SUPREME COURT OF INDIA

State of Madhya Pradesh & Anr.

Vs

Bhola @ Bhairon Prasad Raghuvanshi

06/02/2003

(S. Rajendra Babu, D. M. Dharmadhikari & G. P. Mathur.)

Appeal (crl.) 92 of 2002

JUDGMENT

DHARMADHIKARI, J

This appeal has been preferred by the State of Madhya Pradesh against judgment dated 16.1.2001 of the High Court of Madhya Pradesh in Writ Petition (Crl.) No. 3603 of 1999. By placing reliance on two Judges Bench decision of this Court in State of U.P. vs. Sadhu Saran Shukla [1994 (2) SCC 445] the High Court has held that Rule 3 (a) of the Madhya Pradesh Prisoner's Release on Probation Rules, 1964 is ultra vires Section 2 of Madhya Pradesh Prisoner's Release on Probation Act 1954 [hereinafter referred to as 'the Rules' and 'the Act' respectively].

The two-Judges Bench of this Court in the case Sadhu Saran (Supra) declared similar Rule 3 (a) of U.P. Prisoners' Release on Probation Rules as ultra vires Section 9 and Section 2 of the U.P. Prisoners' Release on Probation Act, 1938 [hereinafter shortly referred to as 'the U.P. Rules' and 'the U.P. Act' respectively].

This appeal was listed before a two-Judges Bench of this Court on 21.8.2002 and it had referred this case to a larger bench stating that two Judges-Bench of this Court in the case of Sadhu Saran (supra) needs reconsideration.

A legal question of general importance on the validity of Rule 3(a) of the Rules is before us for consideration. The respondent/prisoner is not represented by counsel. On our request, Shri Rakesh Dwivedi, Sr. Advocate had agreed to assist this Court and to project the possible view in favour of the prisoner. The appellant/State of M.P. is represented by Sr. Advocate, Shri R.P. Gupta who took us through the relevant provisions of the Act and the Rules and almost similar provisions of U.P. Act and the Rules.

On completion of more than five years sentence of imprisonment, the respondent/prisoner made an application for his release on probation in accordance with Section 2 of the Act read with the Rules. His application for release on probation under the M.P. Act and Rules was not considered by the State because by Rule 3(a) convicts for offences specifies under Section 396 of Indian Penal Code cannot seek release on probation under the Act.

The prisoner approached the High Court in the Writ Petition. By placing reliance on the decision of Sadhu Saran (supra) the Writ Petition was allowed by the impugned order and directions were

issued to the State government to consider the application of the prisoner for release on merits in accordance with the provisions of the Act and the Rules.

The legislation contained in the Act and Rules and its counterpart U.P. Act and Rules is to give effect to the current penal philosophy on sentences. Penologists hold the view that imprisonment should not necessarily be 'retributary' and 'deterrent' but should be 'rehabilitative'. Hegel's theory of punishment says that 'reform is to be effected through punishment.' The modern reformists hold a view that "reform should accompany punishment." Hegel asserts that "object of punishment is to make the criminal repent his crime, and by doing so to realise his moral character, which has been temporarily obscured by his wrong action, but which is his deepest and truest nature." [See Justice through Punishment by Barbara Hudson pg. 3]

The legislation for consideration before us gives effect to this penal philosophy recommending rehabilitation of the criminals so that they come out of the prison to return to society as law abiding citizens. Under the scheme of the two Acts certain classes of prisoners which appear to the Government from their antecedents and their conduct in the prison as likely to abstain from crime and lead a peaceable life, can be released on a "licence" but their conduct outside prison shall be supervised by specified individuals or institutions. The period of release on licence or probation granted to them would give them opportunity to lead a crime free and peaceable life. Such period shall be counted towards the sentence of imprisonment imposed on them. Such licensed releases legislatively sanctioned have been recognised as valid law by this Court in the case of Maru Ram vs. Union of India [1981 (1) SCC 100] at paragraph 71 pg. 152-153. Release on licence is an experiment with prisoners for open jails or as the Court describes it is an "imprisonment of loose and liberal type".

A brief survey of the scheme of the Act and the Rules with detailed examination of the impugned provisions would be necessary. The preamble of the Act is meaningful and conveys the object of the Act. It reads thus:

"An Act to provide for the release of certain prisoners on conditions imposed by the (Madhya Pradesh) Government.

[Underlining for emphasis].

Section 2 of the Act which authorises government to release the prisoner on probation on consideration of his antecedents and his conduct in the prison, reads thus :-

"2. Notwithstanding anything contained in Section 401 of the Code of Criminal Procedure, 1898 where a person is confined in a prison under a sentence of imprisonment, and it appears to the Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison, the Government may by licence permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner or such institution or society as may be recognised by the Government for the purpose, provided such other person, institution or society is willing to take charge of him.

Section 9 of the Act contains the rule making power for carrying into effect the provisions of the Act and sub-section 4 which is relevant for our purposes is also required to be reproduced for its proper interpretation.

"9. The Government may make rules consistent with this Act :- (1) for the form and conditions of licence on which prisoners may be released; (2) for the appointment of Government Officer, the recognition of Institution, Societies and persons referred to in Section 2; (3) for defining the powers and duties of Government Officer, Institutions, or persons, under whose authority or supervision conditionally released prisoners may be kept; (4) for defining the classes of offenders who may be conditionally released, and the periods of imprisonment after which they may be so released; (5) .. (6) .. (7) .. [Underlining for pointed attention]

In exercise of its rules making power, the State Government framed the Rules of 1964 and Rule 3 (a), which was challenged in the High Court by the prisoner, reads thus :- "3. The following classes of prisoners shall not be released under Act :- (a) Those convicted of offences under the Madhya Barat Vagrants, Habitual Offenders and Criminals (Restrictions and Settlement) Act, 1952, or any law in force in any region of the State corresponding to the said Act, or the Explosive Substances Act, 1908 or under the following Chapters or sections of the Indian Penal Code, Chapters V-A, VI and VII and Section 216-A, 224 and 225 (if it is a case of an escape from a jail), 231, 232, 303, 311, 328, 361, 376, 382, 386 to 389, 392 to 402, 413, 459, 460 and 489-A."

[see 396 IPC mentioned as excluding application of Section 2 of the Act]

In the impugned judgment of the High Court of Madhya Pradesh, reliance has been placed on the decision of two Judges Bench of this Court in the case of Sadhu Saran (Supra) which had arisen from almost identical provisions of U.P. Act and Rules and they have been quoted in the said judgment. We have also perused the judgment of the Lucknow Bench of Allahabad High Court dated 11.9.1980 in Writ Petition No. 2070 of 1978 from which Crl. Appeal No. 163 of 1983 decided on 12.1.1994 in the case of Sadhu Saran (Supra) had arisen. The Lucknow Bench of Allahabad High Court in taking the view as it did that Rule 3(a) is in excess of the rule making power and defeats the purposes of the Act contained in Section 2, observed thus:- "The purpose of Section 9 is to achieve the objective contained in Section 2 and Section 8. It permits the making of the rule for that purpose only. When it speaks about the classification of offenders, it means to give power to the State Government to make rules for classifying for purposes of release and not for prohibiting the release of prisoners. A rule framed under the Act cannot eliminate prisoner serving a sentence of imprisonment from the field of eligibility contemplated by Section 2 of the Act."

It further holds thus: "No rule can be made to prohibit person in jail from getting the benefit of Section 2 of the Act because such a rule will have an effect of destroying the purpose of the Act itself". .. The purpose of the rule is to give effect to the provisions of the Act and not to make them ineffective. This rule must, therefore, be held to have been made not only in excess of the powers but in violation of the powers conferred under Section 9 of the Act on the State Government. .."

The Lucknow Bench of Allahabad High Court in the said judgment also interpreted comparable provisions of Section 4 and Section 9 of the U.P. Act to hold that it does not permit classification of offenders on the basis of nature of offences but envisages their classification on the basis of "their age and sex having some nexus with their individual personalities." Rule 3(a) of the UP Rules was struck down by the Lucknow Bench also on the ground of it being violative of Article 14 of the Constitution of India. According to it, "it classifies prisoners on the basis of the offences committed by them and not on the basis of their antecedents and their conduct in the prison which alone could have been the nexus with the object of the Act."

In appeal carried by State of U.P to this Court against the judgment of Lucknow Bench of

Allahabad High Court, this Court upheld the judgment of the High Court but only to a limited extent and on its reasoning that "Rule 3(a) in effect precludes the government for considering the release of the prisoners though they satisfy the requirement of Section 2 of the Act".

For better appreciation of the contention advanced in this case before us, it would be necessary to reproduce the relevant part of the judgment of the two-Judges Bench of this Court in the case of State of U.P. (Supra) which reads thus :- "It can be seen that Rule 3(a) in effect precludes the Government from considering the release of the prisoners though they satisfy the requirements of Section 2 of the Uttar Pradesh Prisoners' Release on Probation Act, 1938. It is also rightly contended that this rule is beyond the power conferred under Section 9 of the Act and if the rule is given effect to, it defeats the object of Section 2.

We have carefully perused the reasoning of the High Court and we are in agreement with the High Court to this extent namely that Section 9 of the Act has to be held as complementary and supplementary provision to Section 2 and Rule 3 cannot frustrate the very purpose by negativing the rights of those prisoners to claim the benefit of Section 2 of the Act.

Mr. Pramod Swarup, learned counsel for the State of U.P. submitted that by virtue of this judgment the entire Rule 3 stands struck down. We do not think that the High Court has gone that far. What all the High Court has held ultimately is that to the extent the rule debars a person convicted of an offence under Section 396 IPC from being considered for release under Section 2 is ultra vires and to that limited extent again the High Court gave a direction to the State Government to consider the petitioner's case (Sadhu Saran Shukla).

However, we are of the view that if the U.P. Government thinks that in respect of serious offences like Section 396 IPC etc., the prisoners should not be released it is better if they bring about some suitable amendments in the Act, then frame necessary rules".

Learned senior counsel appearing for the State of Madhya Pradesh contends that Rule 3 (a) cannot be read and construed to mean that it defeats the object of Section 2 of the Act or exceeds the rule making power conferred under Section 9 (4) of the Act.

We have carefully examined the scheme of the Act and particularly the provisions contained in Section 2, 9(4) and Rule 3(a). What we find is that Rule 3(a) is a piece of 'delegated legislation.' Such a delegated legislation is recognised as valid because on certain legislative fields, it is possible for the legislature only to lay down a policy and give sufficient guidelines for the executive authorities to carry it into effect. The legislation before us aims at giving effect to the current penal philosophy of reforming the prisoners while they are undergoing sentences of imprisonment. For the above purpose, Section 2 confers the power on the authorities to release a prisoner on probation keeping in view his antecedents and his conduct in the prison. Section 9 contains the rule making power and sub-section 4 clearly authorises the State Government to frame rules to define or specify the class of offenders who can be conditionally released. By specifying in Rule 3(a) the offenders undergoing imprisonment under certain offences of serious nature as not eligible for release on licence, there is implied specification of offences excluded in Rule 3(a) to be the class of offenders whose cases can be considered for release on probation under the Act. It was, therefore, an error of interpretation on the part of the Lucknow Bench of Allahabad High Court that specification of offenders under certain sections of penal provisions in Rule 3(a) frustrates the object of the Act contained in Section 2. The preamble of the Act has been quoted by us. It indicates the intention of the legislature that the benefit of release on probation for good conduct in prison is to be made

available not to all but to "certain prisoners" meaning prisoners of a particular class. Thus they can be classified in relation to the offences committed by them for which they are sentenced. Reformative system of punishment by releasing prisoners on the basis of their good conduct in prison and for turning them out as good citizens after they serve out their periods of sentences is not to be resorted to indiscriminately without reference to the nature of offence for which they are convicted. It is open to the legislature to lay down a general policy permitting reformative method of punishment but by limiting its application to less serious crimes. Gravity of offence is an integral dimension in deciding whether a prisoner should be released or not. If we see the offences mentioned in rule 3(a), in the category of exclusion therein are such serious or heinous offences which are against community and society in general where even release on probation may be found hazardous because of the possibility of the crime being repeated or the prisoner escaping. Habitual offenders or those dealing in explosive substances or involved in dacoities and robberies are treated as criminals guilty of heinous crimes who deserve to be treated differently from other offenders guilty of less serious crimes. The offenders could be classified thus reasonably with the object to be fulfilled of reformation of those prisoners who show prospects of some reform. Classification can also be made between habitual offenders and non-habitual offenders or between corrigibles and incorrigibles. Such a classification through delegated legislation of a rule cannot be held to be a legislative step defeating the substantive provisions of the Act. In our considered opinion, the judgment of the Lucknow Bench of Allahabad High Court which has been upheld by two Judges Bench of this Court proceeds on misinterpretation and misconception of Rule 3(a). Rule 3(a) which excludes certain offences from the application of the Act for release of the prisoners on probabtion impliedly makes the Act applicable to other kinds of prisoners and in no manner defeats the object of the Act. Thus the Act is intended to be made applicable to categories of offenders - not mentioned in Rule 3(a).

The two Judges Bench of this Court in the case of State of U.P. (Supra) has confirmed the judgment of the Lucknow Bench of Allahabad High Court only on the limited finding that Rule 3(a) of U.P. Rules is in excess of the rule making authority and the rule falls outside the ambit of section 2 of the Act. In the concluding part of its judgment, the two-Judges Bench observes that it would be open to the State Legislature to make the impugned rule 3 (a) as part of the Act itself. The above observation necessarily leads to an inference that the Bench was also of the opinion that the contents of the impugned rule could have formed the part of the main Act. The only vice found in the rule was that it was in excess of the rule making authority.

A delegated legislation can be declared invalid by the Court mainly on two grounds firstly that it violates any provision of the Constitution and secondly it is violative of the enabling Act. If the delegate which has been given a rule making authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated legislation cannot be held to be in violation of the enabling Act.

In the instant case, the legislative policy of permitting release of prisoners on probation, after considering their antecedents and conduct in the prison, is laid down in the provision of Section 2 read with the preamble and other provisions of the Act. It was not possible for the legislature at the time of enactment of the statute to envisage and encompass in its provisions all penal laws and punishments leading to incarceration of the offenders and desirability for releasing them on probation. The subject of classifying the offenders based on their antecedents and conduct and/or offences for which they have been convicted, has to be left to the executive authority to determine

and specify from time to time by rules and amendments to be made to it if and when found necessary. Such delegation of power by the legislature to the executive cannot be held to be either in violation of any constitutional provision or in excess of the rule making provision of the Act. We are not prepared to accept the reasoning of the High Court of Allahabad that the rule prohibits release of specified classes of offenders in relation to the offences for which they are convicted and thus defeats the very object of the Act.

Section 9(4) which enables framing of rules to classify the offenders impliedly permits their classification not merely on the basis of their antecedents and their conduct in the prison but also on the basis of the offences for which they have been convicted and imprisoned. We fail to understand why such classification of offenders based on the nature of offences committed by them is impermissible for application of the Act which aims at reforming a specified and identified classes of prisoners whose release would not be hazardous to society and who show possibilities of turning out to be good citizens if they are given liberty under strict supervision of specified institutions, authorities or individuals.

It is not possible for us to uphold the view of two Judges Bench of this Court in the case of Sadhu Saran (Supra) that Rule 3(a) is in excess of rule making power under Section 9(4) and is violative of substantive provisions contained in Section 2 of the Act. In our considered view, the decision of two-Judges Bench in the case of Sadhu Saran (Supra) does not lay down a good law and deserves to be overruled.

Lastly, learned Senior Counsel appearing as Amicus Curiae tried to make a submission that rejection of the prayer of the prisoner to be released under the Act should not come in his way of claiming remission in accordance with Section 432 of Code of Criminal Procedure. It is not necessary for us to express any opinion on the same. If the prisoner has any recourse available in law for seeking remission, it would be open to him to avail of the same. Before parting with the case, we thankfully record our appreciation for the valuable assistance given by Shri Rakesh Dwivedi, learned Senior Advocate who had appeared as Amicus Curiae in this matter.

Consequent upon the aforesaid discussion, this appeal succeeds and is allowed. The impugned judgment dated 16.1.2001 of the High Court of Madhya Pradesh in Writ Petition No. 3603 of 1999 is hereby set aside.

The two-Judge Bench of this Court in the case of State of U.P. (Supra) has confirmed the judgment of the Lucknow Bench of Allahabad High Court only on the limited finding that Rule 3(a) of U.P. Rules is in excess of the rule making authority because and the rule goes contrary to the ambit of section 2 of the Act. In the concluding part of its judgment, the two-Judges Bench observes that it would be open to the State Legislature to make the impugned rule 3 (a) as part of the Act itself. The above observation necessary leads to an inference that the Bench was also of the opinion that the contents of the rule could have formed the part of the main Act. The only vice found in the rule was that it was in excess of the rule making authority. A delegated legislation can be declared invalid by the Court mainly on two grounds firstly that it violates any provision of the Constitution and secondly it is violative of the enabling Act. If the delegate which has been given a rule making authority exceeds its authority and makes any provision inconsistent with the Act and thus overwrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by a delegate - the delegated legislation cannot be held to be in violation of the enabling Act. In the instant case, the legislative policy of release of prisoners on probation after considering their

antecedents and conduct in the prison, is laid down in the provision of Section 2 read with the preamble and other provisions of the Act. It was not possible for the legislature at the time of enactment of the statute to envisage and encompass in its provisions all penal laws and punishments leading to incarnation of the offenders. The subject of classifying the offenders based on their antecedents and conduct and offences for which they have been convicted, has to be left to the executive authority to determine and specify from time to time by rules and amendments made to it if and when found necessary. Such delegation of power by the legislature to the executive cannot be held to be either in violation of any constitutional provision or in excess of the rule making provision of the Act. We are not prepared to accept the reasoning of the High Court of Allahabad that the rule gives a blanket power to the executive to lay down specified class of offenders in relation to the offences for which they are convicted and put them outside the purview of the Act. Rule 9(4) which enables froming of rules to classify the offenders impliedly permits their classification not merely on the basis of their antecedents and their conduct in the prison but also on the basis of the offence for which they have been convicted and imprisoned. We fail to understand why such classification of offenders in relation to the nature of offences committed by them is impermissible for a limited application of the Act which aims at reforming a specified and identified classes of prisoners whose release would not be hazardous to society and who show possibilities of turning out to be good citizens if given liberty under strict supervision of specified institutions, authorities or individuals.