

(2004) 04 AP CK 0053
In the Andhra Pradesh High Court
Case No : Writ Petition No. 26241 of 2003

D. Rajasekhar

APPELLANT

Vs

Govt. of Andhra Pradesh, Home Dept.

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 433, 433A
Penal Code, 1860 (IPC) — Section 55

Citation : (2004) 1 ALD(Cri) 894 : (2004) 3 ALT 723 : (2004) 2 APLJ 267

Hon'ble Judges : Devinder Gupta, C.J.;G. Rohini, J

Bench : Division Bench

Advocate : K.R. Prabhakar, for the Appellant; Govt. Pleader for Home Department, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, C.J.—The petitioner who claims to be a public-spirited person, swayed by News item that only 46 prisoners were released out of more than 500 such eligible persons after completion of ten years of sentence including remission, filed this petition as PIL, after furnishing details of prisoners undergoing sentence in various jails in the State, the offences for which they have been convicted and the sentences imposed in the relevant crime cases and the period of sentence undergone. He submits that not less than five hundred prisoners all over the State are eligible to be released by virtue of the policy decision taken by the Government of Andhra Pradesh to release prisoners on completion of ten years of imprisonment including remission i.e., seven years actual imprisonment and three years remission period. Petitioner states that instead of releasing all the eligible prisoners, the Government have released only 46 prisoners. He, therefore, has sought a direction to declare Para 5 of G.O.Ms.No. 17 Home (Prisons B.2) Department dated 17-1-2003 to be arbitrary, illegal, unjust and contrary to law and violative of fundamental rights guaranteed to the prisoners under Articles 14 and 21 of the Constitution of India and also

violative of Section 55 of the Indian Penal Code and Section 433(b) of the Code of Criminal Procedure.

2. The petitioner has alleged that there are more than 500 persons all over the State who were convicted for various offences including for the offences punishable under Sections 302 and 304 read with Sections 148, 149 IPC and were sentenced to undergo imprisonment for life. By virtue of Section 55 of the Indian Penal Code, the Government is specifically empowered to commute the sentence of a prisoner undergoing imprisonment for life so as to ensure that the term of imprisonment does not exceed the total period of fourteen years. Likewise Section 433 of Criminal Procedure Code inter alia empowers the appropriate Government to commute a death sentence to any other punishment provided in Indian Penal Code and a life sentence to a sentence of imprisonment not exceeding fourteen years or fine. Sub-section (b) of Section 433 specifically provides that the Government may without the consent of a prisoner-undergoing sentence of imprisonment for life commute it to imprisonment for a term not exceeding 14 years or fine.

3. The petitioner thus alleged that Government in furtherance of the object of law and in exercise of powers under Section, 59 of the Prisons Act and the A.P. Prison Rules, 1979 has constituted various committees for recommending remission of sentences in respect of persons undergoing imprisonment for life. It has been the consistent policy of the Government of Andhra Pradesh to grant remission to the prisoners governed by Sections 433 and 433-A of the Code of Criminal Procedure. Sentence of imprisonment of life in cases of persons with good conduct is remitted with a view to ensure a healthy body polity that suffered a defined reformatory route to prisoner. The Indian Penal Code has recognised the role of the Government in interdicting sentence from time to time and this power is traceable to Article 161 of the Constitution of India. It empowers the Governor to grant pardons and to suspend, remit or commute sentences in cases of certain prisoners. Consistent with this policy, earlier the Government had issued various G.Os. for release of convicted persons sentenced to undergo imprisonment for life, who had completed 14 years of total sentence but ten years of actual sentence including those aged more than 65 years but had completed five years of actual sentence and a total sentence of seven years.

4. The petitioner then has referred to the impugned G.O.Ms.No. 17 in which the Government has made reference to the report of the All India committee on Jail Reforms and its recommendation under which life convicts are sought to be discharged and their sentence commuted. The petitioner alleged that a reading of the said G.O.Ms.No. 17 would show that it is violative of Section 433 of Code of Criminal Procedure as it has created a classification amongst the persons similarly situated which is nothing but hostile discrimination. Two different categories of prisoners among the same class of prisoners, similarly situated, have been carved out which directly affects the liberty of the individual and is violative of Article 21 of the Constitution of India. It is stated that the power to

commute sentence does not include power to classify. It has further been stated that assuming that Government has such a power to classify the prisoners but the satisfaction continues to be the vice of discrimination because it is not based on any objective criteria. Classification must necessarily have a nexus with the object sought to be achieved. The object sought to be achieved under Sub-section (b) of Section 433 of Code of Criminal Procedure is to ensure societal well-being and the welfare of the prisoners. The same is not achieved by creating two discriminatory groups of convicts. As such the petitioner has alleged that the application of parameters contained in Para 5 of the impugned G.O.Ms.No. 17 are illegal, arbitrary and unjust.

5. The Writ Petition is resisted by the respondents and a counter-affidavit has been filed by Smt. P. Renuka Devi, Deputy Secretary to Government, Home Department stating that the persons whose details have been provided by the petitioners are all convicted for offence punishable u/s 302 I.P.C. and for other offences and were sentenced to imprisonment for life for which the maximum penalty prescribed by law is death. It is stated that the power u/s 55 of I.P.C. is discretionary in nature and exercise of the said power cannot be claimed as a matter of right. This provision has been in existence since 1860 A.D. and it is not a new policy of the Government. It has further been stated that after the amendment of the Code of Criminal Procedure, 1973 by Amendment Act No. 45 of 1978, by which Section 433-A has been incorporated, the power of the Government u/s 433 of Code of Criminal Procedure is subject to restrictions imposed by Section 433-A. As such sentence imposed on a person convicted for an offence punishable with death and undergoing imprisonment for life cannot be commuted to less than 14 years of imprisonment or cannot be remitted in exercise of its power u/s 432 Code of Criminal Procedure. The only way out in respect of such prisoners is the exercise of power of the Governor under Article 161 of the Constitution of India. Referring to Section 55 I.P.C. and Sections 432, 433 and 433-A of Code of Criminal Procedure, it is submitted that Section 433-A has imposed restriction on the exercise of power of the Government under Sections 432 and 433 of Code of Criminal Procedure insofar as they relate to prisoners convicted of offences for which death is a penalty prescribed by law thereby ensuring that murderers should not be let loose easily. Reference has been made to the amendments carried out to the A.P. Prisons Rules, 1979 by G.O.Ms.No. 69 Home (Prisons.B) Department dated 29-1-1991. In the light of the above provisions, it is urged that there is neither any discrimination in classifying the prisoners as underlined in Para 5 of the impugned G.O.Ms.No. 17 nor the same is violative of any of the provisions of the Constitution.

6. The petitioner filed rejoinder and submitted that as per Rules framed u/s 59(5) of the Prisons Act, State Government had constituted Advisory Board under Rule 321 of the said Rules. These rules were framed in 1979 and have been holding the field without any amendments and Government had been granting remission in the sentence to the prisoners in accordance with the said Rules. Without making any amendment to the Rules, Government has issued the

impugned G.O. constituting a separate committee known as Standing Committee, which is comprised of officials only and do not contain any non-official. The committee contemplated under the Prisons Rules is different from the one contemplated under the impugned G.O. and thus the same is in violation of the provisions of law.

7. We have heard the counsel for the parties in detail and have gone through the material on record.

8. Section 55 of the Indian Penal Code is discretionary in nature and empowers the appropriate Government, without the consent of the offender, to commute the punishment for imprisonment of either description for a term not exceeding fourteen years, in respect of such cases, where sentence for imprisonment for life has been awarded. No right is conferred on the prisoner, who has been convicted and sentenced to undergo imprisonment for life, to seek for his release at the end of the fourteen years. Chapter XXXII of Code of Criminal Procedure deals with execution, suspension, remission and commutation of sentences and sub-chapter (E) comprising Sections 432 - 435 specifically deals with suspension, remission and commutation of sentences. Section 432 reiterates the power of the appropriate Government to suspend or to remit sentences at any time without condition or upon any condition. Section 433 on the other hand is a further projection of the power u/s 55 of the Indian Penal Code to commute sentences which inter alia states that the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years or for fine. By amendment Act No. 45 of 1978, Section 433-A was introduced putting restriction on the powers of remission or commutation of sentence in certain cases. Section 433-A reads as under:

433-A : Restriction on powers of remission or commutation in certain cases: Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

9. The object behind the amendment is that those governed by it shall not be released unless they have served at least fourteen years of imprisonment. It does not govern all life convicts. It does not apply to those convicted and sentenced to imprisonment for life before its commencement and for offences not punishable with death.

10. A.P. Prison Rules, 1979 were framed in exercise of powers under the Prisons Act, 1894 and Prisoners Act, 1900. Chapter XXI of the said Act governs grant of remission to prisoners. Rule 320 lays down categories of prisoners, whose cases are to be placed before the Advisory Board constituted under Rule 321, for being

considered as per the said rules. Submission of the learned counsel for the petitioner is that the petitioner is not seeking that the power of remission or commutation be exercised by the Government and sentence be commuted. He submits that before the impugned G.O was issued, it was necessary for the Government to have placed the cases of those prisoners, who have not been prematurely released, before the appropriate Board or Committee to enable it to make its recommendations so as to enable the Government to exercise its power of remission or commutation. But the impugned G.O. has taken away the said exercise by creating an artificial class or category of prisoners among the similarly situated persons, whose cases now cannot be placed before the Committee. The petitioner would contend that the Prison Rules have not so far been amended and there is no such power vested in the Government. It is, thus discriminatory.

11. We find no force in the aforesaid submission. The petitioner himself has placed reliance and filed a copy of G.O.Ms. No. 69 dated 29-1-1991 notifying the amendments carried out to Andhra Pradesh Prison Rules, 1979 (hereby inserting a proviso after Sub-rule (b) of Rule 320 and carrying out consequential amendments in Clause (g) of Rule 320. Rule 321-A has also been inserted making provision for constitution of Committee for the purpose of Section 433-A of Code of Criminal Procedure. Therefore, the submission of the learned counsel for the petitioner that there is no amendment brought to the A.P. Prisons Rules has no force.

12. A bare reading of Section 433-A of the Code of Criminal Procedure would suggest that it imposes restriction on the powers of the Government in respect of certain class of prisoners as detailed in the provision itself. There is also no denial of the fact that Government in exercise of its powers had been issuing various Orders granting remission or commutation of sentences in respect of certain class of prisoners. The position has considerably been changed on the introduction of Section 433-A of Code of Criminal Procedure, which has imposed a restriction on the exercise of power by the Government for grant of remission or commutation of sentence in cases of those prisoners who have been sentenced to imprisonment for life on their being convicted for an offence for which death is one of the punishments provided by law or in case of those persons where sentence of death imposed on a person has been commuted u/s 433 of Code of Criminal Procedure into one of imprisonment for life. Section 433-A clearly provides that such category of persons shall not be released from prison unless they have served fourteen years of imprisonment. The offending part, namely, Para (5) of G.O.Ms.No. 17 dated 17-1-2003 enumerates categories of prisoners saying that though they are covered by Section 433(b) of Code of Criminal Procedure and Section 55 of the Indian Penal Code, but their cases are not eligible for being placed before the Standing Committee. Categories mentioned in para 5 of G.O.Ms.No. 17, inter alia, are:

5. The following categories of prisoners though they are covered by Section 433-

(b) of the Cr.P.C., 1973 and Section 55 of the I.P.C. 1860 are not eligible to be placed before the Standing Committee:

(i) Life term prisoners convicted and sentenced by Courts situated outside the State of Andhra Pradesh.

(ii) Life term prisoners convicted against laws relating to a matter to which the Executive Power of the Union of India extends.

(iii) Life convicted prisoners, who have been punished for any Prison Officer during the preceding two years and whether they are currently under the punishment for the same or not.

(iv) Life convicted prisoners, who have availed either parole or furlough during the preceding two years and not surrendered in time and/or with any adverse reports.

(v) Prisoners convicted under narcotic Drugs and Psychotropic Substances Act, 1985 the Andhra Pradesh Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1993, Explosive Substances Act, 1908, Explosives Act, 1884, Indian Arms Act, 1959, Prevention of Terrorism Act, 2001 and Andhra Pradesh Control of Organised Crimes Act, 2001 who had been sentenced to imprisonment for life.

(vi) Prisoner convicted for crimes against women, under Sections 366, 366-A, 366-B, 367, 372, 373, 376, 304(B) of IPC, 1860 and Dowry prohibition Act while being sentenced to imprisonment for life and also prisoners who are convicted for life along with offences under Sections 354, 498-A, 306 of IPC, 1860 where the victims are women.

(vii) Prisoners convicted for life along with offences of theft, robbery, dacoity and also prisoners convicted of murder while involved in smuggling operations and terrorist crimes such as Sections 121, 303, 305, 311, 379 - 402, 411 and 412 IPC, 1860.

(viii) Prisoners who have been convicted for organised murders in a premeditated manner and in an organised manner including in communal offences.

(ix) Prisoners who have overstayed on parole/furlough for cumulative periods in excess of three (3) years.

(x) Professional murderers who have been guilty of murder by hiring.

(xi) Prisoners convicted of murder of public servants on duty.

(xii) Prisoners sentenced to death sentence, which is later commuted to life sentence.

(xiii) Life convicted prisoners who have escaped during the period of remand, trial or after conviction.

13. Be that as it may, the matter raised before us is no more res integra in view of the two decisions which were brought to our notice viz., the decision of this Court in W.P.Nos 3076 of 2000 and batch (N. Krishnaiah Vs. Government of Andhra Pradesh and others,) dated 11-7-2000 and the decision of the Supreme Court in Criminal Appeal No. 1227 of 2002 dated 29-7-2003 (Sanaboina Satyanarayana v. Government of Andhra Pradesh and Ors., 2003 (5) Supreme 343 = 2003 (3) Crimes 260).

14. W.P.Nos. 3076 of 2000 and batch (Krishnaiah's case 1 supra) were filed questioning the action of the State Government in not granting the benefit of releasing the petitioners therein prematurely and seeking for a direction to place their cases before the Advisory Committee, inter alia urging that their cases would fall under Sub-section (b) of Section 433 of the Code of Criminal procedure but they were not granted remission. G.O.Ms.No. 18 Home (Prisoners-C) Department dated 25-1-2000, which was holding the field when the Writ petitions were filed was under challenge. In the said G.O. also certain categories of persons were excluded saying that remission of sentences shall not apply to the categories enumerated in Para 3 of the said G.O. Petitioners challenged the same on ground of hostile discrimination and creating a separate category of prisoners among the same class of prisoners. The Division Bench of this Court considered the scope of Section 433-A of Code of Criminal Procedure saying that though G.O.Ms. No. 18 was passed by the Governor in exercise of his powers under Article 161 of the Constitution and powers conferred on the Governor have to be treated as discretionary powers Government thought if fit not to grant remission to those convicts who are involved in anti-social activities and their release would not be beneficial to the society at large. The Division Bench further held that the discretion was exercised by the Governor not with reference to a particular case but with reference to a particular offence, which he felt to be an offence against the society and thought it fit not to release them, therefore, no relief could be granted to the petitioners therein. It was held that Section 433-A of the Code of Criminal Procedure imposes restriction on the power of the Government that remission could not be granted in certain categories of prisoners and it was also held that power of the Governor under Article 161 was higher than the power vested in the Government under Sections 432 and 433 of the Code of Criminal Procedure. By the said Common Order, W.P.No. 4441 of 2000 was also decided wherein the writ petitioner had been convicted and sentenced to undergo imprisonment for life for the offence punishable u/s 302 I.P.C. an(sic) was also convicted for the offence punishable u/s 498-A I.P.C. The said writ petition was also dismissed holding that the G.O. could not be made applicable to such of the convicts who were held (sic) have committed crimes against women and since the offence punishable u/s 498-A I.P.C. is an offence against women, therefore, the order of Government in not giving remission in the sentence (sic) perfectly correct.

15. Against the decision of this Court appeal was filed before the Supreme Court in Crl.A.No. 1227 of 2002 (Sanaboina Satyanarayana's case) (2 supra), which

(sic) dismissed. Supreme Court held th(sic) remission to be granted by the G.O. w(sic) only in respect of specified class of convi(sic) and that too subject to the conditio(sic) specified in the said G.O. It was held (sic) claim for remission cannot be made(sic) countenanced de hors the speci(sic) conditions subject to which only it has be(sic) accorded. It was held:

. the grant as well as the conditions formed a compendious single common pattern or scheme of concession by way of remission, pregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirety of the scheme fails as a whole, and there is no scope for judicial modification or modulating the same so as to extend the concession in excess of the very objective of the maker of the order which seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself.

Plea of discrimination was negated by the Supreme Court holding:

The remission proposed in commemoration of the 50 years of Indian Republic itself is a boon and concession to which no one had any vested right. As to what classes of persons or category of offenders to whom the remission has to be extended is a matter of policy particularly when it is also a constituent power conferred upon the constitutional functionary and Head of the State Government, larger area of latitude is to be conceded in favour of such authority to decide upon the frame and limits of its exercise under Article 161 itself.

16. Supreme Court further held that the issue in question being one pertaining purely to the area of policy and political philosophy of the State, the Court except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. It was observed that instances of violence against women and children, particularly, female, such as rape, dowry deaths, domestic violence, bride burning etc. are not only rampant but on phenomenal increase casting a shadow of shame on the society and such a situation deserves special treatment in the hands of the State. Supreme Court then considered various excepted class of convicts and held that the real object is to ensure that those who prey on the community and violate fundamental values of mankind, society and national interest should not get undeserved benefit.

17. Sanaboina Satyanarayana's case (2 supra) answers all points raised on behalf of the petitioners. Section 433-A of Code of Criminal Procedure itself creates an exception and the case of those which is being projected by the petitioner in the Writ Petition do fall in the excepted categories u/s 433-A of Code of Criminal Procedure and the categories of cases mentioned in Para 5 of the impugned G.O. are those which would fall in the excepted class. It being purely a policy of the State, no interference would be called for on any of the grounds

urged on behalf of the petitioners. There is neither discrimination nor illegality in making those exceptions since a separate class itself is created by Section 433-A of Code of Criminal Procedure. Not only the impugned G.O. in question even the earlier G.Os. issued from time to time also mentioned about the separate categories falling outside the consideration for remission and reduction of sentences. Those categories carved out were upheld by the Supreme Court in Sanaboina Satyanarayana's case (2 supra) not being discriminatory and for the self-same reasons we also find no substance in the writ petition and would proceed to dismiss the petition.

18. In result, we find no merit in the Writ Petition. It is accordingly dismissed. There shall be no order as to costs.