

(2014) 12 AP CK 0075
In the Andhra Pradesh High Court
Case No : Writ Petition No. 33640 of 2014

Irfan Ali

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 142, 226, 32

Citation : (2015) 1 ALD(Cri) 894 : (2015) 1 ALT 1

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : S. Nanda, Advocates for the Appellant

Judgement

Vilas V. Afzulpurkar, J.—Petitioner is convict No. 3266 and serving life sentence at Central Prison, Cherlapally, Rangareddy District. Petitioner states that he has completed 17 years in the prison including the remand and the remission and has sought release on parole on the ground of serious illness to his wife. Accordingly, under G.O. Rt. No. 734, dated 24.12.2014 (sic), he was granted parole for one month from 13.06.2014 and to surrender back on 14.07.2014. Petitioner, however, made application for extension of parole by four months in view of his wife's chronic illness. While the said request was pending before the Government and no orders were passed, petitioner filed W.P. No. 19080 of 2014. The said writ petition was disposed of by order dated 11.07.2014 directing the Government to pass appropriate orders on his representation and in the meanwhile, the parole of the petitioner was extended till 31.08.2014. Subsequently, petitioner filed another WP. No. 25031 of 2014, which was also disposed of on 01.09.2014 granting parole upto 15.09.2014 and directing Government to take appropriate decision on his application for extension. Questioning that order, petitioner filed WA(SR). No. 137044 of 2014 and WAMP No. 3036 of 2014, which were disposed of on 23.09.2014 by the Division Bench directing that the parole granted to the petitioner shall stand extended till disposal of the representation pending with the Government and the extension

was granted subject to the condition that petitioner shall not leave Hyderabad without permission of the court and shall report to Habeeb Nagar Police Station once in every week on Saturday between 09:30 am and 10:30 AM. Petitioner was also directed to inform the Station House Officer, Habeeb Nagar Police Station, as to the place of his residence. Meanwhile, since the extension of parole was expiring, petitioner approached this court by another WP. No. 27200 of 2014, which was disposed of by this court on 15.09.2014 extending the parole of the petitioner up to 22.09.2014. Thereafter, the Government passed the impugned order rejecting the parole of the petitioner vide G.O. Rt. No. 321 Home (Legal) Department dated 16.10.2014 and questioning that, petitioner filed the present writ petition. As the learned Assistant Government Pleader sought time to file counter, the parole of the petitioner was being extended from time to time and the last extension is till 15.12.2014.

2. Respondent No. 1 has since filed a counter affidavit. I have heard learned counsel for the petitioner and learned Assistant Government Pleader.

3. Learned counsel for the petitioner points out that the order impugned i.e., G.O. Rt. No. 321 dated 16.10.2014 does not record any reasons while rejecting the petitioner's request. As such, according to the learned counsel, there is no consideration of petitioner's application for extension of parole. She also placed strong reliance upon decision of the Supreme Court in *Sunil Fulchand Shah Vs. Union of India and Others*, wherein the Supreme Court considered the grant of parole in the case of recording conviction under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974) and in that context held in paragraph 19 as follows:

"...The bar of judicial intervention, to direct temporary release of a detenu would not, however, affect the jurisdiction of the High Courts under Article 226 of the Constitution or of this Court under Articles 32, 136 or 142 of the Constitution to direct the temporary release of the detenu, where request of the detenu to be released on parole for a specified reason and/or for a specified period, has been, in the opinion of the Court, unjustifiably refused or wherein the interest of justice such an order of temporary release is required to be made...."

4. Learned counsel also placed reliance upon another judgment of this court reported in *M. Rajender alias Raju Vs. State of Andhra Pradesh and Others*, wherein this court considered in detail the requirement of giving reasons while passing the orders. Relevant portion in paragraph 7 is as follows:

"...Law is well settled that the requirement to record reasons by an administrative authority exercising quasi-judicial functions, can be regarded as one of the principles of natural justice. Such requirement serves a salutary purpose in excluding arbitrary actions and assuring fairness in the decision making, vide the decision in *S.N. Mukherjee Vs. Union of India*,"

5. Learned Assistant Government Pleader, however, seeks to justify the impugned order on the basis of paragraph 16 of the counter affidavit which

refers to Rules 17 and 21 of the Suspension of Sentence on Parole Rules, 1981 and submits that in the teeth of those Rules, the extension could not have been considered by the Government.

6. It is, however, to be noticed, as mentioned above, that the order impugned clearly states in the first paragraph about the history of the case in brief and in the later paragraph, it merely refers to orders of extension of parole granted by this court in the various writ petitions from time to time. Thereafter, however, I find only one sentence "...If the prisoner does not come and surrender himself in the prison on the due date, the Deputy Commissioner of Police West Zone, Hyderabad is directed to arrest and send him to prison". I, therefore, do not find any reason as to why request of petitioner is rejected, as held by this court in the decision quoted above, as it was imperative for the Government to have passed a reasoned order accepting or rejecting the request of the petitioner for grant of parole. Even Rules 17 and 21 of the Suspension of Sentence on Parole Rules, 1981, which are relied upon in the counter affidavit, are also not referred to nor are discussed as to why the petitioner's case does not fall in the exceptional circumstances referred to in the request. I am therefore, unable to sustain the impugned order. Accordingly, the impugned order is set aside and the matter is remitted back to the Government for fresh consideration to consider the reasons given by the petitioner in his application for extension and also keeping in mind the relevant Rules of the State and pass a reasoned order on the request of the petitioner on or before 31.12.2014. The parole of the petitioner shall stand extended till 31.12.2014, on the same conditions as granted by the Division Bench in WA(SR). No. 137044 of 2014 and WAMP No. 3036 of 2014, referred to above, within which time the Government is required to pass an appropriate order as directed above.

The writ petition is, accordingly, allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.