

K. Guruswamy and Others Vs. the State of Tamil Nadu and Others

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Court : Chennai

Decided On : Aug-31-1990

Reported in : 1991CriLJ1890

Judge : S.T. Ramalingam and; T.S. Arunachalam, JJ.

Appeal No. : Writ Petition Nos. 2320/87 and 7825, 7874, 7875/88

Appellant : K. Guruswamy and Others

Respondent : The State of Tamil Nadu and Others

Advocate for Def. : Mrs. Kalaiselvi, Public Prosecutor and ;P. Narasimhan, Senior Central Government Standing Counsel

Advocate for Pet/Ap. : Vijay Narayan, Adv., ;A. Natarajan, Senior Adv. for ;M/s P. Venkatasubramanian, ;K.J. Ayyappan and ;K. Selvakumarasamy and for ;R. Sankarasubbu, Adv.

Judgement :

Arunachalam, J.

1. The prisoners concerned in these petitions were verdicted by Court to die and are awaiting execution. Originally these writ petitions were listed along with several other similar writ petitions which we have disposed of by a common order dated 15-12-1989. These writ petitions were kept in abeyance, since the petitioners had

desired to implead the Central Government as a party, for consideration of one of their pleas raised in each one of these petitions. The disposals, of the earlier writ petitions were based mainly on the long delay of the Executive, in disposing of the mercy petitions of those petitioners, who had claimed to have suffered mental agony of living under the shadow of death for a long long period.

2. In all these writ petitions the arguments advanced were two-fold. One was that there was long delay in the disposal of the mercy petitions preferred by them to the Governor of Tamil Nadu and the President of India and the second was that though they had addressed their mercy petitions to the President of India, the Governor had chosen to consider them and forward the same to the President with his opinion, thereby preventing an independent consideration by the President, on the inherent merits of their plea for mercy. In W.P. No. 2320 of 1987 it was further argued, that the mercy petition had not yet been disposed of by the President of India and that alone will be sufficient to hold in favour of the petitioner therein.

3. W.P. Nos. 7825, 7874 and 7875 of 1988 :- These three writ petitions relate to Nataraya Gounder and Nattudurai alias Natarayan, who were accused in S.C. No. 10 of 1986 on the file of the Principal Sessions Judge, Erode and hence facts which are the same can now be briefly stated. Initially in W.P. No. 7825 of 1988 Subramani alias Subramaniam, an accused in S.C. No. 5 of 1983 on the file of the Court of Session, Periyar Division at Erode, was also shown as a condemned prisoner, but as far as his case was concerned, we have disposed of, by our order dated 15-12-1989, while the consideration, of the cases of Nataraya Gounder and Nattudurai alias Natarayan, was kept in abeyance. Nattudurai alias Natarayan, A-2 in S.C. No. 10 of 1986 is the son of Nataraya Gounder shown as A-1 in the same case. W.P. No. 7825 of 1988 was filed by one K. M. Subramaniam, a practising Advocate of this Court and a staunch member in Kongu Vellala Community Association at Madras on behalf of the prisoners, who are also stated to belong to the same community. W.P. No. 7874 of 1988 and W.P. No. 7875 of 1988 have been filed on behalf of the same prisoners by the Secretary, Legal Aid Centre. High Court, Madras. There were five other accused in S.C. 10/86, of whom Achi Ammal (A-3), the wife of the first accused Nataraya Gounder and mother of Nattudurai alias Natarayan was sentenced to undergo life imprisonment.

4. The occurrence had taken place on the mid night of 26th May, 1985 and the deceased are four in number. Palaniswami Gounder, one of the deceased, his wife and one Challappa Gounder who were in the field shed, heard some explosion which prompted them to run towards the house of one of the other deceased Vathiyar Palaniswami. They found the latter's house burning. They also noticed all the accused standing in the front of the burning house. A-1 was armed with a Koduval, while A-2 wielded a Kutheeti. When Vathiyar Palaniswami Gounder came out of the burning house followed by his father-in-law Thirumalaiswami Gounder, his wife Selvalakshmi and children Jayaprakash and Selvadurai, the petitioners Nataraya Gounder and Nattudurai alias Natarayan attacked them, resulting in the death of Vathiyar Palaniswami, Thirumalaswami Gounder, Selvalakshmi and Palaniswami Gounder, who went to their rescue. The learned Sessions Judge, after trial, found the petitioners guilty as charged and awarded the extreme penalty of law by his judgment dated 23-7-1986. Apart from the appeals preferred by the petitioners themselves, on a reference made under section 366, Cr.P.C. to this Court their case was taken up as referred trial No. 12 of 1986. The referred trial was disposed of along with their appeals and by a judgment dated 8-4-1987, the sentence of death imposed on each of the petitioners was confirmed by this Court. The petitioners filed S.L.P. (Criminal) 1776 of 1987 before the Supreme Court of India, challenging their conviction and sentence, but the same was dismissed on 25-1-1988. A common mercy petition addressed to the President of India in duplicate dated 15-3-1988 was forwarded by the prison authorities to the State Government. The State Government received them on 21st March, 1988. The case file was put up before the Governor of Tamil Nadu, who rejected the plea for mercy on 15-4-1988. On 22-4-1988 along with a covering letter. The State Government forwarded to the President of India, the petition for mercy, stating that the State Government had rejected the plea for clemency and further recommended that the mercy petition may be rejected. The letter was addressed to the Secretary, Ministry of Home Affairs, Government of India, by the Special Commissioner and Secretary to the Government of Tamil Nadu, Home Department, Madras. The President of India rejected the mercy petition on 17-6-1988. W.P. Nos. 7874 and 7875 of 1988 were admitted on 14-7-1988 by this Court (after the President had rejected the 'mercy plea') W.P. 7825 of

1988 was also admitted on the same date. There was also a stay of execution of the death sentence imposed on both the prisoners. In the grounds taken in the affidavits filed in support of the writ petitions, the petitioners have stated that the President of India had kept the mercy petition pending for four years and had ultimately dismissed it without assigning any reason and considering the grounds urged therein which was violative of the law laid down by the apex Court in Sher Singh's case. Further the President of India had not independently applied his mind on the mercy petition, but was weighed by the note of rejection of the Governor of Tamil Nadu appended to the petition. The procedure adopted was violative of Art. 21 of the Constitution of India. Further the appeal preferred by the prisoners before the Supreme Court was pending and the mercy petition had yet to be disposed of by the Governor of Tamil Nadu.

5. In a common counter-affidavit filed by N. M. Duraisingh, Joint Secretary to Government, Home Department, Government of Tamil Nadu, it has been stated, that the rejection of the mercy petition by the President of India was communicated to the prisoners on 7-7-1988. Therefore, the contention that the President of India had kept the mercy petition pending for more than four years and hence the principles laid down by the Supreme Court in Sher Singh's case would be attracted, was incorrect and untenable. The averment that the procedure adopted in the disposal of the mercy petition was in violation of Art. 21 of the Constitution was untenable. It was also incorrect to state that the appeal preferred by the petitioners before the Supreme Court was pending and their mercy petition preferred to the Governor of Tamil Nadu was also yet to be disposed of. A perusal of the case file shows that the Government of Tamil Nadu had received the communication of rejection of the mercy petition of the petitioners by the President of India, on 24th June, 1988.

6. W.P. No. 2320 of 1987 :- The petitioner Guruswami was tried, for having murdered his paternal uncle Vellaisamy alias Velu Velar and his wife Periyannayagam by cutting them with an aruval at or about 2-10 p.m. on 24-1-1980 at Venkatachalapuram village, in S.C. No. 106 of 1980 on the file of the Sessions Judge, Ramnad. He was found guilty as charged and sentenced to death by the Judgment dated 5th February, 1981. In R.T. No. 2 of 1981 his conviction and

sentence were confirmed on 2-7-1981 by this court. The affidavit filed by K. Chandran, the brother-in-law of the prisoner shows, that the mercy petition preferred by the petitioner's wife was rejected by the Governor of Tamil Nadu on 17-7-1982 and the subsequent mercy petition to the President of India was also rejected on 24-3-1983. The petitioner, who appears to have been not willing to file any appeal in the Supreme Court of India, but was prepared to submit a mercy petition, as is evident from the counter-affidavit filed by T. V. Venkataraman, Secretary, Home Department, Tamil Nadu, however, chose to send a petition dated 12-4-1983 to the Chief Justice of India pleading that his petition may be treated as a writ petition, challenging his sentence of death and further pleading for a stay of execution. The Supreme Court of India, however, dismissed the said petition for special leave to appeal on 26-8-1983 in S.L.P. CrI. No. 976 of 1983. Thereafter the wife of the petitioner is stated to have sent another mercy petition dated 19-9-1983 to the President of India, which has not yet been disposed of. On 8-10-1983 another mercy petition was forwarded to the President of India by the wife of the petitioner with copies thereof marked to the State Government and the Superintendent of Central Prison at Madurai. On 12-10-1983 the Government of Tamil Nadu issued a letter to the counsel for the petitioner, stating their inability to interfere in the matter, since the petitioner had exhausted all the legal remedies that were available to him. A further averment has been made in the affidavit of K. Chandran, that on 21-9-1983 he and the wife of the petitioner found the petitioner mentally disturbed, talking incoherently and not being able even to recognise his family members. A specific averment has been made in the writ petition that the fixing of repeated dates for execution and repeated deferment of the dates of execution, had caused grave mental anguish and agony to the petitioner much beyond that could have been intended by the death sentence imposed on him. The grounds have been placed before us in an attempt to have this writ petition allowed. One is that there has been an inordinate delay in the execution of the death sentence and secondly the subsequent mercy petitions have not been disposed of by the President of India after the disposal of the earliest mercy petition and such non-disposal for a pretty long time, would be sufficient to substitute life sentence instead of the sentence of death, hanging over for several years.

7. In the counter-affidavit filed by the State Government it has been stated, that the petition for mercy preferred by the wife of the prisoner and the public of the village were rejected by the President of India and the Governor of Tamil Nadu. The orders were also communicated to the prisoner through the Superintendent of Central Prison, Madurai. The averment that the prisoner was mentally disturbed was denied and the opinion of Dr. A. Venkaba Rao, Psychiatric Physician and Director of Institute of Psychiatry, Government Rajaji Hospital, Madurai, stating that on his examination of the prisoner the latter did not appear to manifest any signs and symptom of illness falling under the category 'Insanity' was referred to. There was no unaccounted or unjustifiable delay in carrying out the execution of the death sentence.

8. Having narrated the facts in all these writ petitions, our attention will have to be focussed now, on the feasibility of issue of a direction not to carry out the sentence of death and the possibility of altering it into one of imprisonment for life. In the earlier batch of cases *Haja Mohideen etc. etc. v. Government of India*, 1989 LW 546 : 1991 CLJ 1325 taking note of the Tamil Nadu Prison Rules in conjunction with the observations of the Supreme Court in *Sher Singh's case* : [1983]2SCR582 suggesting a self-imposed rule to dispose of mercy petitions within three months, we held, that anxious care on the part of the executive to perform its duty in disposing of the mercy petitions as early as practicable, without avoidable delay was implied. We have also stated, that as per the law of the land, the only delay which would be material for consideration, will be the delay in the disposal of the mercy petitions or the delay occurring at the instance of the executive. Lack of explanation for the undue delay would strike at the very root or foundation, necessitating a verdict in favour of the prisoner. In the earlier petitions there was not even an attempt to explain the long delay and we took the view, on the totality of the circumstances, that death sentence should not be carried out, on each one of those prisoners and altering their sentences into one of imprisonment for life was needed.

9. In the present group of writ petitions, we are afraid that the petitioners cannot succeed on the ground of delay in consideration of their respective mercy petitions. In W.P. Nos. 7825 of 1988, 7874 of 1988 and 7875 of 1988, the

petitioners Nataraya Gounder and Nattudurai alias Natarayan, had forwarded their mercy petitions through the prison authorities, to the President of India on 15-3-1988. The Governor of Tamil Nadu had rejected their plea on 15-4-1988 and the President of India did not accede to their plea for mercy, by his order dated 17-6-1988. The mercy petitions had been disposed of by both the constitutional authorities in or about three months.

10. Similarly in the case of the prisoner in W.P. No. 2320 of 1987 the first mercy petition dated 19-8-1981 had been rejected by Governor of Tamil Nadu on 29-12-1981 as seen from the file and not on 17-7-1982 as alleged. The State Government forwarded the mercy petition to the President only on 19-3-1982 and the same was rejected by the President on 24-3-1983. We are unable to hold that the executive had not played their role consciously, though quicker action could have been taken much earlier. The State Government should have also forwarded the mercy petition to the President with greater promptitude. However, we are satisfied that there has been no unreasonable time lag and logically no ground has been made out to intervene in favour of the prisoner, on the ground of mental agony to stop execution of the sentence of death. We have carefully taken note of the judgments of the apex Court culminating in *Triveniben v. State of Gujarat* : 1990 CriLJ1810 and *Madhu Metha v. Union of India* 1989 SCC 785 while arriving at our conclusions in these writ petitions.

11. In respect of Nataraya Gounder and Nattudurai alias Natarayan, we are bound to consider the further submission that independent consideration of the plea for mercy by the President of India, had been made an empty formality by the letter dated 22-4-1988 of the State Government, which had recommended negating the mercy plea, while highlighting the rejection of a similar plea by the Governor of Tamil Nadu, to whom no petition for mercy was addressed. The Tamil Nadu Prison Rules, 1983, and more specifically Rules 915 and 916 contemplate forthwith despatch to the Commissioner and Secretary to Government, Home Department, by the Superintendent of the Prison, the petitions submitted by the convict for mercy addressed to the Governor of Tamil Nadu and the President of India. Art. 72 of the Constitution refers to the power of the President, while Art. 161 of the Constitution takes in its fold the power vested in the Governor of the State. It is

obvious that the prisoners have a dual right in the case of sentences of death and the power is vested in the President as well as the Governor, to commute the sentence. This scheme has been explained in the Debates of the Constituent Assembly. The Debates disclose, that if an offence was committed in a particular locality, the concerned Home Minister would advise the Governor on a mercy petition from an offender sentenced to death, for he would be in a better position to tender advice, having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. Even if the Governor rejected the mercy petition, it was open to the offender to approach the President and try his luck. In the event of the Governor holding in favour of the prisoner, the need for consideration of the mercy plea of the prisoner, by the President of India will not at all arise. Though an argument has been advanced, that plea for mercy was not made to the Governor of Tamil Nadu, it is evident from the affidavit filed in support of the prayer of the prisoners in W.P. Nos. 7874 and 7875 of 1988, that their mercy petition preferred to the Governor of Tamil Nadu was pending as well as their appeal to the apex Court had not yet been disposed of. It is thus apparent that the prisoners were desirous of exhausting their dual right and that was the reason why the Petition was in duplicate addressed to the President of India while it was forwarded to the State of Tamil Nadu. We, therefore, find no infirmity whatsoever in the Governor of the State having considered the mercy petition and rejected it on 15-4-1988. It may be that the petition for mercy addressed to the President of India could have been forwarded by the State Government simultaneously to the President of India, but on facts, we do not find anything unreasonable or suspicious in the petitions for mercy having been forwarded to the President of India, after its disposal by the Governor of the State. The entire file has been placed before us and it is apparent that in cases of mercy petitions of condemned prisoners, if the sentence of death was commuted as life imprisonment by the Governor, only information will be forwarded to the Government of India, Superintendent of Central Prison and the prisoner for information, while if the petition for mercy was rejected by the Governor, it will be forwarded to the Government of India, for orders of the President, with the note of the Governor. The Governor had rejected the petition for mercy after taking note of the entire circumstances placed before him. It is true, that along with the mercy

petition, a letter dated 22-4-1988 had been forwarded to the Secretary, Ministry of Home Affairs New Delhi, by the Home Secretary of the State of Tamil Nadu, wherein while detailing the rejection of the mercy petition by the Governor, a recommendation for rejection of the mercy petition by the President had also been made. We are unable to comprehend or persuade ourselves to hold, that merely because of this letter the President of India would have been influenced and would not have exercised his power independently without being influenced in any manner by the recommendation aforesaid. The President of India who holds an exalted office and who appoints Governors in the States, will not be unconscious of his constitutional responsibility under Art. 72 and it is hard to believe, that the President mechanically, without any independent consideration, would have dismissed the mercy petitions merely because such a recommendation had been made. As the Debates of the Constituent Assembly disclose, if the Home Minister could have advised the Governor, on a mercy petition, in view of his being in a better position to tender advice, having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area, such unfurling of material facts together with the view of the Governor do not appear either to block or cast a dent in the independent consideration of the mercy petition by the President. On facts, there is not even a note put up by the Governor of Tamil Nadu to the President of India. We are unable to hold that the President would have been clouded by the recommendation of the State Government while arriving at his own conclusion on the totality of the material placed before him. This power of great magnitude and dimension vested in the President is certainly bound to dictate to him the prudential caution, which calls for in its exercise, uninfluenced by any circumstance except this own conscious conclusion on the whole material placed for consideration. The power so vested in the President proclaims the confidence of the Nation, that it will not be abused. It will certainly be conducive that such recommendations are not made, but on facts we are not persuaded, to hold in favour of the prisoners on this ground, as well. W.P. Nos. 7825, 7874 and 7875 of 1988 are, therefore, dismissed.

12. As far as W.P. No. 2320 of 1987 is concerned, the mercy petition of the prisoner had been considered by both the constitutional authorities and it had been dismissed by the Governor of Tamil Nadu on 29-12-1981 and by the

President of India on 24-3-1983. It is only thereafter that the petitioner who was not willing to move the apex Court, had chosen to address the Chief Justice of India to treat his petition as a writ, to set aside his conviction and sentence imposed by the trial Court and confirmed by this Court. The moving of the Supreme Court obviously after a substantial delay of nearly two years was only a time prolonging device and after the Supreme Court had dismissed the belated special leave petition, the petitioner's wife had thought it fit to send further mercy petitions dated 19-9-1983 and 8-10-1983 to the President of India. We do not think that successive petitions for mercy will lead anywhere especially when it has not been argued before us that some new or unexpected circumstances had arisen, which could not have been considered in the earlier mercy petition and these fresh circumstances may tend to tilt the balance in favour of the prisoner. There will be no limit of finality to mercy petitions if this course of successive mercy petitions were allowed to be filed needing consideration every time by the President of India and the Governor of the State. The successive petitions for mercy, on facts, appear to have been filed somehow or other to keep the legal process pending, rather than on the basis of any bona fides. We are satisfied that there will be no duty cast on the Governor of the State and the President of the country to consider successive mercy petitions without limit. However, we find from the Government file relating to Guruswamy that even on 25-11-1983, the State Government had been informed that in respect of the latter mercy petitions, dated 19-9-1983 and 8-10-1983, it had been decided that the order communicated by letter dated 24-3-1983, that the President declines to interfere on behalf of Guruswamy should stand. We also hold that there has been no unaccounted or unjustifiable delay in carrying out the execution of death sentence. We are unable to accede to the plea made on behalf of the prisoner. Hence, W.P. No. 2328 of 1987 is also dismissed.

13. In the result, all the writ petitions are dismissed.

14. Petitions dismissed.