
(1981) 09 MP CK 0027
In the Madhya Pradesh High Court

Anand Rao

APPELLANT

Vs

Inspector General of Prisons and Others

RESPONDENT

Date of Decision : 30-09-1981

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Prisons Act, 1894 — Section 45, 59

Citation : (1982) CriLJ 925 : (1982) JLJ 238 : (1982) 27 MPLJ 73

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Judgement

G.P. Singh, C.J.

By this petition under Article 226 of the Constitution, the petitioner who is a prisoner in the Central Jail, Gwalior seeks quashing of an order dated 22nd April, 1981 passed by the Inspector-General of Prisons by which remission of four months and three days earned by the petitioner has been forfeited. The main grievance of the petitioner in the petition is that no opportunity was given to him to explain his conduct before imposing the punishment.

We have heard Shri D. M. Dharma-dhikari as amicus curiae who has taken us through the relevant provisions, and Shri Rajendra Tiwari, Government Advocate for the respondents.

Section 45 of the Prisons Act enumerates the acts which are prison offences. Section 59 further authorises the State Government to make rules on various matters mentioned in that section. One of the matters mentioned is "defining the acts which shall constitute prison offences." Thus, by rules, the State Government can supplement the prison offences enumerated in Section 45. Rule 723 in the Jail Manual enumerates the acts which are also prison offences. Abetting the commission of any prison offence, which is item No. 8 in Rule 723, is itself a prison offence. Punishments for prison offences are mentioned in Rule 724. Forfeiture of remission earned in excess of one month is a major punishment under this provision. Rule 734(1) provides that every commission of

a prison offence shall be reported to the Superintendent who shall make such enquiries as may be found necessary and come to a decision as to the commission of the said offence or otherwise. The rule further provides that a record of the enquiry has to be maintained mentioning (a) name of the prisoner, (b) prison offence reported, (c) date of offence, (d) details of offence, (e) name of witnesses proving the offence, (f) finding of the competent authority and the reasons therefore and in the case of punishment awarded, the nature thereof, and (g) date of infliction of the punishment.

It appears from the documents exhibited along with the return that the incident in respect of which a number of prisoners were punished took place on 3rd March, 1981. The senior Jailor orally ordered Octagon Officer to make secret enquiry from lumbardars. The Octagon Officer after examining the lumbardars made his report to the Senior Jailor. The Octagon Officer in this report stated that 25 prisoners had committed the prison offence of abetment. The Senior Jailor recommended forfeiture of remission of the concerned prisoners. He further recommended that the case be submitted to the Inspector-General of Prisons for that purpose. The Superintendent agreed with the view taken by the Senior Jailor. The papers were then submitted to the Inspector-General of Prisons who passed the impugned order.

It is now well settled that there exists no iron curtain between the prisoners and the Constitution and that a prisoner is not denuded of his fundamental rights except to the extent lawful incarceration by its own compulsion has the effect of withdrawing or limiting these rights. So even a prisoner is entitled to the right guaranteed under Article 21 that he shall not be deprived of his life or personal liberty except according to procedure established by law and the law establishing the procedure must be right, just and fair and not arbitrary, fanciful or oppressive (Sunil Batra Vs. Delhi Administration and Others etc., . Penalty of forfeiture of remission earned by a prisoner affects his right of personal liberty because that would result in continuing his incarceration for a longer time and would deprive him of the right of early release on the basis of remission. Procedure for imposition of the penalty of forfeiture must, therefore, meet the requirements of Article 21 in that it must be just and fair and not arbitrary and oppressive. It is in this background that the procedure prescribed by Rule 734 must be interpreted. It must be taken to be implicit that the enquiry contemplated by the rule, subject to the requirements of prison security and discipline, must be consistent with the principles of natural justice and the prisoner concerned must be given opportunity to explain his conduct and the material appearing against him in the enquiry before he is found guilty of a prison offence. It will appear from the facts stated earlier that the petitioner at no stage was asked to explain his conduct or the material appearing against him in the enquiry. He was not heard at all before imposition of penalty. This lends a serious infirmity to the impugned order.

The petition is allowed. The order of the Inspector-General of Prisons dated 22nd

April, 1981(Annexure R-I) in so far as it relates to the petitioner is quashed.