

(1984) 07 SHI CK 0004
In the High Court Of Himachal Pradesh

Nawal Thakur

APPELLANT

Vs

Brahmu Ram

RESPONDENT

Date of Decision : 10-07-1984

Acts Referred:

Citation : (1985) CriLJ 244 : (1984) 13 ILR HP 381

Hon'ble Judges : P.D. Desai, C.J;H.S. Thakur, J

Bench : Division Bench

Judgement

P.D. Desai, C.J.—The petitioner's allegation that his two co prisoners are being required to carry buckets of water to the residences of the Jail Officers is admitted in the affidavit in-reply. It has been admitted that Amar Singh and Keshav Ram, who are undergoing sentences of rigorous imprisonment have been detailed to supply water to the quarters occupied by the Jail Officers Reliance has been placed in the said affidavit upon the provisions of Para702 read with the Explanation to Para 703 of the Superintendence and Management of Jails in the Punjab, as applicable to Himachal Pradesh (hereinafter referred to as "the ManuaD, in order to justify the services being taken accordingly from the two prisoners.

2. Para 702 of the Manual reads as under :

Small detachments of the sweeper and water-carrier gangs may be permitted to clean out and supply water to the quarters occupied by jail officers (except those of the Superintendent), twice a day ; each house shall be visited in turn and the prisoners not allowed to separate or lag behind.

Para 703 reads as under :

No prisoner shall at any time be employed by any officer of the jail, or other person ; on any private work or service of any kind whatsoever :

Provided that nothing in this rule shall be deemed to prohibit the employment of any prisoner on any work carried on within the walls of the jail, in the ordinary

course of any jail industry, with the knowledge and permission of the Superintendent and subject to the payment of the usual charges for such work

Explanation : For the purposes of this rule " private work" does not include the supplying of water to, or the cleansing of the quarters occupied by, any subordinate officer, under the orders of the Superintendent

3. The Supreme Court as well as this Court have repeatedly observed that Fundamental Rights do not flee a person as he enters the prison although they may suffer shrinkage necessitated by incarceration. In other words, convicts are not by mere reason of the conviction, denuded of all the Fundamental Rights which they otherwise possess. Whether inside prison or outside, a person is not deprived of his guaranteed freedoms save by methods right just and fair.

4. Provisions such as those made in Para 702 read with the Explanation to Para 703 of the Manual are, prima facie, violative of Art 21 of the Constitution because they could be regarded as an infraction of liberty or life in its wider sense without prescribing in respect thereof by law a procedure which is right just fair and reasonable. In fact those provisions involve forced labour for a prisoner because no payment is contemplated to be made for such work, although, for other work within the jail, which could be classified as jail industry, payment at the usual rate is required to be made. Employment of a prisoner for such private work of menial nature against his will and without remuneration also offends human dignity Which again is infraction of life and liberty as understood in its wider sense. Besides, such provisions also, prima facie, violate Article 14 of the Constitution because they are arbitrary, irrational, unjust and unfair in their operation.

5. Under the circumstances, the operation of Para 702 and the Explanation to Para 703 of the Manual is suspended with immediate effect The State Government is directed to issue instructions forthwith to all Jail Authorities in the State not to take from any prisoner the work of the nature contemplated by Para 702 and the Explanation to Para 703 of the Manual The State Government will also immediately take up for consideration the question of the repeal of provisions of Para 702 read with Explanation to Para 703 of the Manual and such or similar provisions of anachronistic nature in the light of the observations made hereinabove and a report as regards the action taken in the matter will be placed on the record of this proceeding on or before July 30, 1984.