
(2011) 12 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 16890 of 2011

Kishore @ Ram Kishore

APPELLANT

Vs

The State Of Rajasthan and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Rajasthan Prisoners Open Air Camp Rules, 1972 — Rule 3

Citation : (2011) 12 RAJ CK 0058

Hon'ble Judges : Narendra Kumar Jain, J;Bela M. Trivedi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Mr. Rajendra Yadav, Government Advocate accepts notice on behalf of the respondents. Two sets of writ paper book have been supplied to him.
2. At the request of learned counsel for the parties, arguments were heard and writ petition is being disposed off finally.
3. Convict-petitioner has preferred this writ petition to set aside impugned order dated 05.05.2010 (Annexure-3) qua the petitioner, whereby his application for sending him to Open Air Camp, Sanganer has been dismissed on the ground that he is not eligible in view of Rule 3 (h) of the Rajasthan Prisoners Open Air Camp Rules, 1972 (for short "the Rules of 1972"), as he is 68 years of age, i.e. above 60 years.
4. Submission of learned counsel for the petitioner is that Rule 3 of the Rules of 1972 has been considered and interpreted by this Court in number of cases and this Court has taken a view that Rule 3 is not mandatory but it is directory and the word, "Ordinarily" has been interpreted as "Not Necessarily", therefore, only on this ground alone, the application of the petitioner could not have been dismissed.
5. Learned counsel for the State does not dispute the legal position and the

judgments of this Court, wherein a view has been taken that the word "Ordinarily" used in Rule 3 of the Rules of 1972 does not mean "Necessarily", and Rule 3 is directory.

6. We have considered the submissions of learned counsel for the parties.

7. This Court in *Kishna & Anr. Vs. State of Raj. & Ors.* 2004 (4) WLC (Raj.) 582, has held that Rule 3 of the Rules of 1972 is directory. A reference may also be given in this regard to D.B. Civil Writ (Parole) No. 14542/2009 (*Man Singh Vs. State of Raj. & Ors.*) decided on 16.12.2009.

8. After considering all the facts and circumstances of the case, we are of the view that the word "Ordinarily" used in Rule 3 of the Rules of 1972 does not mean "Necessarily". In these circumstances, the case of the prisoners, who are ordinarily not eligible under Rule 3 of the Rules of 1972 should also be considered by the Prisoners Open Air Camp Advisory Committee.

9. In these circumstances, we are of the view that case of the petitioner is also liable to be considered for sending him to Open Air Camp.

10. Consequently, writ petition is allowed. Impugned order dated 05.05.2010 qua the petitioner is set aside and the respondents are directed to consider the case of the petitioner for his transfer to Open Air Camp at the earliest.

11. It is needless to mention that we have not examined the merits of the case of the petitioner and it will be open for the Prisoners Open Air Camp Advisory Committee to examine the case of the petitioner independently, as each case has to be decided on the basis of facts and circumstances of that particular case and it should not be understood that we have given a direction to send the petitioner to Open Air Camp.