
(1995) 12 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 18625-M of 1995

Goverdhan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Citation : (1996) 1 RCR(Criminal) 722

Hon'ble Judges : Swatanter Kumar, J

Advocate : N.S. Bhinder, Ashwani Talwar, Advocates for appearing Parties

Judgement

Swatanter Kumar, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure read with Articles 226/227 of the Constitution of India for issuance of directions to the respondents to release the petitioner on parole under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. Notice on this petition was issued to the respondents on 6.11.1995 and the reply has been filed. In short the case of the petitioner is that the petitioner was sentenced to undergo imprisonment for life by the learned Sessions Judge, Karnal vide order dated 18.3.1994 and since then he has been in jail. Petitioner owns about 2 acres of agricultural land in Village Gagsina and family members of the petitioner are dependent upon the earning from this land. Wife of the petitioner is stated to be sick and infirm and is not able to look after the children and the land in question. Petitioner on 28.8.1995 made a request to the respondent to grant him benefit of temporary release for the agricultural purposes under Section 3(1)(c) and (d) of the said Act. The petitioner was informed that the request of the petitioner for release on parole has been rejected by respondent No. 1, District Magistrate, Karnal. The counsel had requested for copy of the order which was supplied and has been annexed as Annexure P1 with the petition. Vide Annexure P1, rejection of the competent authority was conveyed to the petitioner and it is based upon the letter dated 28.7.1995. It is relevant to reproduce the relevant portion which reads as under :

"As per the report of the District Magistrate, Karnal, Sh. Ranbir Singh of the opposite party has objected to the visit of convict Goverdhan son of Shiv Ram on parole, any untoward incident may take place. The release of convict on parole has, therefore, not been recommended. Keeping the above report in view, the application for grant of parole of convict Goverdhan son of Shiv Ram has after due consideration been rejected by the Additional Director General of Prisons, Haryana."

2. As is apparent from the above, the ground for rejecting the request of the petitioner for release on parole is that some untoward incident may take place if the petitioner is released. This ground appears to be ambiguous and lacks reasoning and even provide application of mind. Section 3 of the above Act gives certain benefit to the convicts, who are undergoing their sentence in jails. This benefit under the scheme of the Act is a well considered legislation to enable the convicts to come out of jails for the purposes specified in the said section. The legislation has a definite object as it has even introduced clause (d) of subsection (1) of Section 3 to cover cases which are otherwise not specifically provided for in other clauses of the section. Of course limitations to exercise powers under the Act are specified in Section 6 of the said Act. The consideration by the authorities have to be an objective satisfaction and the request of the detenu cannot be declined as a matter of routine by introducing such vague reasons. The real purpose is to provide benefit to the convict as per the scheme of the Act and to implement its provisions to achieve the object and not to frustrate the legislative intent. The reason which has been given in this order itself shows the non application of mind. Some valid plausible reason which must fall within the four corners as postulated under Section 6 of the Act must be passed. It cannot be an order which is unreasoned, vague, indefinite, unexplainable and not in conformity with the restrictions stipulated in Section 6 of the Act. Such an order would be bad and would apparently suffer from the infirmity of nonapplication of mind. Application of mind is an essential prerequisite for passing of such orders. Passing of a proper reasoned order upon application of mind is now the accepted basis even on administrative action and orders.

3. The administrative orders may not be like reasoned judgments but must by and large provide basis on which the request of a convict/detenu has been declined by the authority. Passing of such order is not only in consequence with the basic principles of law but is a minimum requirement of fairness and fair play. The orders which are in conformity with the above principles provide an opportunity to the adversely affected party to challenge the order properly and by taking all the grounds of attack to such an order as may be permissible to that party in law. The requirement of passing of such order by authorities concerned has been directed by the Supreme Court in number of cases and more particularly in the case reported as Union of India and others v. E.G. Nambudiri, JT 1991(2) S.C. 285, wherein it has been held as under :

"The purpose of the rules of natural justice is to prevent miscarriage of justice

and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasijudicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far reaching effect than decision in a quasijudicial enquiry."

"Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen. It is, therefore, desirable that reasons should be stated."

4. The counsel for the State has fairly conceded that in the reply nothing more has been stated than what was stated in the impugned order. Thus the respondents have failed to satisfy the Court as to how the impugned order satisfies the application of mind and gives a plausible reasoning within the limits imposed upon the respondents under Section 6 of the Act. The petitioner has specifically given details of his land and the fact that his wife is sick, infirm and cannot look after the agricultural land and there is nobody else to carry on the agricultural activities in his place. These allegations to a great extent have been even admitted in reply/affidavit filed in behalf of the respondents.

5. Thus, in the present case, all the above ingredients are apparently lacking and in all fairness, Mr. Bhinder has not supported the said order and nothing adverse is contained in the reply filed by the State. In these circumstances, the impugned order Annexure P/1 is hereby set aside. The respondents are directed to release the petitioner on temporary parole for a period of five weeks to the satisfaction of District Magistrate, Karnal and upon his furnishing surety in the sum of Rs. 25,000/ with one surety of the like amount. Upon the expiry of the said period of five weeks from the date of his release the petitioner shall, without fail, surrender. In the event of his failing to surrender, the authorities shall be at liberty to arrest him forthwith. With these directions, the petition is disposed of.