in State of M.P. v. Ajit Singh : 1976 CriLJ1396 . That was also a similar case and there the Supreme Court adverted to the earlier decision in State of M.P. 1984 Cri. L. J. 51 v. Ratan Singh. : 1976 CriLJ1192 and reiterated the view expressed therein. The same view was expressed by the Supreme Court recently in Hanumant Dass v. Vinay Kumar : 1982 CriLJ977 . At para 14 of the judgment Justice Misra. speaking for the Bench said thus:

14. According to this section the appropriate Government is the Government of the State of conviction and not the Government of the State where the offence was committed. A somewhat similar question came up for consideration in State of Madhya Pradesh v. Ratan Singh 1976 Supp SCR 552 : 1976 Cri LJ 1192. where the respondent was convicted and sentenced to imprisonment for life by a court in the State of Madhya Pradesh. At his request he was transferred to a jail in the State of Punjab, to which State he belonged. He applied to the Government of Punjab that under the Punjab Jail Manual he is entitled to be released since he had completed more than 20 years of imprisonment. The application was sent to the Government of Madhya Pradesh, which rejected it. In a writ petition filed by him the High Court of Punjab and Haryana held that the State of Puniab was the appropriate authority to release him and directed the State of Puniab to consider the matter. This Court in appeal observed 'a perusal of this provision clearly reveals that the test to determine the appropriate Government is to locate the State where the accused was convicted and sentenced and the Government of that State would be the appropriate Government within the meaning of Section

401 of the Cr. P. C. Thus since the prisoner in the instant case was tried, convicted and sentenced in the State of Madhya Pradesh, the State of Madhya Pradesh would be the appropriate Government to exercise the discretion for remission of the sentence under Section 401(1) of the Cr. P. C.

That was a case based on Section 401 of the old Criminal P. C. but the Cr. P. C. 1973 has put the matter completely beyond any controversy and reiterated the provisions of Section 402(3) in Sub-section (7) of Section 432.

19. It may not be out of place here to notice a decision of the High Court of Madhya Pradesh where apparently the High Court has taken a view that a prisoner transferred from one State to another is entitled to premature release on the basis of the decision of the transferee State. We are referring to the decision in *Sitaram v. State* : AIR 1969 MP252 . Section 2 of Madhya Pradesh Prisoners Release on Probation Act 1964 enabled the Government to release a prisoner prematurely notwithstanding anything contained in Section 401 of the Cr. P. C. 1898 on condition he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner or such institution or society as may be recognised by the Government for the purpose, provided such other person, institution or society was willing to take charge of him. The question that arose in that case was whether the Madhya Pradesh Government could release under this provision a prisoner who had been transferred in exercise of the power under Section 3 (1) of the Transfer of Prisoners Act 29 of 1950 from the Maharashtra State. He was convicted and sentenced in the court of Maharashtra and for the sake of convenience he had been later transferred to the Madhya Pradesh State. The Maharashtra State was not willing to release him and therefore the Madhya Pradesh State which had originally decided to release him under Section 2 of the Madhya Pradesh Prisoners Release on Probation Act went back upon its earlier order. The prisoner thereupon moved a writ of habeas corpus for release evidently under the abovesaid Act particularly Sections 2 and 3 (1) of the Prisoners Transfer Act. 1950. The decision to release taken by the transferee Government was evidently based on the provisions of the Act adverted to. The release of prisoner, as pointed out by the Supreme Court, can only be on the expiry of the term of his sentence. If

there be any remission of his sentence so as to reduce the term of such sentence that can only be by exercise of power under Section 432 of the Code. The Constitution envisages such exercise in Article 72 of the Constitution by the President and Article 161 of the Constitution by the Governor of a State. We are not speaking of the power of remission under the relevant rules of the State in which the prisoner undergoes his sentence. That of course we have dealt with in an earlier part of this judgment. That he would be entitled to. That apart the remission of the term of his sentence which is different from the remission that he earns in the jail is a matter entirely for the appropriate Government to decide upon. The Madhya Pradesh State cannot empower itself by any enactment to take away the power conferred on another State Government. This aspect of the matter had not been examined at all in that case. The question is whether any such power could be exercised under the provisions of the Transfer of Prisoners Act at all. We are not going into the question further because of the later pronouncement of the Supreme Court on this question in the decisions adverted to.

20. We may now summarise the result of our discussion thus:

1. When a person convicted and sentenced by a court in one State is transferred to a court in another State or is transferred from Union territory to another State he is entitled to the benefit of remissions under the Prison Rules in force in the transferee State. Those remissions are different from the remissions contemplated in Section 432 of the Cr. P. C. where the remission is of the term of sentence.

2. The Advisory Board of the State in which such a prisoner undergoes his sentence is entitled to consider his case for premature release. It is advisable that it should take note of the orders relating to remissions and the law relating to remission in force in the State in which he was convicted and sentenced. That is because the rules of special remission which are applicable to the prisoners of the State in which he was convicted would apply to him in the matter of determining whether he is entitled to premature release. For the above purpose it is necessary that in every jail where there are transferred prisoners arrangement is made to receive and keep all orders relating to conditions for release and order of remission in the particular State from which a prisoner has been transferred. In

other words wherever there are transferee prisoners (for the sake of convenience we are referring to the prisoners transferred to a State from outside its territory as outside prisoner) it is the duty of the Superintendent of the Jail where there are such transferee prisoners to have up-to-date information relating to all matters bearing on the subject of remissions and premature release of the prisoner in the State from which he was transferred. That is because the prisoner is entitled to know the change in regard to the rules, regarding premature release as in force from time to time in the State of the appropriate Government'.

3. Whenever there is any information received in regard to the matters concerning the premature release of a transferred prisoner by the appropriate Government applicable to him he should be served with copies thereof so that he may know when under the Rules governing him, he is entitled to release. This must be treated as a mandate and must be observed as otherwise prisoners who are likely to be released on the application of proper rules of remission or premature release of the appropriate Government applicable to them may remain in the prison longer than they are bound to.

4. Recommendation by the Advisory Board which necessarily would contain relevant facts for consideration by the appropriate Government such as the prior history of the prisoner, his conduct in jail remissions which he has earned in jail under the Prison Rules of the State and the term which he has undergone must receive immediate and serious attention at the hands of the appropriate Government to which such recommendation is forwarded. We are mentioning this because we have instances where there has been no response from the appropriate Government for a very long time. The prisoner is entitled to know what has happened to the recommendation of the Advisory Board at the hands of the appropriate Government. It is the duty of the appropriate Government to acknowledge and take action upon the recommendation of the Advisory Board as forwarded by the Government wherein the transferee prisoner is undergoing his sentence. If within a reasonable time no action is taken it is a case for concern and a court may have to take such a situation quite seriously in a writ of habeas corpus moved in regard to the prisoner concerned.

5. The appropriate Government which is addressed by the Government in which the transferee prisoner undergoes sentence must necessarily accept the facts which are in the peculiar knowledge of the Government in which the transferee prisoner undergoes his sentence such as the conduct and the period of his remissions. In other words for facts the appropriate Government must necessarily look up to the Advisory Board's recommendation. But the law to be applied in regard to premature release is the law as in force in the State of the appropriate Government applicable to the prisoners of the State. If it is found that on application of such law the prisoner whose case is recommended is not entitled to release then the reasons for such decision should be forwarded to the Government which has sent the recommendation within a reasonable time and that communication must be made available for perusal by the transferee prisoner.

Now we will come to the individual cases.

O. P. No. 4188 of 1982.

The claim for release is too premature. We are told by the learned Advocate-General that the recommendation from the Advisory Board in Kerala has not been sent at all to the Maharashtra Government. Therefore no action is called for in that case.

O. P. Nos. 5559 of 1982 and 445 of 1983.

These, as we have said earlier, relate to V. P. Johny who was convicted by a court in Goa. As mentioned earlier the release of this prisoner by order of the Lt. Governor of Goa could be expected at any time now as action has been taken on the basis of the recommendation from the Kerala State.

O. P. Nos. 940 and 8953 of 1982.

The prisoner here is one Narayanankutty who has been convicted in court martial proceedings. The court martial proceedings as Article 72(1)(a) of the Constitution indicates are separately treated. The President has the power to remit the sentence of any person convicted of any offence in all cases where the punishment or sentence is by a court martial. In view of this provision in Article

72(1)(a) it is the President that has to act in the matter. Section 179 of the Army Act which corresponds to Section 432 of the Cr. P. C. would be applicable to him in the matter of premature release. At the moment it is said that he is not entitled to release under the norms prescribed by the appropriate Government and therefore we are not directing his release.

O. P. No. 2476 of 1982.

This is by a prisoner convicted by a court in Tamil Nadu and transferred to the Kerala State. The Advisory Board of Kerala has recommended his release. The matter is pending with the Tamil Nadu Government. The Inspector-General of Prisons of the Tamil Nadu State is before us and we are assured that the matter will be given immediate attention and the matter will be disposed of immediately. Therefore we are not passing any orders.

There are other petitions which were heard. The petitioners there were released subsequently and therefore no orders are necessary.

The petitions are disposed of as above. Copies of this judgment will be sent to the Governments of Tamil Nadu, Goa, Maharashtra and the Ministry of Defence in the Central Government for their information. The prisoners concerned will also be informed of this judgment.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com