

Kishna Vs. State of Raj. and ors.

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Court : Rajasthan

Decided On : Sep-02-2004

Reported in : [2005(105)FLR616]; RLW2006(2)Raj898

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : [Prisons Act 1894](#) - Sections 59; Rajasthan Prisoners Open Air Camp Rules, 1972 - Rules 3, 7, 8, 9 and 10

Appeal No. : D.B. Civil Writ Petition No. 3480 of 2004

Appellant : Kishna

Respondent : State of Raj. and ors.

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : R.S. Chauhan and; Satyapal Poshwal, Advs.

Disposition : Petition allowed

Judgement :

Shiv Kumar Sharma, J.

1. Prayer of the petitioners, who are incarcerated in Central Jail Ajmer, for transfer to the Open Air Camp was rejected on the ground that they are above 60 years of age. Since relief sought in these petitions is identical, they are taken up together

for disposal.

2. As per the facts stated in writ petition No. 3480/2004, as many as thirteen members of petitioner's family, including Jagan Nath, the son of the petitioner were convicted and sentenced. They subsequently were transferred to Sampurana Nand Open Air Camp Sanganer Jaipur. Jagan Nath, the son of the petitioner, is willing to take the responsibility of the petitioner. An affidavit has been filed by Jagan Nath in the form of undertaking. Similarly in writ petition No. 3481/2004 petitioner's son Jagdish and in writ petition 3482/2004 petitioner's son Ram Dayal have filed affidavits to the same effect.

3. In the returns to writ petitions, the respondents averred that in view of the Rajasthan Prisoners Open Air Camp Rules, 1972 (for short 1972 Rules), the petitioners are not eligible to be transferred to Open Air Camp. Since the petitioners are infirm persons and incapable of doing daily work in order to earn their livelihood.

4. Pursuant to directions of this court the petitioners appeared in person on August 17, 2004 and expressed that they can work in kitchen garden, look after the cattles and effectively use the brooms in cleaning the area.

5. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties.

6. In exercise of the powers conferred by Clause (18) of Section 59 of the [Prisons Act 1894](#), the State of Rajasthan enacted 1972 Rules for sending convicts to open Air Camps with a view to encourage good conduct, satisfactory performance of work and a life of self-discipline among the convicts of Rajasthan and to provide these convicts with a pre-release opportunity to learn social adjustment and economic self dependence. As per rule 3(h) prisoners who are below 25 years and above 60 years of age shall ordinarily be not eligible for being sent to Open Camp. Rule 7 provides that out of agriculture work, Manufacturing or Industrial work, work in any farm, any work of public utility and construction work, digging of canals or dams, the prisoner will get one or more work in the open Camps. According to Rule 10 the prisoners can keep their families in the open camps with the

permission of Inspector General of Prisons. The wages earned by the prisoners shall be utilised by them for the use of themselves or their family (Rule 8). The prisoners shall be allotted suitable accommodation and they shall have to make their own cooking arrangement for their food from their own earning within the Camp (Rule 9).

7. A travel though the case law relating to prisoners demonstrates that big void exists in the legal remedies for prisoner injustices. In such a situation the courts have to be dynamic and diversified in meeting out remedies to prisoners. Reformation, not vindictive suffering should be the purpose of the penal treatment of prisoners. The prisoner should be made to realise the his destiny is in his own hands. Prison discipline should be such as to gain the will of the prisoner and conserve his self respect. The aim of the prison should be to make industrious free men rather than orderly and obedient prisoners. Urgent requirement of Indian Prisons now a days is to reduce tension and raise the pace of rehabilitation. It is only the 'Judicial Watchtower' that can control 'Prison power.'

8. Their Lordships of the Supreme Court in Sunil Batra II case, (1980) 3 SCC 488, had considered he aspect of visit to prisoner by family and indicated thus:- (para 53)

'Visits to prisoners by family and friends are a solace in insulation, and only a dehumanised system can derive vicarious delight in depriving prison in mates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members can not be denied in the light of Article 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden and this will be promoted by more such meetings.'

9. There have been reform movements in several countries to improve prison conditions by facilitating family visits. In Russia, prisoners are allowed two, 72 hour visits per year in small suits of flats within the prison walls with minimal supervision. Visitors can bring food and civilian clothing, In France, visits lasting upto 72 hours take place in mini- apartments consisting of two small rooms, a kitchen and a dining area. Canada is most liberal and family visits lasting upto 72

hours every three months are permitted in apartments designed to resemble family homes within prison walls. Some are furnished with fitted bath rooms, and have gardens and barbecues. Brazil frowns upon discrimination and visits are accorded to single man and woman. Zimbabwe is pragmatic and favours conjugal visits.

10. In the province of interpretation of statute, Frankfurter (H. Friendly: Benchmarks 202 (1967) gave three-fold advice-(i) Read the Statute; (ii) Read the Statute; (ii) Read the Statute! Acting on the advice when we read 1972 Rules we find that the main object of these rules is the rehabilitation of the prisoner. There are many questions regarding our prison systems and their rehabilitative quality observers from inside the walls find prisoners to be a melting pot of tensions and anxiety which are the result of variety of abnormal conditions. All convicts are not rock-hard individuals. They are people with fears and aspirations like everyone else. They are not a different breed of human beings. They want to live in peace and return to their loved ones as soon as possible. Therefore those who administer prisons are expected to plan a career for the prisoners to be pursued by them while they are in prison.

11. Coming to the scheme of 1972 Rules it may be noticed that eligibility criteria incorporated in Rule 3 is directory in nature. The persons mentioned in the said rule are although normally not eligible for being sent to Open Camp, they may however be sent when special circumstances exist. In view of the Rules 7, 8, 9 and 10, the prisoners can keep their families with them in Open Camp. Suitable accommodation for this purpose shall be allotted to the prisoners for this purpose and they shall have to make their own cooking arrangement for their food from their own earning from the work distributed to them. Work in any form can be allotted to the prisoner.

12. Undeniably families of all the three petitioners including their own sons are in Sampurana Nand Open Air Camp Sanganer, Jaipur and if the petitioners are also sent to Open Camp to live with their families, the object of 1972 Rules shall not be defeated. The petitioners may be directed to work in kitchen garden, looking after cattles or cleaning and washing the residential or other areas. We are satisfied that old age of the petitioners shall not come in the way of effectively performing

these works since we have found them fit and healthy and they look much lesser of their age.

13. For these reasons, we allow the writ petitions and direct as under:-

(i) The petitioners shall be sent to Sampurana Nand Open Air Camp Sanganer Jaipur forthwith to live with their sons.

(ii) The petitioners shall have to work in Open Camp and earn wages.

(iii) Deputy Registrar (Judicial) is directed to remit copies of this order to Central Jail Ajmer and Sampurana Nand Open Air Camp Sanganer Jaipur.

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