

(2009) 07 BOM CK 0081

In the Bombay High Court

Case No : Criminal Writ Petition No's. 5 and 46 of 2009

Ashish Colaco

APPELLANT

Vs

Inspector General of Prisons and Superintendent of Prisons

 Basudev Joshi Vs Inspector General of Prisons,
Superintendent of Prisons and State

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Goa (Prisoners Victim or his family of offence) Compensation Rules, 2005 — Rule 3
Goa Prison Act — Section 36(A)
Goa Prison Rules, 2006 — Rule 209, 210, 210(5), 210(6), 219
Penal Code, 1860 (IPC) — Section 302, 34 53, 374, 60

Citation : (2009) 07 BOM CK 0081

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : A. Dessai, under Legal Aid Scheme in Criminal Writ Petition No. 5 of 2009 and Party in Person in Criminal Writ Petition No. 46 of 2009, for the Appellant; W. Coutinho, Public Prosecutor, for the Respondent

Judgement

N.A. Britto, J.—Rule. By consent heard forthwith.

2. These writ petitions filed by the prisoners can be disposed off by this common order.

3. The petitioner Ashish Colaco, prisoner No. 395 has been convicted u/s 302 read with 34 I.P.C and is undergoing life imprisonment from 28.2.2000. In this petition he has raised a grievance that he was not being provided with work and further alleged that the work which was provided to him earlier was suddenly removed from him. The petitioner has stated that work whilst in custody, was important which enables him to earn wages to buy things from the jail canteen. His other grievance is that as there was no victim left in his case, part of the wages went to the Inspector General of Prisons Family Fund.

4. Notice having being given, the Superintendent of Central Jail, Aguada, filed his

affidavit first on 17.4.2009 and again on 14.7.2009 and in the said affidavit it is stated that the petitioner was working in the tailoring Section from February, 2006 to May, 2007 and the wages for the work was paid to him in terms of the provisions of Rule 416 of the Goa Prison Rules, 2006, and as per rotation policy, the petitioner was removed from the tailoring Section to accommodate another prisoner and the petitioner was allotted work in the bakery Section of the jail, but he refused to work there and thereafter he again was allotted work by order dated 20.11.2008 and again the petitioner refused to work and thereafter the Work Assignment Committee has allotted to him work in the Mess Section of the jail vide order dated 1.4.2009. It was also stated that the contention of the petitioner that he does not have a victim is not correct. As per Rule 414, a Common Victims Compensation Fund is required to be created for the jail from part of the wages earned by the prisoners for the purpose of giving compensation to the deserving victim or his/her family of the prisoner's offence. In the additional affidavit it was further stated that 50% of the total wages earned by the prisoner was deducted in terms of Rule 414 of the Prison Rules, 2006, to compensate the deserving victim and that it is saved in the Common Victims Compensation Fund. It is further stated that an account has already been opened in the State Bank of India, Candolim, to operate the Common Victims Compensation Fund and it is operated jointly by the Inspector General of Prisons and the Superintendent of Jail. Reference is also made to Rule 415 of the Goa Prison Rules, 2006 and it is stated that a committee is constituted in terms of the provisions of Section 36(A) of the Act for fixing the amount of compensation to the deserving victims. It is also stated that the said committee will meet to decide who are the deserving victims in each case and accordingly the amount that has accumulated in the Common Victims Compensation Fund will be distributed amongst the deserving victims within a period of six months from today.

5. Initially on behalf of the respondents it was submitted that since the petitioner was now provided with work nothing survived in the Writ Petition. However, that submission was not accepted since the issue of allotment of work to prisoners and payment of wages to the prisoners for work done was required to be examined in the light of the said Rules.

6. Ms. Asha Dessai, the Learned Counsel on behalf of the petitioner has referred to Section 53 of the I.P.C and the Judgment of the Apex Court in the case of State of Gujarat and Another Vs. Hon"ble High Court of Gujarat, and has submitted that the petitioner ought to be provided with regular work as a matter of right and paid wages for the same. She has further referred to Rule 415 of the Goa Prison Rules and particularly Sub-rule 3 thereof and has further submitted that the petitioner having been convicted for life has to be given precedence over others in the matter of allotment of work and since there are not more than thirty to thirty five life convicts in the Central Jail, the prisoner ought to be provided with work on regular basis.

As regards work, the Apex Court in the above cited case (para 12) has stated that the jail authorities are enjoined by law to impose hard labour on a particular Section on convicted persons who were sentenced to rigorous imprisonment. Section 53 of the I.P.C. which falls under the Chapter entitled Of Punishments vivisepts punishments into five categories, of which the category imprisonment has been further sub divided into two sub categories as rigorous and simple. Rigorous imprisonment is explained as imprisonment with hard labour. Section 60 of the I.P.C confers power on a sentencing Court to direct that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple. The sentence of imprisonment for life tagged along with a number of offences delineated in the Indian Penal Code is interpreted as rigorous imprisonment for life and not simple imprisonment. It is also stated that a person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. It is further stated that the jail officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the Court. No prisoner sentenced to rigorous imprisonment can conceivably complain that the jail authorities committed the offence u/s 374 of I.P.C by compelling him to do work during the term of his imprisonment. So the task to do labour can be imposed on a prisoner only if he has been sentenced to rigorous imprisonment. Neither the under-trial internees nor the detainees with simple imprisonment nor even detenus who are kept in jails as preventive measures can be asked to do manual work during their prison term. It is a different matter that he is allowed to do it at his request. As regards payment for work done, the Apex Court has stated that it is imperative that the prisoner should be paid equitable wages. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible. The Apex Court therefore ruled that (1) it is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not. (2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose; and, recommended to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

8. In the light of the above recommendations we have now the Goa Prison Rules which have come in force from 13.10.2006 and it appears that they are being followed more in their breach rather in their spirit.

9. Employment of prisoners have been dealt with by Chapter 13 and Rule 209 provides that the Board of Work Programme and Vocational Training shall be constituted by the Inspector General under his chairmanship at the headquarter

of the prison department to carry out the following functions for which the Inspector General will have full fiscal and administrative powers. It requires him amongst others to fix a policy of production, put prison work programmes on a sound commercial footing, promote marketing of prison products, etc. Does a tailoring, carpentry and bakery Sections sufficient to achieve the object of Rule 209?

10. Rule 219 provides for a Work Assignment Committee to assign work to the prisoners and it appears that presently the work is being allotted not by the committee but by the Superintendent of the Jail himself. In terms of Sub-rule 1 of Rule 219 of the said Rules, the Work Assignment Committee consists of the Superintendent, the Medical Officer and the Assistant Superintendent, the Superintendent being its Chairman and the Assistant Superintendent being its Member secretary. Sub-rule 2 further provides that the committee shall meet once a week and examine all the newly admitted prisoners sentenced to a term of imprisonment for six months and more and consider cases requiring change of work. It provides that the Chairman may allow the technical and agricultural personnel and Jailors to attend the meetings of the committee. Sub-rule 3 further provides that after considering the volume of work available in the jail for employment, the Work Assignment Committee shall provide employment to the prisoners and the priority for selection of the prisoners shall be in the following order:

- a) Prisoners undergoing life imprisonment with rigorous imprisonment.
- b) Other prisoners undergoing rigorous imprisonment.
- c) Prisoners undergoing simple imprisonment and who are willing to work.
- d) In Sub-jails, under-trial prisoners who are willingly ready to render their services may be employed if the prisoners of above category are not available.

Sub-rule 4 provides that the work once assigned shall not be changed, unless the reasons for such change are enquired into by the committee, and found to be justified, and the decision of the committee is recorded in the prisoner's History Ticket: Provided that, the Superintendent, in exceptional cases to be recorded in writing, change the work assigned to a prisoner. Sub-rule 5 of Rule 219 further provides that notwithstanding anything contained in these rules, the Assistant Superintendent/Jailor in consultation with the Medical Officer and under intimation to the Superintendent, shall assign work to a prisoner who is sentenced for term of imprisonment, which is less than six months.

11. The annexure to the affidavit shows the Work Allocation Order and it further reflects that there are fourteen work Sections (only 3 are of some importance referred to herein before) in which work is allotted to the prisoners for a period of three months on rotation basis. Ms. Coutinho, Learned Counsel appearing on behalf of the respondent concedes that the provisions to Rule 219 and particularly Sub-rule 3 have not been taken care of whilst allotting work to life

convicts undergoing rigorous imprisonment who in terms of Clause (a) of Sub-rule 3 of Rule 219 have precedence in getting work above the others and if there are about thirty to thirty five such convicts there is no reason why all of them should not be allotted work in accordance with the said rule. Much is required to be done first by the Inspector General of prisons to create work for those who are required to do the work and then by the Work Assignment Committee to ensure that whatever work available, is allotted as a matter of rule, strictly in terms of Rule 219 of the said Rules. The affidavits filed by the Superintendent of Central Jail are woefully silent as to when the Work Assignment Committee had met last although the same is required to meet once a week as required by Rule 219 of the said Rules.

12. The petitioner is a life convict. Life convict means that he has to undergo sentence of imprisonment running throughout the remaining period of his natural life. The nature of life imprisonment is rigorous and not simple. Therefore, the petitioner is enjoined by law and mandated by Court to put in hard labour throughout his life unless, the State Government decides to use its powers of suspension, remission or commutation of sentence under the relevant provisions of law. The petitioner is willing to do hard work and in fact is demanding the same from the said Jail Authorities. The Inspector General of prisons, therefore, is hereby directed to ensure that the Work Assignment Committee meets regularly and assign work to the prisoners in the prescribed order in terms of Sub-rule 3 of Rule 219 of the said Rules within a period of three weeks. This direction will take care of the first grievance of petitioner Ashish Colaco.

13. Rule 210 of the said Rules deals with classification, forms of labour, eligibility for employment and utilization of wages. The prisoners are entitled for wages for the work done. Sub-rule 5 of the said Rule 210, inter alia, provides that subject to the provisions of this rule, all convicted criminal prisoners under sentence of more than three months shall be entitled for wages at such scale as may be from time to time notified by the Government which shall not be less than the wages provided under the Minimum Wages Act on condition that they complete their quota of task to the satisfaction of the prison authorities. Clause (b) of Sub-rule 5 further provides that a prisoner who does conservancy work shall be allowed to earn wages at such scale as may, from time to time be determined by Government, even during the first three months of his sentence.

14. How the wages payable to the prisoners are to be dealt with, has been provided for by Sub-rule 6 of Rule 210 read with Sub-rule 2 of Rule 416 of the said Rules read with the Goa (Prisoner's Victim or his family of offence) Compensation Rules, 2005. Fifty percent of the wages earned by the prisoners are required to be deposited in Common Victims Compensation Fund which is required to be managed by a committee consisting of the District Magistrate as its Chairman, the District Superintendent of Police and the Superintendent of Jail as its members in terms of Rule 3 of the said Rules of 2005. Any interest credited to the Common Victims Compensation Fund shall be added to the fund. The

amount of Common Victims Compensation fund is required to be deposited in a personal joint deposit account opened in any Nationalized bank in the name of the Inspector General and the Superintendent of the Jail concerned and the compensation shall be paid once to a deserving victim of the offence and in case of the death of the deserving victim, to the family member of the victim as decided by the committee. The balance of 50% is to be managed as required by Clauses (a), (b) and (c) of Sub-rule 6 of Rule 210 of the said Rules of 2006, i.e. 30% is required to be deposited in the prisoner's separate bank account and the entire amount is required to be paid to the prisoner at the time of his release. Another 30% is required to be paid to the prisoner or his family member to meet legal expenses and in case there is no such necessity then this amount will be deposited in the said separate bank account of the prisoner. The remaining 40% is to be made available to the prisoner as and when required by him for purchasing articles from the prison canteen or for making purchases from outside the jail in case canteen facilities are not available in the jail premises.

15. As can be seen from Rule 414 of 2006 Rules, the Common Victims Compensation Fund has been created for jail from the part of wages earned by the prisoners for the purpose of giving compensation to the deserving victim of his/her family of the prisoner's offence. I am unable to accept the prisoner's contention that the prisoner ought not to pay 50% of his wages because the victim of the offence committed by him is dead. In fact, no affidavit has been filed by the Inspector General of Prisons in that regard. In other words, prisoner's objection is that the authorities are not entitled to deduct 50% of wages towards the Common Victims Compensation Fund. The purpose for which Common Victims Compensation Fund is created by the said Rules is to provide some assistance or compensation to the deserving victims or his/her family. It is not the case of the petitioner that his victim has no deserving family members. The fund is also to provide assistance to them and the petitioner is liable to make the deduction towards the said fund from the wages payable to him. Petitioner's second grievance needs to be rejected. That being the position, although the petitioner has precedence to get work and earn wages over others in terms of Sub-rule 3 of Rule 219 of the said Rules, the petitioner cannot claim that no deduction should be made from his wages towards Common Victims Compensation Fund because his victim is dead. An affidavit of compliance with direction herein given, within four weeks by the Inspector General of Prisons, be filed.

16. The petitioner Basudev Joshi prisoner No. 670 is a convict undergoing 12 years imprisonment under N.D.P.S. Act, 1985 and it appears that he has been sentenced to undergo rigorous imprisonment. The grievance of the petitioner Basudev Joshi is that full wages earned by him should be credited to his account without making any deduction towards the Common Victims Compensation Fund. His further contention is that in case of prisoner C.P. Tommy Thomas full wages were paid to him without 50% deduction. On his behalf Ms. Asha Dessai has placed on record unreported decision dated 16.2.09 in Cr. Misc. Appln. No.

250/08. From the said order it can be seen that vide communication dated 21.1.09 the Inspector General of Prisons had ordered to work out the wages of the said Tommy Thomas without deducting the amount towards the Victim Compensation Fund and to credit the same to his account. If prisoner Tommy Thomas who was undergoing imprisonment in connection with an offence under N.D.P.S. Act, 1985, was paid full wages, there is no reason why the petitioner Basudev Joshi who is undergoing a sentence under the same Act should not be paid the same till such time the Inspector General of Prisons reconsiders his earlier decision dated 21.1.2009 if he is entitled to in law as reflected in order of this Court dated 16.2.2009 in Criminal Writ Petition No. 30 of 2003. There cannot be two yardsticks as regards payment of full/half wages to the prisoners who are undergoing sentence for offences under the same Act. The petitioner Basudev Joshi, therefore, would be entitled for full wages till such time the Inspector General of Prisons reconsiders his order dated 11.11.2008 or the same is otherwise successfully challenged. It appears that the Inspector General of Prisons has taken that stance because according to him there are no victims in cases of prisoners who are sentenced under N.D.P.S. Act, as submitted across the Bar. This has created two classes of prisoners undergoing rigorous imprisonment, those who will get full wages and others only 50%, because the former class have victims of their offences and the latter do not. The Fund is created as a Common Victims Compensation Fund. True, the purpose of it, as stated by Rule 414 of 2006 Rules is for giving compensation to the deserving victim or his/her family of the prisoner's offence. The Rule may be required to be suitably amended making it obligatory for all prisoners to contribute their share of wages to the Common Victims Compensation Fund or it may be required to be read down, in an appropriate case but till that is done, the Inspector General of Prisons cannot discriminate one prisoner from another, sentenced for offences under the same Act. Petitioner Basudev Joshi therefore would be entitled to full wages as per letter dated 21.1.09 of the Inspector General of Prisons. Compliance affidavit of undertaking given in para 6 of affidavit dated 14.7.09 be filed by the Inspector General of Prisons within three months.

17. With the above directions and findings, both the Writ Petitions are disposed of. Rule is made absolute with no order as to costs.