

Madhu Limaye

Vs

The Superintendent, Tihar Jail, Delhi and Others

Writ Petition No. 318 of 1970

(K. K. Mathew, V. R. Krishna Iyer, P. K. Goswami, JJ)

19.02.1975

JUDGMENT

KRISHNA IYER, J. -

1. Shri Madhu Limaye, M. P., moved this petition while he was prisoner, imbued more by the pro bono publico spirit than perhaps by his own invidious lot in jail. The gravamen of his public grievance is that a long silver jubilee span of years having elapsed after became a Sovereign Democratic Republic, it is obnoxious that racial discrimination, smacking of colonial hangover, should stubbornly resist Articles 14 and 15 of the Constitution and survive in the Punjab Jail Manual. If it were so, it were a matter to blush for, but the preliminary objection raised by the Solicitor General is that the petitioner having been freed from prison years ago, this Court should not be invited into an academic exercise on a constitutional issue. Of course, he concedes that the Court is not deprived of jurisdiction by the cessation of incarceration. An inflexible rule that as soon as a custodial term of prohibitory order expires the Court will not investigate into its legality may well immunize ephemeral illegality against judicial review - an unwitting infraction of the amplitude of the Court's powers. But there are cases and cases.

2. Mr. Santok Singh, for the petitioner, has brought to our notice decisions of this Court and of the Supreme Court of the United States to press home his point that issues of such great moment affecting the liberty of the citizen should not be avoided even though the immediate prohibition which has led to the writ petition has, for the time being, disappeared (See *Carroll v. Commissioners of Princess Anne* (21 L Ed 2d 335) and *United States v. Phosphate Export Asso.* (21 L Ed 2d 344); also *Madhu Limaye v. Ved Murti and Himat Lal K. Shah v. Commr. of Police* ((1973) 1 SCC 227, 232 : 1973 SCC (Cri) 280).

3. The thrust of the charge of unconstitutionality made by Sri Madhu Limaye consists in the artificial discrimination between India and European prisoners in the matter of treatment and diet, going by the rules he has set out in his petition. It is true that many laws which do not square with the equality enshrined in Articles 14 and 15 die hard until pronounced dead by the Court. Prima facie the rules quoted are neither fair on their face nor equal in their bosom, as between Indians and Europeans. This white-complex has no right to remain extant in the rules, according to Counsel for the petitioner. We have drawn the attention of the Solicitor General to what appears to be an obsolete but overlooked discrimination. We are not inclined to examine this matter more incisively for two reasons. The petitioner is no longer in prison. Even so may be the matter can be competently scrutinised from the constitutional angle by this Court. But the learned Solicitor General assures us that he will draw the attention of the Punjab Government to the need for revision of the impugned rules from the point of view of racial equality. In the light of this submission we

hope the State Government will take up the reform of the law, lop off dead wood, eliminate the vice of inequality and update the regulations to be in keeping with the spirit and letter of the paramount law.

4. In view of this attitude of the Solicitor General, Counsel for the petitioner himself expressed that he was not keen on going on with the case. We hope that the above observations would be sufficient for the high purpose the petitioner has in view.

5. We accordingly dismiss the petition.

</html