

SUPREME COURT OF INDIA

Laxman Naskar

Vs.

Union of India

(G.T.Nanavati and S.N.Phukan JJ.)

15.02.2000

JUDGMENT

PHUKAN, J.

By this common judgment we propose to dispose of six writ petitions filed under Article 32 of the Constitution as the points involved in all the petitions are common. Writ petitions have been filed on behalf of life convicts as their prayer for pre-mature release was rejected by the Government of West Bengal. The common grievance is that though they are entitled for pre-mature release under relevant rules, their prayer was rejected by the Government on extraneous consideration. It is settled position of law that life sentence is nothing less than lifelong imprisonment and by earning remissions a life convict does not acquire a right to be released prematurely; but if the Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution and if according to the Government policy/instructions in force at the relevant time the life convict has already undergone the sentence for the period mentioned in the policy/instructions, then the only right which a life convict can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. When an authority is called upon to exercise its powers under Article 161 of the Constitution that will have to be done consistently with the legal position and the Government policy/instructions prevalent at that time.

Sub-rules (4) & (29) of Rule 591 of the West Bengal Rules relating to premature release of life convict run as follows:

(4) In considering the cases of prisoners submitted to it under sub-rules (1) and (2), the State Government shall take into consideration (I) the circumstances in each case, (ii) the character of the convicts crime, (iii) his conduct in prison and (iv) the probability of his reverting to criminal habits or instigating others to commit crime. If the State Government is satisfied that the prisoner can be released without any danger to the society or to the public it may take steps for issue of orders for his release under section 401 of the Code of criminal Procedure, 1898.

(29) Every case in which a convict, who has not received the benefit of any of the foregoing rules, is about to complete a period of 20 years of continued detention including remission earned, if any, shall be submitted three months before such completion by the Superintendent of the Jail in which the convict is for the time being detained, through the Inspector-General, for orders of the State Government. If the convicts jail records during the last three years of his detentions are found to be satisfactory the State Government may remit the remainder of his sentence.

All the life convicts before us have completed continued detention of 20 years including remission earned.

From the counter filed by the State, we find that the Government has also framed guidelines for this purpose. To consider the prayer for premature release of the life convicts, police report was called for on the following points :- i) Whether the offence is an individual act of crime without affecting the society at large; ii) Whether there is any chance of future recurrence of committing crime; iii) Whether the convict has lost his potentiality in committing crime; iv) Whether there is any fruitful purpose of confining this convict any more; v) Socio-economic condition of the convicts family.

Though the police report did not cover all the above points, the prayer of life convicts for premature release was rejected mainly on the ground of objections by police.

The police had only reported about the chances of the petitioners committing crime again. It becomes apparent from the record that the Government did not consider the prayer for premature release as per the rules. The Government did not pay sufficient attention to the conduct-record of the petitioners while in jail nor did it consider whether they had lost their potentiality in committing crime. The relevant aspect, namely, that there is no fruitful purpose in confining them any more was also not considered nor the socio economic conditions of the convicts family were taken into account. Thus the orders of the Government suffer from infirmities and are liable to be quashed.

In the result, we set aside all the orders of the State Government and direct the authorities to re-consider the cases for premature release of all life convicts who have approached us by filing present Writ Petitions as per relevant rules/guidelines within a period of one month from the receipt of this order. The Writ Petitions are allowed to the extent indicated above.