

(1990) 02 GUJ CK 0004
In the Gujarat High Court
Case No : Spl. Cri. Application No. 347 of 1989

Haiderkhan Lalkhan Pathan	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 09-02-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1973 (CrPC) — Section 366
Penal Code, 1860 (IPC) — Section 302
Prisons Act, 1894 — Section 48A, 52

Citation : (1991) CriLJ 1266 : (1990) 1 GLR 498

Hon'ble Judges : V.H. Bhairavia, J; A.P. Ravani, J

Bench : Division Bench

Advocate : B.M. Mangukia, for the Appellant; M.A. Bukhari, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.P. Ravani, J.—The petitioner has been convicted for offence punishable u/s 302 of I.P. Code by the court of Addl. Sessions Judge, Bombay as per judgment and order dated October 16, 1975. Initially he was sentenced to death by the trial court. However, on reference to the High Court, the sentence has been modified to that of R.I. for life. On this point there is no dispute. The petitioner-prisoner remained in Yaravada Jail in the state of Maharashtra till some time in July, 1977. In the month of July 1977, he has been transferred to Sabarmati Central Prison, Ahmedabad. Since then he is undergoing imprisonment in the Sabarmati Central Prison.

2. During the period of his imprisonment in Sabarmati Central Prison, he has enjoyed parole leave on several occasions from 1979 to 1988. On April 8, 1985, he was ordered to be released on parole for a period of seven days. He surrendered late by about 116 days. He was tried for the jail offence inasmuch as late surrender is a jail offence under the relevant provisions of law. The petitioner was again released on parole for a period of about 21 days in the month of June

1986. Again he surrendered late by 799 days. It is not clear as to whether, on both the occasions, he surrendered voluntarily or he was arrested by the Police. At page 55 of the compilation, the details submitted by the jail authorities are produced. In these details, the aforesaid fact is not stated. However, it is stated by the jail authorities that when the petitioner was released in June 1986, he did not surrender voluntarily and he was arrested by the police. Be that as it may. For the latter offence also, he was tried for the jail offence by the Superintendent of Jail. For these offences punishment was imposed upon the petitioner-prisoner as per order of punishment dated October 26, 1988. The said order of punishment reads as under :--

"Said convict has committed offence by 799 days late surrender from parole through police in another offence. Therefore cut of remission excluding State remission for 4 days per day of late surrender. If at present remission is not sufficient, it should be recovered from remissions likely to be earned by said convict in future. Total cut of remission $799 \times 4 = 3196$ days. Forfeiture of surety amount of Rs. 500/- and recovery of amount of Rs. 500/- of personal bond from wages or P.B.C. because he has breached parole furlough rules."

As per the provisions of Rule 1285 of the Bombay Jail Manual, punishment of forfeiture of remission in excess of 15 days is required to be confirmed by the Inspector General of Prisons. According to the respondents, the Inspector General of Prisons has exercised the powers under Rule 1285 of Bombay Jail Manual and has passed order confirming the punishment imposed upon the petitioner by the Superintendent of Jail with modification. The I.G. Prisons has passed order on February 22, 1989. A copy of the order passed by the I.G. Prisons has not been placed on record, but it has been shown to us by the learned counsel appearing for the respondents from the file of the jail authorities. As per the modifications made by the I.G. Prisons, the punishment for overstay of 799 days is reduced from 3196 days to 906 days. Rest of the order passed by the Superintendent of Jail has not been disturbed by the I.G. Prisons. It is against the aforesaid order of I.G. Prisons, that the present petition is filed by the petitioner-prisoner.

3. Several contentions have been raised challenging the legality and validity of the order of punishment imposed by the jail authorities. The contentions raised are (i) punishment is excessive, (ii) rules of Maharashtra State will be applicable to the case of the petitioner and not the rules framed by the State of Gujarat and since the decision is taken as per the provisions applicable to the State of Gujarat, the decision is illegal and void, (iii) that no cumulative punishment can be awarded in view of the provisions of Section 48-A of the Prisons Act, 1894; (iv) that Section 52 of the Prisons Act provides that punishment cannot be for a period of more than one year and therefore punishment at the most should be limited up to a period of one year, and (v) that the concurrence of I.G. Prisons, Maharashtra should have been obtained before imposing the punishment and the concurrence of I.G. Prisons, Gujarat would not be sufficient. All these contentions

raised by the learned counsel for the petitioner are not required to be gone into in details inasmuch as the petition is capable of being disposed of on the short ground that the petitioner has not been afforded an opportunity of being heard before confirming the imposition of punishment as required under Rule 1285 of Bombay Jail Manual. Rule 1285 of Bombay Jail Manual reads as follows:--

"1285. The following punishments require confirmation by the Inspector-General,

(a) Forfeiture of remission earned in excess of 15 days.

(b) Forfeiture of more than three months deferred pay.

(c) Separate confinement for a period exceeding one month

(d) Imposition of chain or bar fetters for a period exceeding 15 days. The use of fetters in such cases shall not exceed 30 days. If the Superintendent finds it necessary to continue fetters beyond 15 days, he shall obtain previous sanction of the Inspector General of Prisons, reporting full details of the case."

4. It is contended by the learned counsel for the respondents that since the rule does not provide for affording an opportunity of being heard to the prisoner, he has not been heard by I.G. Prisons, before passing the impugned order dated February 22, 1989 by which the punishment proposed by Superintendent is confirmed with. We have looked at the order and the order also discloses that no opportunity of being heard has been afforded to the petitioner-prisoner.

5. Cardinal principles of interpretations of statute is that the provisions of a statute are to be so read as to be in conformity with the basic constitutional provisions and the basic requirements of natural justice, unless of course, the principles of natural justice are excluded expressly or by necessary implication. The principles of natural justice are nothing but fair play in action. Be it an executive authority, or a quasi-judicial or judicial authority, the authority which has been conferred with the power to act in his discretion has to exercise the powers in just, fair and reasonable manner. Even while performing administrative functions the administrative authority is required to act fairly, because the principles of natural justice means fair play in action. For acting fairly, nobody needs commands from the legislature to the effect that he shall act fairly. It is the duty of all the authorities to act fairly while exercising discretionary powers conferred upon them. This requirement to act fairly is to be read into the statute. If such requirement is not read, the provisions of the statute itself may be held to be bad. The minimum principles of natural justice require that person be heard before any decision adversely affecting him is taken. However it needs to be clarified that even in such type of cases, the observance of principles of natural justice may not be necessary, provided it is shown that the principles of natural justice are excluded either expressly or by necessary implication. No such contention is raised by the respondent, nor do we find from the provisions of law pointed out to us that the principles of natural justice have been excluded either expressly or by necessary implication. Therefore, the principles of natural justice

have got to be read in the provisions of rule 1285 of Bombay Jail Manual.

6. When the Inspector General of Prisons confirms the punishment which is mentioned in rule 1285 of Bombay Jail Manual, he takes a decision which will adversely affect the prisoner. The prisoner will have a right to show that the view taken by the Superintendent of Jail was not just and proper and that the prisoner will be entitled to make submissions both on facts and law. The submissions that may be made by the prisoner are required to be taken into consideration by the I.G. Prisons before passing the order of confirming the punishments mentioned in the Rule. If such requirement is not read into the rule, the rule will be exposed to the vice of arbitrariness and it would be ultra vires the provisions of Article 14 of the Constitution. Therefore, to save the constitutionality of the rule, the requirements of principles of natural justice are required to be read into the rule.

7. Here, one may refer to the provisions of Section 366 of the Criminal Procedure Code. As per this provision, the Court of Sessions when passes an order of sentence of death is required to submit the papers to the High Court and the sentence of death cannot be executed "unless it is confirmed by the High Court." The section does not provide that before the punishment of sentence of death is accepted and confirmed by the High Court, the High Court shall afford an opportunity of being heard to the accused. Even, so the accused is afforded an opportunity of being heard. He is elaborately heard both on fact as well as on law. He is also even entitled to show that the decision arrived at by the Sessions Court is not sustainable on facts and law and that he is entitled to be acquitted. Similarly, when the Inspector General of Prisons confirms any of the sentences mentioned in Rule 1985 of Bombay Jail Manual, he is required to afford an opportunity of being heard to the prisoner concerned.

8. In the instant case, it is an admitted position that before confirming the punishment and modifying the order of sentence passed by the Superintendent of Jail, the petitioner-prisoner has not been heard. It is settled legal position that the decision arrived at in contravention of principles of natural justice is illegal and void. Therefore, the order passed by the I.G. Prisons dated February 22, 1989 is liable to be quashed and set aside.

9. In the result, the order of I.G. Prisons dated February 22, 1989 confirming the order of punishment imposed by the Superintendent Jail with modifications is quashed and set aside. The I.G. Prisons is directed to proceed further with the proposal of punishment made by the Superintendent of Jail in accordance with law bearing in mind the observations made and the principles enunciated in this judgment. The I.G. Prisons shall take decision as regards the confirmation of the sentence latest before March 16, 1990. It is clarified that after the order is passed by the I.G. Prisons and if the petitioner feels aggrieved by the same. He will be at liberty to challenge the legality and validity of the same on facts as well as on law points before the appropriate forum. It is also clarified that before the I.G. Prisons as and when the petitioner is called for making submissions before the confirmation of the order of punishment, the petitioner will be at liberty to

make submissions on facts as well as on law points as it may be available to him.
The petition stands allowed accordingly. ,Rule made absolute accordingly.