SUPREME COURT OF INDIA

Satpal

Versus

State of Haryana

(G.B. Pattanaik and U.C. Banerjee, JJ.)

Writ Petition (Crl.) Nos. 45-46 of 1999.

01.05.2000

JUDGMENT

G.B. Pattanaik, J. - The order of the Governor dated 25.1.1999, granting pardon remitting the un-expired portion of the sentence passed on prisoner Shri Siriyans Kumar Jain S\o Shri Ram Chand Jain in exercise of power conferred by Article 161 of the Constitution of India read with Section 132 of the Code of Criminal Procedure is being assailed, inter alia, on the ground that the power has been exercised without application of mind, and that the said power has been exercised by the Governor on extraneous consideration and even without the aid and advice of the Government, namely, the concerned Minister. The applicants are the brother and widow of the deceased Krishan Kumar who was murdered during the election held in the year 1987 for the post of President of Municipal Committee, Hansi. The prosecution had alleged that a gruesome crime was committed by the accused persons and the entire family of deceased suffered the agony and pain. In the criminal trial the respondent-Siriyans Kumar Jain alongwith four other accused persons belonging to the Bhartiya Janta Party were tried for having committed offence under Section 302 read with Sections 149 and 120-B as well as under Sections 392, 148, 452 and 323 Indian Penal Code. The learned Sessions Judge convicted all the five accused persons and on an appeal the High Court of Punjab and Haryana while maintained the conviction of accused Krishan Kumar Jakhar and Gurvinder Singh but acquitted the accused P.K. Chaudhary, Siriyans Jain and Ram Nath Bhumla. The State of Haryana preferred appeal against the acquittal of the aforesaid three accused persons. The Supreme Court by judgment dated 10.12.1998, set aside the acquittal of accused Siriyans Kumar Jain, Ram Nath Bhumla but upheld the acquittal of P.K. Chaudhary. The Court also directed Siriyans Kumar Jain and Ram Nath Bhumla to surrender to custody in order to serve out the remaining part of their sentence. In setting aside the order of acquittal passed by the High Court the Supreme Court had observed that all the four accused persons had gone together to the place of occurrence and they were armed with weapons with a definite purpose and, therefore, there was no scope for entertaining any doubt regarding their involvement in commission of the crime and also as regards the said crime that the said crime having been committed by them in prosecution of common object of an unlawful assault (assembly ?) consisting of them and other persons who had come along with them upto the factory. Immediately after the

judgment of this Court dated 10.12.1998, respondent Siriyans Kumar Jain (respondent No. 3) in the present Writ Petition instead of surrending to serve the sentence, as directed by this Court, filed an application before the Governor invoking his jurisdiction under Article 161 of the Constitution and this application was filed on 15.1.1999. The Secretary to the Governor addressed a letter to the Secretary to the Government of Haryana, Department of Jails requesting for a report in the matter to be placed before His Excellency the Governor of Haryana. The Appropriate Authority, namely, Joint Secretary to the Government in the Home Department indicated in his note that the opinion of the Legal Remembrancer should be obtained as to whether this is a fit case for exercising the power under Article 161 of the Constitution or not. The opinion of the Legal Remembrancer was then placed before the concerned Minister and finally the Chief Minister agreed with the views of the Legal Remembrancer and came to the conclusion that this is a fit case where discretion given under Article 161 of the Constitution be exercised and relief prayed for be granted. On the basis of the aforesaid advise of the Chief Minister the Governor finally granted pardon, as already stated.

2. Mr. K.T.S. Tulsi, learned senior counsel appearing for the petitioners contended that the very order passed by the Governor would indicate total non-application of mind and, therefore, the said order cannot sustain the judicial scrutiny and must be set aside. He also contended that if the order of the Governor is examined it will indicate as to the uncanny haste with which the entire matter was disposed of, without scant regard for the judgment of this Court whereunder the Court convicted the present respondent No. 3 under Sections 302\149, IPC and 120-B and the final order of the Governor emanated even before respondent No. 3 surrendered to serve the sentence though the impugned order categorically indicates that the prisoner is in jail. Mr. Tulsi also contended that the Governor has passed the order without being aided and advised by the Council of Ministers and, therefore, the order is vitiated.

3. Mr. R.K. Jain, learned senior counsel appearing for the State of Haryana and Mr. D.D. Thakur, learned senior counsel appearing for respondent No. 3, however, contended that the power to grant pardon and remission of sentence is essentially an executive function to be exercised by the Head of the State after taking into consideration various matters and the Court is precluded from examining the wisdom or expediency of exercise of the said power. According to the learned counsel the power of judicial review, as has been held by this Court in Kehar Singh's case is of a very limited nature, namely, whether the authority who had exercised the power had the jurisdiction to exercise the same, and whether the impugned order goes beyond the power conferred by law upon the authority who made it, and this being the position the grounds on which the impugned order is being attacked essentially pertain to the propriety of the Governor in the matter of exercising power under Article 161 after the conviction and sentence passed by this Court and as such, it should not be interfered with.

4. There cannot be any dispute with the proposition of law that the power of granting pardon under Article 161 is very wide and do not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said powers could be exercised. But the said power being a constitutional power

conferred upon the Governor by the Constitution is amenable to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Article 161 of the Constitution if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is a mala fide one or the Governor has passed the order on some extraneous consideration. The extent of judicial review in relation to an order of the President under Article 72 of the Constitution of India was subject matter of consideration before this Court in Kehar Singh's case, 1989(1) Supreme Court Cases 204, where the Constitution Bench had observed "It appears to us clear that the question as to the area of the President's power under Article 72 of the Constitution falls squarely within the judicial domain and can be examined by the Court by way of judicial review". The Court had further indicated that "as regards the considerations to be applied by the President to the Petition we need say nothing more as the law in this behalf have already been laid down by this Court in Maru Ram's case, 1981(1) Supreme Court Cases 107. What has been stated in relation to the President's power under Article 72 equally applies to the power of Governor under Article 161 of the Constitution. In Maruram's case (supra) the Court came to the conclusion that the power under Articles 72 and 161 can be exercised by the Central and State Governments and not by the President or Governor on their own. The advise of the appropriate Government binds the head of the State. The Court also came to the conclusion that considerations for exercise of power under Article 72 or 161 may be myriad and their occasions protean, and are left to the appropriate Government, but no consideration nor occasion can be wholly irrelevant, irrational, discriminatory or mala fide. Only in these rare cases will the Court examine the exercise. In paragraph 62 of the judgment in Muru Ram's case (supra) the Court had observed :-

> "An issue of deeper import demands our consideration at this stage of the discussion. Wide as the power of pardon, commutation and release (Articles 72 and 161) is, it cannot run riot; for no legal power can run unruly like John Gilpin on the horse but must keep sensibly to steady course. Here, we come upon the second constitutional fundamental which underlies the submissions of counsel. It is that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power. We proceed on the basis that these axioms are valid in our constitutional order."
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> It was further held that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law unto itself but must be informed by the finer canons of constitutionalism.
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> 5. Three Judge Bench of this Court recently considered the question of judicial review against an order granting pardon by the Governor under Article 161 of the Constitution in the case of Swaran Singh v. State of U.P. and others, 1998(2) RCR (Crl.) 267 : (1998)4 Supreme Court Cases 75. In

that case an MLA of the State Assembly had been convicted of the offence of murder and within a period of less than two years he succeeded in coming out of the prison as the Governor of Uttar Pradesh granted remission of the remaining long period of his life sentence. The son of the deceased moved the Allahabad High Court challenging the aforesaid action of the Governor and the same having been dismissed the matter had been brought to this Court by grant of Special Leave Petition. This Court had come to the conclusion that the Governor was not told of certain vital facts concerning the prisoner such as his involvement in five other criminal cases of serious offences, the rejection of his earlier clemency petition and the report of the jail authority that his conduct inside the jail was far from satisfactory and out of two years and five months he was supposed to have been in jail, he was in fact on parole during the substantial part thereof. The Court further held that when the Governor was not posted with material facts the Governor was apparently deprived of the opportunity to exercise the powers in a fair and just manner and the order fringes on arbitrariness. The Court, therefore, quashed the order of the Governor with a direction to re-consider the petitioner of the prisoner in the light of the materials which the Governor had no occasion to know earlier.

6. Bearing in mind the parameters of judicial review in relation to an order granting pardon by the Governor, when we examine the case in hand, the conclusion is irresistible that the Governor had not applied his mind to the material on record and has mechanically passed the order just to allow the prisoner to overcome the conviction and sentence passed by this Court. It is indeed curious to note that the order dated 25.1.1999 clearly indicates that the Governor of Haryana is pleased to grant pardon remitting the unexpired portion of the sentence passed on prisoner Siriyans Kumar Jain confined in the Central Jail, Hissar. But the said prisoner was not confined in the Central Jail, Hissar on that date and on the other hand after obtaining the order of pardon and remission of sentence to give an appearance of compliance to the order of Supreme Court said Siriyans Kumar Jain surrendered before the Court of Sessions Judge, Hissar on 2.2.1999 and also released on the very same day in view of the order of Governor dated 25.1.1999. If by order dated 25.1.1999 the accused has already been granted pardon and there has been a remission of the sentence then there was no reason for him to go and surrender before the District Judge on 2.2.99. That apart, the Governor has not been made aware of as to what is the total period of sentence the accused has really undergone, and if at all has undergone any sentence. When an accused is convicted of heinous offence of murder and is sentenced to imprisonment of life the authority who has been conferred with power to grant pardon and remission of sentence under Article 161 of the Constitution must be made aware of the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he has been undergone the sentence which would be all germane considerations for exercise of the power. Not being aware of such material facts would tend to make an order of granting pardon arbitrary and irrational, as has been held by this Court in Swaran Singh's case (supra). The entire file had been produced before us

and we notice the uncanny haste with which the file has been processed and the unusual interest and zeal shown by the authorities in the matter of exercise of power to grant pardon. We also fail to understand how the order in question could show that the prisoner is in jail while in fact he was free at large and had not surrendered to serve the sentence notwithstanding the position direction of this Court dated 10.12.1998 disposing of the appeal filed by the State.

7. So far as the contention that Governor passed the order on his own without being advised by the Council of Ministers, we do not find any substance in the same. We have scrutinised the relevant file that was produced before us and it clearly demonstrates that the matter was examined by the Law Department, the concerned Administrative Department and was finally endorsed by the Chief Minister after which the Governor passed the order. Consequently, there is no substance in the submission of Mr. K.T.S. Tulsi, learned senior counsel appearing for the petitioners.

8. In the aforesaid premises, we have no hesitation to come to the conclusion that the order in question has been vitiated and the Governor has not been advised properly with all the relevant materials and, therefore, we have no other option than to quash the said order dated 25.1.1999. We accordingly quash the impugned order dated 25.1.1999 and allow this Writ Petition, but, however quashing of the order does not debar the Governor in reconsidering the matter in the light of the relevant materials and act in accordance with the constitutional provisions and discretion.

Petition dismissed.