
(2007) 01 RAJ CK 0032
In the Rajasthan High Court

Jameel Ahmed

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Explosive Substances Act, 1908 — Section 5
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 6

Citation : (2007) CriLJ 2009 : (2007) 5 RCR(Criminal) 874

Hon'ble Judges : Shiv Kumar Sharma, J;Raghvendra S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner has challenged an order dated 24-9-2000 whereby the State Government has withdrawn its earlier letter dated 28-10-1998 wherein the State had given the benefit of parole, Open Camp Jail and Remission to the prisoners convicted under NDPS Act and TADA Act.

2. The brief facts of the case are that vide judgment dated 30-11-2002, the Judge, Designated Court, TADA, Ajmer had convicted the appellant u/s 6(1) of TADA u/s 5 of the Explosive Substances Act and u/s 9-B(1) B and (vii) and u/s 9-C of the Explosive Act and had sentenced him for different terms of imprisonment, the maximum being 5 years of R.I. Till 16-7-2006, the petitioner has undergone an incarceration of 4 years and 23 days. According to the petitioner vide letter dated 28-10-1998, the benefit of remission, parole & Open Camp Jail was extended to prisoners convicted under NDPS Act and TADA Act. However, vide order dated 29-4-2000, the said letter was revoked. Hence the benefit of parole, Open Camp Jail & Remission was denied to prisoners convicted under the aforementioned Acts. According to the petitioner such a denial is arbitrary and unreasonable as no reasons have been stated by the State for denying the said benefits.

3. Mr. Suresh Sahni, learned Counsel for the petitioner has argued, with all the

vehemence at his command, and has contended that personal liberty can be deprived only by a procedure established by law. According to him the Rajasthan Prisoners Rules 1951 provide for grant of remission to the prisoner. Initially, vide letter dated 28-10-1998, the Government had granted the grant of remission, parole, Open Camp Jail to the convicted of TADA and NDPS Act. However, vide circular dated 29-4-2000 the said privileges have been denied. According to the learned Counsel Rule 4 of the Rajasthan Prisoners (Release on Parole) Rules, 1958 prescribes ineligibility of the prisoners. Under the rules, prisoners convicted under NDPS and TADA have not been declared ineligible for the benefit of parole. Therefore, there is no express bar that the prisoners are not entitled to be released on parole, (though they have completed one fourth of their sentence). They are entitled to be released on parole under Rule 9 of the Rules of 1958. According to the learned Counsel since Rules of 1958 themselves do not make a prisoner convicted of TADA ineligible of remission or parole, the State cannot deny the benefit of remission or of parole by withdrawing a privilege given to them earlier. Lastly, according to the learned Counsel parole and remission are the rights of the prisoners. Such a right cannot be denied without a procedure established by law. For, such a denial would be in violation of Article 21 of the Constitution of India.

4. On the other hand, Mr. M.L. Goyal, learned Dy. G.A. has supported the impugned circular.

5. We have heard both the learned Counsel and have perused the impugned circular.

6. Remission and parole are not vested rights of the prisoners. In fact, they are privileges granted by the State to the convicted prisoners. Therefore, a convicted prisoner cannot claim these two privileges as their vested rights. Jurisprudentially, there is a difference between right and privilege. Rights are classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by a Statute. On the other hand, a privilege is granted by the State under certain conditions and privilege by their very nature can equally be taken away by the State. Whereas rights are universal in nature, privileges can be given to certain specific groups and need not necessarily be universal in its application. Remission and parole are part of the reformatory theory of punishment. Since they are privileges granted by the State, it is not necessary that all the convicted prisoners must have the privilege extended to them. Certain categories of prisoners can be refused these privileges. In case the refusal is based on intelligent differentia and has a nexus to the object of the Rules, the refusal is not violative of Article 14 of the Constitution of India. Since a privilege can be denied under the law, it is procedure established by law, therefore, such a denial would not be violative of Article 21 of the Constitution of India. Undoubtedly, the freedom of movement is cribbed, cabined and confined by the very act of imprisoning a prisoner. Therefore, the personal liberty is curtailed by judicial order under a procedure

established by law. It is a policy decision of the State to decide the category of prisoners who are entitled to the privilege of remission and parole and those who are disentitled for such a privilege. Considering the fact that TADA was a law enacted for the purpose of controlling the terrorist activities in India, considering the fact that terrorist activities shake the very foundation of the nation, considering the fact that such activities are an attack on the integrity and unity of the nation, considering the fact that such activities entail the killing of innocent women and children, considering the fact that such activities pose a serious threat to the survival of the nation as a whole, the State has rightly deprived prisoners convicted under TADA of the privilege of remission and parole and Open Camp. Those who conspire and threaten the nation do not deserve any mercy from the law or from the State.

7. In the result, there is no force in this petition. It is, hereby, dismissed.