
(2011) 10 RAJ CK 0008

In the Rajasthan High Court

Case No : Criminal (Parole) Writ Petition No. 8587 of 2011

Geeta Devi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Rajasthan Prisoners Open Air Camp Rules, 1972 — Rule 3, 7, 8, 9

Citation : (2012) 2 RLW 1711

Hon'ble Judges : Narendra Kumar Jain, J; Govind Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. An application submitted by Smt. Geeta Devi, mother of convict Shri Prahlad Ram, has been treated as petition for writ and the contents of that are as under:-

2. In view of the provisions of Rule 3(m) of the Rajasthan Prisoners Open Air Camp Rules, 1972 (hereinafter referred to as "the Rules of 1972") the respondents are not considering claim of convict Prahlad Ram for admission to open air camp. Rule 3(m) aforesaid provides that a prisoner who is unmarried shall ordinarily be not eligible for being sent to open camp.

3. The issue requires adjudication is that whether the marital status of a prisoner can be a reason sufficient for denying admission to open air camp or the classification of prisoners on basis of their marital status is having any rational for admission to open air camp?

4. The intent of the Rules of 1972 is to encourage good conduct, satisfactory performance of work, life of self-discipline among the convicts, prerelease to the convicts, opportunity to learn social adjustment and economic self-dependence of the prisoners. Under the Rules of 1972 the work at open air camp, internal management of the camp, lodging and boarding at the camp are also designed in a fashion to avail the intent aforesaid.

5. As per Rule 7 of the Rules of 1972, work in open camp shall be as under:-

(a) The prisoner will get one or more of the following work in the Open Camp-

(i) Agriculture.

(ii) Manufacturing or industrial work.

(iii) Work in any form.

(iv) Any work of public utility.

(v) Construction work, digging of canals or dams.

(b) Any prisoner desires of pursuing a hobby as a side work apart from the vocation that he adopts, will be allowed to do so with the permission of the works and discipline committee.

(c) Every prisoner shall devote at least two hours a day twice a week for work of common utility which will be decided by the works and discipline committee.

6. The internal management of the camp as per Rule 11 of the Rules of 1972 is through the Prisoners' Panchayat, Works and Discipline Committee and Prisoners, Cooperative Society established in the Open Camps. Sub-rule(2) of Rule 11 provides that the prisoners panchayat shall consist of not less than five and not more than seven members as may be decided by the Inspector General of Prisons, keeping in view the number of prisoners in a camp. The Panch shall be elected by the prisoners, but a casual vacancy shall be filled by nomination by the Inspector General of Prisons from amongst the prisoners. The term of each panchayat will be for a year. The prisoners' panchayat is empowered to deal with minor acts of omission/ commission/misconduct of the prisoners and it may impose the penalties prescribed in the rule itself. The Works and Discipline Committee in each camp shall consist of not more than seven members representing various trades and crafts adopted by the prisoners of the camp. The Inspector General of Prisons is empowered to nominate members to the committee aforesaid and the officer-in-charge of the camp is required to preside it. The committee is having an authority to prepare a work programme and a code of conduct for camp prisoners. As per sub-rule(4) of Rule 11 of the Rules of 1972 the cooperative society of the prisoners shall supply and serve day to day needs in the camp.

7. According to Rule 9 of the Rules of 1972, the prisoners, group of prisoners, prisoners with families shall be allotted suitable accommodation by the officer-in-charge of the respective camps and the prisoners shall have to make their own cooking arrangement for their food from their own earning within the camp. A prisoner earns wages as per Rule 8 of the Rules of 1972, that is required to be utilised by him for use of himself or his family. A prisoner admitted to open camp is also entitled to have a saving bank account in the nearest post office.

8. An important power is available to the Inspector General of Prison to

retransfer of prisoners from open camp as per Rule 12 of the Rules of 1972, that reads as under:-

12. Retransfer of Prisoners from Open Camp.-

(a) Prisoners who commit acts of misconduct or who fail to pay penalties as imposed by the prisoners panchayat or who do not perform their scheduled task for any other reason are found undesirable in the Open Camp shall be sent back to the Jails by the Officer-incharge of the Camps under intimation to the Inspector General of Prisons.

(b) The Inspector General of Prisons can transfer any prisoner from Open Camp in any Jail whenever he deems it proper to do so.

9. The entire scheme of the Rules of 1972 depicts that at open air camp a prisoner is provided with opportunity to rehabilitate himself in society by staying with his family and by earning wages to support himself and his family. An unmarried prisoner also deserves rehabilitation in society by flourishing his conduct, self-discipline and by developing an aptitude for community adjustment. It is also pertinent to note that Rule 9 of the Rules of 1972 provides lodging and boarding for the prisoners, group of prisoners and families of prisoners. Meaning thereby, a prisoner, if not having his own family, is also entitled to be lodged in an open air camp.

10. The term "family" though is not defined under the Rules, but that is quite broad. It is not confined only to married couple or dependent to matrimonial status, but includes parents and other siblings also.

11. The term "Family" is defined in Oxford Dictionary as under:-

1 (a). Group consisting of parents and their children;

(b). Group consisting of parents, their children and close relatives;

2. Persons's children;

3 (a). All the people descended from a common ancestor.

12. As per the definition given in New Webster's Dictionary the "Family" means-

the unit consisting of parents and their children; the children, as distinguished from the parents; persons related by blood or marriage; those who are descendants of a common progenitor; a clan; noble or distinguished lineage; as, a man of family; the group of persons who live in one household and under one head; a group of people or things with a common or related characteristic, function, or origin.

13. In view of the definitions aforesaid, an unmarried prisoner too is part of a family and may be head of the family. He also requires the same treatment for his rehabilitation as given to others.

14. The classification sought to be made under the Rules for admission to an open air camp on the basis of marital status, thus, appears to have no rational. Every prisoner is having a right to avail the intents of establishing open air camps. The classification made on basis of marital status is apparently discriminatory as it creates a class within a class without having any nexus with the object i.e. to be acquired by the Rules of 1972.

15. If a prisoner irrespective of his marital status, is not behaving with a conduct befitting to the level of continuance in the commune i.e. the open air camp, he/she may be remitted to the jail as per Rule 12 of the Rules of 1972. As such, if an unmarried prisoner is not befitting to continue in the open air camp, he may be sent back to the jail, but the total denial from application of the Rules of 1972 is certainly bad.

16. In totality, we are of the considered opinion that the classification of the prisoners made under Rule 3 (m) of the Rules of 1972 on basis of marital status is a irrational and is having no nexus with the object sought to be achieved by the Rules of 1972. The classification impugned is discriminatory and arbitrary too and as such i.e. in violation of Article 14 of the Constitution of India. The Rule concerned, therefore, is declared bad and as such is set aside.

17. Accordingly, this petition for writ is allowed. The respondents are directed to consider candidature of convict Prahlad Ram son of the petitioner for his admission to open air camp as per the Rules of 1972 ignoring his marital status.