

SUPREME COURT OF INDIA

Anil Sharma

Vs.

State of Haryana

Writ Petition (Crl.)135 of 2003

(H.K. Sema and Markandey Katju JJ.)

29.01.2008

ORDER

H.K. Sema,J.

1. In this petition under Article 32 of the Constitution the petitioner prays for quashing of Annexure P-1, P-2 and P-3. Annexure P-1 is a publication in India Today. No particular has been disclosed by the petitioner. Annexure P-2 is the publication in Hindustan Times. No material particular has been disclosed. Annexure P-3 is list of accused granted remission by the Government. Charge under Section 302 IPC in respect of accused/Kulwant Singh has been shown to have withdrawn on 03.12.2001. In the list Annexure P-3 besides Kulwant Singh none of the accused has been convicted/charged under Section 302 IPC. Therefore, the contention of the learned counsel appearing for the petitioner that the accused who has been convicted under Section 302 IPC. Has been arbitrarily released prematurely is not substantiated. This petition being abuse of the process of the Court is accordingly dismissed. Writ Petition (Crl.)No.200/2003 In view of our order passed in Writ Petition (Crl.)No.135/2003 this petition is dismissed. Writ Petition (Crl.)No.267/2003.

2. In this writ petition petitioner prays for the following reliefs:

“a. Issue notice on the Union of India and States and Uts. of the Union.

b. Issue writ in the nature of writ of mandamus/ order or direction to the respondents for releasing life convicts after 14 years term in jail generally and to release all life convicts particularly detailed in Annexure P-2 to P-4.

c. Constitute an expert Committee to deal with the case of life convicts languishing in jail even after 14 years term.

d. In the alternative, issue an appropriate writ, order or direction to the Respondent Union of India, the States and the Union Territories to frame uniform rules and guidelines for exercise of powers under Articles 72 and 161 of the Constitution keeping large reservoir of power to deal with exceptional situations as observed in the Maru Ram case but subject to recording of reasons;

e. Issue an appropriate writ, order or direction to the Respondent Union of India, the States and the Union Territories to treat the mandatory minimum period of 14 years to be served by certain life convicts under Section 433-A as only one of the guidelines under Articles 72 and 161 of the Constitution.

f. Issue an appropriate writ, order or direction that all the cases of life convicts must mandatorily and automatically be reviewed by a board after a specified period (which in the case of convicts covered under Section 433A of the Cr.P.C. is at the end of 13 years in prison) on an individual basis under the above guidelines to consider whether the convict should be released or not;

g. Direct the Respondents to educate the prisoners on their right to be considered for premature release and provide adequate legal aid for the same.

h. Issue any order or direction as this Hon'ble Court finds fit and proper in the circumstances of the case.”

3. Mr. K. Venugopal, learned counsel appearing for the petitioner at the outset fairly submits that he is not pressing prayer Nos. a and b. On a reading of the prayers from c to h, we are afraid that in exercise of power under Article 32 of the Constitution such prayer could be acceded. The prayer, inter alia, seeks direction to amend a law which power this court does not have. At the same time, the learned counsel for the petitioner has also brought to our notice that in the case of Andhra Pradesh as many as 1500 hardcore prisoners have been prematurely released. It is no doubt true that power under Articles 72 and 161, or under Section 433-A cannot be exercised arbitrarily, as pointed out by this *Court in Maru Ram vs. Union of India and others*¹. However, there is another difficulty to give effective relief. The alleged prematurely released 1500 hardcore prisoners are not before us. Therefore, it is difficult to give effective relief in exercise of our power under Article 32 of the Constitution.

4. We, however, clarify that if there are instances that the power has been exercised arbitrarily by the State Government it is open to the petitioner to challenge such arbitrary exercise of power before the High Court under Article 226 of the Constitution after impeding the prisoners released prematurely as respondents. Subject to the aforesaid observation, we see no merit in this petition. The writ petition is dismissed accordingly. Application for impalement is dismissed.

Cases Referred

1(1981) 1 SCC 107