

(1985) 02 DEL CK 0049

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 619 of 1984

Charanjit Lal

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:

Citation : (1985) CriLJ 1541 : (1985) 1 Crimes 1115 : (1985) 28 DLT 92 : (1985) 9 DRJ 135 : (1986) 2 ILR Delhi 417 : (1985) 2 RCR(Criminal) 211

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : R.S. Bakshi and S.T. Singh, for the Appellant;

Judgement

J.D. Jain, J.

(1) The above-mentioned petitioners have been convicted of offence u/s 302, Indian Penal Code (for short IPC") in different cases and have been awarded sentence of imprisonment for life. Charanjit Lal was convicted on 10th January 1980, Sunder Lal was convicted on 12th November 1979 and Vijay Singh was convicted on 6th January 1977 They have moved these petitions through Jail complaining of refusal on the part of the Delhi Administration to grant them furlough as envisaged in letter No. F. 18/(27)/55-Home dated 7th March 1958 of the Delhi Administration to the Inspector General of Prisons etc. The relevant provisions of the said letter are reproduced below for ready reference :

"PART-1(Parole) (Amended vide I (i) A prisoner may be released on parole for such letter No. period as the Chief Commissioner, Delhi, may order; F. 18/59/62-parole shall be admissible for :- Home dt. 16-9-63) (a) Seeing any sick or dying member of the family. (b) any other sufficient cause such as marriage of the prisoner or any other member of the family i.e. son, daughter, sister, brother etc. etc. (c) for construction of a house. (d) for repairs to a badly damaged house. For purpose of (a) above, the prisoner's family means his/her parents, brothers, sister, wife/husband and children. (ii) The period spent on parole will not count

as part of the sentence. PART-II (Furlough) I (i) A prisoner who is sentenced to 5 years or more rigorous imprisonment and who has actually undergone three years imprisonment excluding remission may be released on furlough. The first spell may be of three weeks and subsequent spells of two weeks each per annum, provided that : (a) his conduct in jail has been good; he has earned three annual good conduct remissions and provided further that he continues to earn good conduct remissions or maintain good conduct. (b) that he is not a habitual offender. (c) that he is not convicted of robbery with violence, dacoity and arson, (d) that he is not such a person whose presence is considered highly dangerous or prejudicial to the public peace and tranquillity by the District Magistrate of his home district. (ii) The period of furlough will count as sentence undergone except any such period during which the prisoner commits an offence outside. 4. The period of furlough will be treated as a part of the sentence undergone in Jail."

(2) On a bare juxtaposition of the aforesaid guidelines pertaining to parole and furlough it is manifest that they are quite distinct in their nature, scope and content. While a prisoner can be released on parole when he is undergoing a sentence of imprisonment for any offence whatsoever and irrespective of the duration of the imprisonment awarded to him, furlough can be granted only in those cases where a prisoner has been sentenced to long imprisonment i.e. five years or more. Further, it is evident that release on parole is designed to afford some relief to the prisoner in certain specified contingencies, for instance, illness or death of member of his family or marriage of the prisoner himself or any member of the family etc. whereas furlough is in the nature of a remission earned by a prisoner by consistent good conduct for over a number of years and it is granted to him as a matter of course if other conditions laid in Part-11 of aforesaid the letter are satisfied. One of the postulates which must weigh with the authorities while granting furlough is that the prisoner's release will not be hazardous or prejudicial to the public peace and tranquillity. Further the period of furlough counts as sentence undergone unless, of course, the prisoner released on furlough commits an offence outside the prison. In other words, while parole is tantamount to more suspension of the sentence for the time being keeping the quantum of sentence awarded to a prisoner in fact, furlough affords double relief in the sense that it gives not only an opportunity to the prisoner to breath fresh air and enjoy the society of his kith and kin etc. outside the prison but also counts towards the total sentence awarded to him, i.e. his total sentence is reduced to the extent he earns remission in the form of furlough by continuous good conduct. As observed by the Supreme Court in Maru Ram and Others Vs. Union of India (UOI) and Others, :

""Remission" limited in time, helps computation but does not ipso jure operate as release of the prisoner. But when the sentence awarded by the judge is for a fixed term the effect of remissions may be to scale down the term to be endured and reduce it to nil, while leaving the factum and quantum of the sentence in tact. That is the ration of Sarat Chandra Rabha and Others Vs. Khagendranath

Nath and Others, . Here, again, if the sentence is to run until life lasts, remissions, quantified in time, cannot reach a point of zero. This is the ration of Godse. The inevitable conclusion is that since in Section 433A we deal only with life sentences, remissions lead nowhere and cannot entitle a prisoner to release."

(3) These observations were made by their Lordships keeping in view the well settled law that in the case of a prisoner, who has been sentenced to imprisonment for life, his imprisonment in law is co-terminus with his natural death in the ordinary course. As held in Gopal Vinayak Godse Vs. The State of Maharashtra and Others, :

"Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions-ordinary, special and State-and the said remissions will be given credit towards his term of imprisonmentAs the sentence of transportation for life or its prison equivalent, the life imprisonment," is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence u/s 401 of the Code of Criminal Procedure (1898), on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government."

(4) The same proposition of law has been reiterated in Maru Ram"s Case (Supra) in the following words :

"The nature of a life sentence is incarceration until death, judicial sentence of imprisonment for life cannot be in jeopardy merely because of long accumulation of remissions. Release would follow only upon an order u/s 401 of the Criminal Procedure Code, 1898 (corresponding to Section 432 of the 1973 Code) by the appropriate Government or on a clemency order in exercise of power under Article 72 or 161 of the Constitution."

(5) So even remission of sentence to a life convict does not confer a right on him to release without undergoing the sentence of life imprisonment except when an order of release is made either u/s 432 or Article 72/161 of the Constitution. We have, Therefore, to bear in mind this basic legal position while considering the relevance of the aforesaid guidelines to regulate the powers of the executive to release a prisoner on parole or furlough, as the case may be.

(6) No doubt. Section 432 of the Code of Criminal Procedure, confers very wide powers upon the State Govt. to remit or suspend a sentence awarded to a life convict. Literally speaking this power of remission being unlimited in character, the appropriate Govt. may, in the absence of Section 433A, grant remission of the entire life sentence of a prisoner if it so chooses to do. Obviously, Therefore, with a view to circumscribe this unfettered power of the Government the

legislature thought it fit to enact Section 433A in order to abridge/curtail the same with respect to two extreme types of cases of life convicts mentioned therein. This matter was considered at length by the Supreme Court in Maru Ram's Case (supra) and it was held that:

"The non-obstante clause, in terms, excludes Section 432 and the whole mandate of the rest of the Section necessarily subjects the operation of Section 433(a) to a serious restriction. This embargo directs that commutation in such cases shall not reduce the actual duration of imprisonment below 14 years. Whether that Section suffers from any fatal constitutional infirmity is another matter but it does declare emphatically an imperative intent to keep imprisoned for at least 14 years those who fall within the sinister categories spelt out in the operative part of Section 433A."

(7) It is thus manifest that as at present a life convict falling under the two categories referred to in Section 433A must undergo at least 14 years actual imprisonment and not mere notional imprisonment by including the period spent on furlough or parole therein. The instructions contained in the letter under reference of Delhi Administration are just executive instructions and they can not affect the total actual period of incarceration which such a prisoner has to suffer. These administrative orders can, of course, be always withdrawn, altered or amended by the State Government from time to time by issuing fresh executive instructions. I am told that no such instructions have been issued by the Delhi Administration so far although it was contended by the learned counsel for the State at Bar that the Delhi Administration is no longer granting furlough to life convicts although in all suitable cases parole is being granted to such prisoners.

(8) The learned counsel for the petitioners has, however, invited my attention to the observation made by the Supreme Court in Maru Ram's Case (supra) that in the view their Lordships have expressed regarding the nature and duration of the life sentence the remission rules do not militate against Section 433A and as such a lifer will still be entitled to earn remission in accordance with the guidelines contained in the aforesaid letter. I am afraid this wide proposition cannot be expected in view of the enunciation of Section 433A and its impact on the whole remission system by the Supreme Court. Their Lordships have clearly laid down that a prisoner must undergo actual imprisonment for 14 years notwithstanding any amount of remissions granted to him by the appropriate Government. Reference has, however, been made to sub-para 10 of para 72 of the judgment which formulates the findings recorded by Krishna Iyer, J. and concurred in by other learned Judges. It runs as under :

"Although the remission rules or short-sentencing provisions proprio vigore may not apply as against Section 433A, they will override Section 433A if the Government, Central or State, guides itself by the self-same rules or schemes in the exercise of its constitutional power. We regard it as fair that until fresh rules are made in keeping with experience gathered, current social conditions and accepted enological thinking-a desirable step, in our view-the present remission

and release schemes may usefully be taken as guidelines under Articles 72/161 and orders for release passed. We cannot fault the Government, if in some intractably savage delinquents. Section 433A is itself treated as a guideline for exercise of Articles 72 or 161. These observations of ours are recommendatory to avoid a hiatus, but it is for Government, Central or State, to decide whether and why the current Remission Rules should not survive until replaced by a more wholesome scheme."

(9) On its plain reading it is manifest that the guidelines issued by the appropriate Government in connection with the short-sentencing and remission schemes may now be usefully utilised for exercise of power under Article 72 or 161 of the Constitution but certainly the State Govt. is no longer a competent to release a prisoner before he undergoes actual imprisonment for 14 years. Moreover, their Lordships have explicitly stated that their observations are of recommendatory nature with a view to avoid a hiatus. Further their Lordships have made it abundantly clear in sub-para (14) of para 72 that : "Section 433A does not forbid parole or other release within the 14 years span." In this view of the matter, Therefore, the line of demarcation between parole and furlough as drawn in the guidelines embodied in the letter in question tends to vanish and even though theoretically speaking furlough may amount to remission of sentence but in practice it would be no more than release of a prisoner on parole because the prisoner must undergo 14 years of actual imprisonment before his premature release can be considered by the appropriate Government u/s 432, Code of Criminal Procedure. Of course, the powers of the appropriate Government to remit sentence under Articles 72 or 161 of the Constitution remain unaffected.

(10) It may be pertinent to notice here the following observations of their Lordships appearing in sub-para (7) of para 72 also :

"We declare that Section 433A, in both its limbs (i.e. both types of life imprisonment specified in it), is prospective in effect. To put the position beyond doubt we direct that the mandatory minimum of 14 years" actual imprisonment will not operate against those whose cases were decided by the trial court before the 18th December, 1978 when Section 433A came into force. All "lifers" whose conviction by the court of first instance was entered prior to that date are entitled to consideration by Government for release on the strength of earned remissions although a release can take place only if Government makes an order to that effect."

(11) Therefore, it inevitably follows that every person who has been convicted by the sentencing court before December 18, 1978, shall be entitled to benefits accruing to him from the remission scheme or short sentencing rules as if Section 433A did not stand in his way.

(12) The upshot of the whole discussion, Therefore, is that the guidelines formulated by the Delhi Administration in the aforesaid letter with regard to

release of prisoners including life convicts cannot be said to militate against the provisions of Section 433A subject, of course, to the over-riding condition that the life convicts falling within two sinister categories of Section 433A must undergo mandatory minimum of 14 years of imprisonment and an order of release is then made either u/s 432 or Article 72 or 161 of the Constitution. In other words, remission by way of reward or otherwise cannot cut down the sentence to less than a minimum period of 14 years. However, that does not mean that even a life convict falling within the ambit of Section 433A cannot be set free on parole or furlough during the currency of his sentence of imprisonment. As said by Krishna Iyer, J. in Maru Ram's Case at page 2174 :

"There was some argument that Section 433A is understood to be a ban on parole. Very wrong. The Section does not obligate continuous fourteen years in jail and so parole is permissible."

(13) It is now well settled that the four main objects which punishment of an offender by the State is intended to achieve are deterrence, prevention, retribution and reformation. Of course, the problem of penology is not one which admits of an easy solution and all these four objectives have to be kept in view while dealing with a prisoner especially life convicts who, literally speaking, must remain in jail for the rest of their life. It is in this context that their release from jail off and on for short periods has to be considered and opportunities have to be afforded to them not only to solve their personal and family problems but also to maintain their links with society. They must breath fresh air for at least sometime provided, of course, they maintain good conduct consistently during incarceration and they show a tendency to reform themselves and become good citizens. In other words, redemption and rehabilitation of such prisoners for the good of the society must receive due weight while they are undergoing sentence of imprisonment. Looked at the problem from this angle, there is no reason why even the life convicts, who are hit by the mischief of Section 433A, be not released off and on either on parole or on furlough subject, of course, as observed earlier, to their undergoing at least 14 years of actual imprisonment. The concept of constructive imprisonment while they are on parole or furlough does not enter into Section 433A even remotely. Hence, it cannot be said by any stretch of reasoning that the concept of furlough must be given a go by once and for all so far as life convicts hit by Section 433A are concerned.

(14) It is, no doubt, true that as held by a long catena of judicial decisions the question of remission is exclusively within the province of the appropriate Government but it is equally well settled that the Government while exercising its discretionary power must act reasonably and rationally. In other words, the exercise of discretion must be just, fair and uniform, to the extent possible, consistent with the intention and objective implicit in the circular letter and it is not open to the Government to exercise its power in an arbitrary or whimsical manner. So even though the Government is the exclusive authority to grant remissions yet its orders are liable to be challenged in a court of law if the orders

are vitiated by the vice of arbitrariness or discrimination or if they are passed on irrelevant, extraneous or unintelligible grounds because it may attract the charge of discrimination and may be hit by Article 14 of the Constitution. It is basic to our Constitution that all public power including constitutional power should never be exercised arbitrarily or mala fide and ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power. The action of the Government must be in conformity with some principle which meets the test of reason and relevance. As has been repeatedly held by the Supreme Court, Article 14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. (See *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*,). The following observation appearing in the last mentioned authority is very pertinent to note:

"Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement."

(15) It is, no doubt, true that the instructions contained in the afore- said letter are executive instructions and have no statutory force. It is equally well settled that any existing executive instructions can be substituted by issuing fresh executive instructions for processing the cases of lifers for grant of parole, remission or their premature release but so long as the present instructions stand they must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of discrimination under Article 14 of the Constitution.

(16) It is not the case of the Delhi Administration that the instructions contained in the aforesaid letter with regard to furlough have been withdrawn, modified or altered in any way. The admission made by the counsel for the State is that of late the Delhi Administration has discontinued release of life convicts on furlough irrespective of whether they were convicted prior to or subsequent to the introduction of Section 433A in the Code of Criminal Procedure. It is indeed regrettable that the Delhi Administration should have taken such a stance notwithstanding the fact that the instructions contained in the aforesaid letter still subsist and have not undergone any change. It is well settled that a public authority cannot disable itself by a self-imposed policy from exercising a discretion it is required to exercise. No doubt, an authority is entitled to adopt a policy but the policy will be invalid where it disables the authority from exercising a discretion it is required to exercise. It cannot fetter its discretion in this way and disable itself from considering the application of a prisoner for his release on parole or furlough. Indeed it amounts to refusal on the part of the authority to exercise the discretion vesting in it. In the well-known book "*de Smith's Judicial Review of Administrative Action*", 4th Edition, the law on the subject is stated as under at page 285 :

"The authority in which a discretion is vested can be compelled to exercise that

discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it : it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case.It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations,....."

(17) In this view of the matter, Therefore, the exercise of discretionary power cannot be said to be absolutely and totally immune from judicial review and it will be open to the court to afford appropriate relief to a prisoner where it finds that the exercise of the power by the executive authority stems from extraneous or irrelevant considerations or it betrays total non-application of mind or is otherwise tainted with malafides. Said Lord Devlin in *Chandler and others v. Director of Public Prosecutions*, (1964) AC 763

"The courts will not review the proper exercise of discretionary power but they will intervene to correct excess or abuse. This is a familiar doctrine in connection with statutory powers."

(18) Reference in this context may also be made with advantage to a Bench decision of Madras High Court in *R. Ragupathy and others v. State of Tamil Nadu and others*, 1984 Cri. L.J. 117 and *Sadhu Singh and Others Vs. State of Punjab*,

(19) In view of the foregoing, I direct that the respondent-Delhi Administration shall consider the cases of the above-mentioned three petitioners for their release on furlough/parole, as the case may be, in the light of foregoing observations. It may, however, bear repetition that in the cases of life convicts governed by Section 433A of the Code of Criminal Procedure, their release on parole or remission will not have the effect of reducing the minimum period of actual imprisonment for 14 years. In case the respondent fails to comply with this direction within two months, it will be open to the petitioners or anyone of them to seek redress of their grievance through a fresh petition.