

(1972) 04 AP CK 0007
In the Andhra Pradesh High Court

Gunpu Gangi Reddy and Another

APPELLANT

Vs

Pinzari Kasim and Others

RESPONDENT

Date of Decision : 14-04-1972

Acts Referred:

Constitution of India, 1950 — Article 161, 162
Criminal Procedure Code, 1898 (CrPC) — Section 2, 401
Penal Code, 1860 (IPC) — Section 392, 393, 394, 395, 396

Citation : (1974) CriLJ 440

Hon'ble Judges : Gopal Rao Ekbote, C.J.;Muktadar, J

Bench : Division Bench

Judgement

Gopal Rao Ekbote, C.J.—These appeals are from the judgment of Parthasarathi, J. given in Writ Petitions Nos. 3627 and 4004 of 1969 whereby the learned Judge allowed the Writ Petitions after holding that the order of release from the jail is void because it has no sanction of law and it is clearly outside the purview of Government Order dated 25-9-1969.

2. The material facts in order to appreciate the contentions raised before us may briefly be stated.

3. In Sessions Case No. 6 of 1968, the appellants, who were respondents 4 and 5 in W. P. No. 3627 of 1969 and the 4th respondent in W. P. No. 4004 of 1969. were arrayed as accused. They were charged with an offence of murder. After trial, they were, however, acquitted by the Sessions Judge. The High Court on appeal set aside the acquittal order. All the three persons referred to above were found guilty of the offence. They were convicted of the offence of murder and were sentenced to imprisonment for life. The decision was given by this Court on 26-9-1969.

4. While the appellants were serving their sentence, the Government of Andhra Pradesh issued G. O. Ms. No. 1321 dated 25-9-1969. The said order was issued to exercise of the powers conferred by Article 161 of the Constitution of India. The following is the text of the order:

In exercise of the Powers conferred by Article 161 of the Constitution of India, the Governor of Andhra Pradesh suspends the sentences of the following classes of prisoners who are convicted of offences against laws relating to matters to which the executive power of the State extends and directs that the prisoners falling in the said classes shall be released.

(1) All convicted prisoners (other than those convicted for offences punishable under Sections 392 - 402 I. P. C.) who are sentenced to imprisonment for life or to imprisonment for a term exceeding seven years and who have completed or would complete by 2nd Oct., 1969 one third of the term of imprisonment including remission earned provided the term of imprisonment undergone together with the remission earned is not less than three years and six months.

Explanation : Imprisonment for life shall for the purpose of calculating the fraction of one third be reckoned to be imprisonment for a term of twenty years.

(2) All convicted prisoners (other than those convicted for offences punishable under Sections 392 - 402 I. P. C.) and who are sentenced to a term of imprisonment not exceeding seven years and who have completed or would complete by 2nd October 1969 one half of the term of imprisonment including remission earned by them.

(3) All convicted prisoners whose case is not less than 60 years as on 2nd October, 1969 (i. e. those who were born on or (before 1909).

(4) All convicted prisoners who immediately before the date of this order were certified by a Medical Officer or authority to be suffering from tuberculosis, leprosy, cancer, or paralysis or who are totally blind.

(5) All female prisoners other than those who are sentenced to death or convicted for offences punishable, under Sections 392 - 402 I. P. C.

All convicted prisoners whose sentences are not suspended and who are not therefore eligible to be released by virtue of the order in para 1 above will be granted special remission of one third of the sentence.

Orders in paragraphs 1 and 2 above will apply to prisoners of this State undergoing sentence in other States but will not apply to any person who is convicted by a court situated outside the State nor to any prisoner who is convicted of an offence against a law relating to a matter to which the executive power of the Union extends.

Orders in paragraph 2 above need not be made applicable to prisoners to whom special remission is granted by any other State Government or the Government of Union Territory with the concurrence of the Government of Andhra Pradesh,

The prisoners who are eligible for release under paragraph 1 above shall be released as early as possible and in any case before the 1st October, 1969.

The Inspector General of Prisons, Andhra Pradesh, Hyderabad is requested to

submit (1) a list of prisoners released from various jails and (2) a list of prisoners who are to be granted special remission in accordance with tile orders of Para 2 above in the porforma given in the annexure to this order for issue of formal orders u/s 401, Crl. Procedure Code or Article 161 of the Constitution of India remitting the unexpired portion of the sentence of prisoners referred to in paragraph 1 above or allowing the special remission referred to in paragraph 2 above.

5. In pursuance of this order the three appellants were released on 3-10-1969.

6. The two writ petitions were filed on 6-10-1969 by persons who were witnesses in the criminal case launched against the appellants contending inter alia that their lives are in danger because of the release of these appellants. They argued that the said G. O. Ms. No. 1321 of 25th September, 1969 does not apply to the cases of the appellants. Their contention was two-fold. It was firstly submitted that the appellants had not completed 60 years of their age by 2-10-1969; and secondly that since they were convicted on 26-9-1969 after the said G. O. was issued, their cases are not governed by the G. O. and they ought not to have been released in pursuance of the said G. O.

7. The Writ Petitions were resisted both by the appellants as well as by the Government. The main contention was that the appellants have completed the age of 60 years according to the committal orders received by the jail authorities from the Court. It was also contended that the said G. O. covers cases also where the order of conviction Is passed after 26-9-1969 but on or before 2-10-1969.

8. The learned Judge held that the said G. O, does not cover the orders of conviction made after 25-9-1969 and as a result held that the release of the appellants, who were convicted on 26-9-1969, was bad in law and void. It is to challenge the correctness of this decision that the present two appeals have been filed by the appellants.

9. The first contention of Sri P. Kodandaramaiah the learned Counsel for the appellants, is that if property construed, the G. O. would take in the cases of the appellants although they were convicted subsequent to the issue of the G.O. but before 2nd October, 1969.

10. In order to appreciate the implications of this contention, we have to necessarily constarue the G. O. which we have extracted in full above.

11. A careful and analytical reading of that G. O. would indicate that even in the preamble the Governor of Andhra Pradesh suspends the sentences of the prisoners who are convicted of offences. The words "who are convicted" clearly indicate those who stand convicted by the date the G. O. was issued.

12. In paragraph 1 of the G, O, also the same phraseology appears. It states "All. convicted prisoners who are sentenced to imprisonment for life or to imprisonment for a term exceeding seven years."

13. Similarly in clause (2) of the G. O. the words used are "All convicted prisoners...and who are sentenced to a term of imprisonment not exceeding seven years."

14. Then comes the relevant clause (3) of the G. O. We are mainly concerned with that clause. The said clause also uses the terminology as "All convicted prisoners."

15. Clauses (4) and (5) repeat this same phraseology.

16. It is difficult to consider these words to mean not only the prisoners who are convicted on or before 25-9-1969 but also all those who are going to be convicted after 25-9-1969 but prior to 2nd October, 1969. There are no words any where appearing in the G. O. which would lend support to any such construction of the G. O. The words "are convicted" can relate only to those prisoners who have been convicted by the date the G. O. was issued. It is impossible to interpret the G, O. to include the cases of those persons who are convicted subsequent to the issue of the G. O. although before 2nd October, 1969.

17. That this interpretation is correct can be seen from the fact that wherever the Government wanted to make its intention specific in reference to 2nd October, 1969 they made it so. For example in clause (1) where the Government made it clear that one-third of the term of imprisonment should have been completed by 25-9-1989 but the computation of serving the term of imprisonment is extended upto 2nd October. 1969.

18. Similarly in clause (2) also when the Government wanted to compute the completion of one half of the term of imprisonment, they made a specific reference to 2nd October, 1969. The computation therefore would so beyond the data when the G. O. was issued and would have to be extended to 2nd October. 1969.

19. Likewise in clause (3). the computation of age also is to be made as on 2-10-1969 when the prisoners reach the age of 60 and are intended to be released.

20. What follows from this specific mention of 2nd October, 1969 is that if the Government really wanted prisoners convicted not only on or before 25-9-1969 but wanted to extend the benefit of the G. O. to even those prisoners who may be convicted after 25-9-1969 and on or before 2-10-1969 nothing would have been easier than to express it so. The very fact that in clause (3) the Government has omitted to mention the date of 2nd October, 1969 clearly and unmistakably indicates that the Government did not want the prisoners who are by then not convicted to get the advantage of Clause (3). The Government was conscious as is apparent from the other clauses regarding the implication of mentioning the date 2-10-1969. When the Government came to clause (3) and they omitted to mention the date of 2nd October, 1969, it cannot but mean that

the Government did not want to release prisoners who may be convicted after 25-9-1969 but before 2-10-1969.

21. That this interpretation is reasonable and plain enough can be seen from another point of view also. If a person commits a murder on or after 25-9-1969 and is convicted before 2nd October, 1969. he would immediately set the benefit of this order. We do not think that the Government wanted that result to be created. It may be that during such a short time there is very little possibility of completing the trial and convicting a person. Nevertheless it cannot be completely ruled out.

22. It is true that in cases where the language employed in a G. O. is ambiguous or is capable of being interpreted in more than one way the Court should attempt to find out the intention of the Government in issuing the G. O. That principle, however, is not applicable to the present case. As stated earlier, in our judgment the language of the G. O. is plain enough and is not capable of more than one meaning that is to say that the persons who were convicted before 25-9-1969 and who completed the age of 60 on 2nd October, 1969 alone are governed by the G. O. and not those persons who are convicted after 25-9-1969. It is therefore unnecessary to go into the question of the intention of the Government.

23. It was however, argued that in order to remove any doubt in regard to the understanding of this G. O. the Government issued Memo No. 3085 dated 24-9-70. The Memo was issued by the Deputy Secretary to Government and it was not issued in the name of the Governor. It reads as follows:

The Inspector General of Prisons is informed tot it is sufficient if one is convicted by a Court of law as on 2-10-1969 and falls within the classes of persons mentioned in G. O. Ms. No. 1321 Home (Prisons-A) Department dated 25-9-1969, to secure the remission contemplated in the said G. O. even though, he has not served the sentence as an inmate of the prison and remains at large on bail from the beginning.

24. Admittedly this Memo was not issued in exercise of the powers conferred on the Governor under Article 161 of the Constitution. The said Memo therefore cannot be raised to the status of an order issued under Article 161. This Memo it is relevant to mention, also does not clearly lay that all those persons who are convicted between the dates of 25-9-1969 and 2-10-1969 shall also be released provided they satisfy the other requirements of the G. O. The words "as on 2-10-1969" even if taken to mean that all those persons who by 2-10-1969 are convicted even then we do not think that this Memo can be taken assistance of for the purpose of construing the G. O. in question. Nowhere the Memo says that the G. O. issued is ambiguous in any way and requires any clarification. In fact the memo is not issued by way of clarification. It is in a way a supplement to the G. O. whereunder another class of cases not intended by the G. O. is sought to be covered. It was not shown to Us as to how the Deputy Secretary can give amnesty to a class of cases not covered by the G. O. If the Governor thought

that this class of prisoners also should be given benefit of the centenary, nothing precluded the Government from issuing a separate G. O. which would cover that class of cases also. The Memo cannot be given effect to as an order under Article 161 of the Constitution.

25. The memo was relied upon by the learned Advocate for the appellants also for the purpose of showing that it is an administrative interpretation given to the G. O. by the Government and therefore this Court should accept that interpretation and act upon it. It is, however, clear that to administrative interpretation of any G.O. given by the executive is not binding upon this Court. This Court can independently interpret the G. O. and come to its own conclusion. In that process of construction it may be that the interpretation placed by the executive can also be considered. We have already, however, stated that the G. O. is incapable of being understood in any other way except the one to which we have already made reference. Moreover it is difficult to say that this Memo really can be characterised as an attempt by the executive to construe the G. O. in question.

26. We are therefore satisfied that the cases of the appellants who were convicted on 26-9-1969 cannot be brought under the said G. O. They were therefore not entitled to be released on 2nd October, 1969. In releasing them, whoever has been responsible for the release, he has acted without any authority of law. The release therefore has rightly been declared by the learned Judge as bad in law,

27. It is also relevant in this connection to note that clause (3) of the G. O. does not direct release of the prisoners falling within the ambit of that clause unconditionally. Only those prisoners who attain the age of 60 years by 2-10-1969 that are entitled to be released. Curiously the G. O. does not authorise any officer of the Government to scrutinise and take a decision as to whether the prisoners have completed their age of 60 years by 2-10-1969. We repeatedly asked the learned Government Pleader to show from the file as to whether at any stage or by any communication the Government authorised any officer to satisfy about the conditions precedent laid down in different clauses of the G. O, before the prisoners are released. He could not bring to our notice any such authorisation. It could not be doubted that the Government has not by itself examined the cases. There was thus no proper person authorised to examine as to whether the appellants had completed 60 years of age by 2-10-1969.

28. We find from the counter that the Government directed the Superintendent of Jail to treat the committal orders of the Court as final and conclusive evidence of the age of prisoners who are convicted and are serving the imprisonment in jail. Since the ages of the appellants were found to have been mentioned in the committal orders as more, than 60 they seem to have been released. It is not for us to comment upon the direction of the Government and upon the correctness or otherwise of placing reliance upon the committal orders regarding the ages mentioned therein. But we have to mention that the ages mentioned in the

committal orders are usually those which are given by the police in the charge-sheet and it is a common knowledge that those ages are approximate without making any enquiry in that behalf. It was therefore necessary for the Government to have authorised some person to hold a sort of preliminary enquiry regarding the age of the prisoners who are intended to be released and take a decision in that behalf. No one seems to have been authorised to discharge that duty.

29. Although this should be enough to dispose of the appeals, but we think we should not omit to mention the argument advanced by Sri Ayyapu Reddy, the learned Counsel for the respondents. His contention was that if the G. O. is interpreted to cover the cases of prisoners who are convicted after the G. O. was issued but prior to 2-10-1969. such an interpretation would so contrary to Article 161 of the Constitution. His contention was that under that Article, the Governor has no power to grant pardons, reprieves, respites or remissions of punishment in anticipation of any punishment. It was submitted that he can grant pardons, reprieves, respites or remissions only in cases where punishment is already awarded and a person is convicted of any offence.

30. Article 161 reads as under : ""The Governor of a State shall have the power to grant pardons, reprieves, respites, or remissions of punishment or to suspend remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends."

31. The Governor's power to pardon prisoners is extended to offences against laws relation to List II and against laws relating to matters included in List III, subject of course to Union laws made in respect thereof, if any. It is also obvious that the pardoning power of the Governor is co-extensive with the executive power of the State as defined in Article 162 of the Constitution. Even a plain reading of Article 161 would indicate that it refers to two classes of cases. Firstly, it refers to the Power to grant pardons, reprieves, respites or remissions of punishment : and secondly to suspend, remit or commute the sentence. But in either case it relates to any person who is convicted of any offence. What emerges from the said article therefore is that the power of Governor can be exercised only in cases where punishment is awarded or sentence is passed against a person who is convicted of any offence against any law relating to a matter to which the executive power of the State extends.

32. Our attention, however, was drawn to Chennugadu, in Re ILR 1955 Mad 92 : 1954 CLJ 13701. It is true that Govinda Menon. J. after referring to Article 161 of the Constitution and Section 2 of Article II of the United States Constitution, observed in his judgment at page 105:

Are we therefore compelled to hold that the same power cannot be exercised by the President or Governor under our Constitution without any specific provision to that effect? In our judgment the framers of our Constitution, having before them the earlier precedent and practice in India when governed by the British

Sovereign as well as what obtained in monarchical Great Britain and in the republican United States, intended to vest in the President, or the Governor, the same power of pardon or reprieve, etc., as was understood to inhere in the English sovereign or statutorily invested in the United States" President. Such being the case, we are of opinion that there has been no interference with the even course of judicial proceedings pending in this Court by the general amnesty granted by the Government of Andhra.

Earlier, the learned Judge observed that as our country is now a Sovereign Republic a parallel from the prerogatives exercised by the constitutional monarch in England may not be very apposite, since we have a written Constitution to interpret. It was also observed that the wording of the corresponding article of the Constitution of the United States is similar.

33. Article II, Section 2 of the Constitution of the United States defines the President's powers and reads as under in so far it is relevant.

...and he shall have power to Grant Reprieves and Pardons for offences against the United States, except in Cases of Impeachment.

34. The learned Judge after extracting Article 161 of Constitution of India said:

A comparison of the language of these articles with Section 2 of Article II of the United States Constitution will show the similarity between them.

35. It is on the assumption of this similarity which exists between Article 161 of our Constitution and Article H Section 2 of the Constitution of the United States that the learned Judge came to the conclusion that if it can be gathered that the President of the United States can grant a pardon before a conviction, it stands to reason that the appropriate authority in India exercising powers under provision similarly worded must have that power.

36. Chandra Reddy J. (as he then was) in his separate Judgment followed almost the same line of reasoning and reached the same conclusion. He was also of the opinion that the two provisions of the United States of America and India are similar,

37. It was argued before us that there is no similarity between Article II Section 2 of the Constitution of the United States of America and Article 161 of our Constitution. It was submitted that whereas Article 161 uses the terms "sentence, punishment and convicted", the word used in Article II Section 2 of the United States Constitution is "offence." The scope of Article II Section 2 is much larger than the scope of Article 161. It is possible to take a view under Article II Section 2 of the United States Constitution that the pardon etc. can be granted even before a person is convicted of any offence or even before a sentence is passed or punishment is inflicted. But is it possible, to so interpret Article 161 worded plainly as it is to cover the cases Where offences are only charged but no sentence or punishment is Passed and con-sequently a person cannot be said to have been convicted ?

38. In *State Vs. Kavas Manekshaw Nanavati*, following the above said Madras decision, a similar view has been taken. In that case also it was not closely examined to find out in what respects the two provisions are really similar.

39. The Bombay case was taken In appeal to the Supreme Court. The Supreme Court in *K.M. Nanavati Vs. The State of Bombay*, has not expressly approved of the observation of the Bombay High Court in this behalf. On the other hand the Supreme Court thought that the question involved in that appeal was limited to the exercise by the Governor of his powers under Article 161 of the Constitution suspending the sentence during the pendency of the SLP and the appeal to the Supreme Court and the controversy had narrowed down to whether for the period when the Supreme Court is In seisin of the case, the Governor could pass the impugned order, having the effect of suspending the sentence during that period. In that case, as is clear, the person was already convicted and the question was whether, during the pendency of appeal before the Supreme Court, the Governor can exercise the power vested in him under Article 161. No specific approval therefore can be said to have been given by the Supreme Court to the observation of the Bombay High Court accepting the view of the Madras High Court

40. In the view which we have taken regarding the interpretation of the G. Os we do not desire to express any concluded opinion on this point. We have merely pointed out the argument advanced by the learned Advocate for the respondents. We, however, feel that this matter will have to be considered in a proper case.

41. The next question urged before us was that the Writ petitioners had no locus standi to file the writ petitions. It was contended that they have had no interest whatsoever in a matter relating to the release of the appellants. They were merely witnesses for the prosecution in the case in which the appellants were convicted. Merely because of the fact that they were witnesses, they cannot be said to have any interest in the release of the petitioners.

42. It was, however, contended by the learned Advocate for the respondents that not only they were witnesses in the case but they are now being threatened by the appellants, who have been released with dire consequences to their lives : and they are therefore interested in seeing that they do not remain outside the jail and it is therefore contended that they have sufficient interest to file the writ petitions.

43. What is, however, plain is that the question of locus standi is a Part of the discretion which is vested in the High Court under Article 226 of the Constitution. In cases where there is inherent lack of power in releasing the petitioners from the jail, it is now well settled that even strangers can move the Court and the High Court is not only entitled when it finds that the officer has acted without any authority of law to declare the law but it becomes its duty to do so.

44. The law on this point is laid down in *N.V. Subba Rao and Others Vs. The*

Government of Andhra Pradesh and Others, , and we do not find any reason to take a different view.

45. It must also be remembered that since the question of locus standi is a part of discretion, when once the learned single Judge has exercised the discretion, except in some exceptional or extraordinary cases, it would not be proper for the appellate court to dismiss the writ petition on the ground that the writ petitioner had no locus standi to file the writ petition. We are fully supported by the observation made in *The Municipal Corporation for Greater Bombay and Another Vs. The Advance Builders (India) Private Ltd. and Others*, to that effect. We do not therefore experience any difficulty in rejecting this contention.

46. For the reasons aforesaid, the appeals fail and are dismissed with costs. Advocate's fee Rs. 100/- in each.