
(2007) 01 AHC CK 0106
In the Allahabad High Court

Rajendra Prasad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 433

Citation : (2007) 2 ADJ 228

Hon'ble Judges : Shiv Shanker, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Since both the aforesaid writ petition are identically placed and connected and have been heard together, the same are being decided by this common judgment having binding effect upon both the matters.

2. These writ petitions are made challenging the order passed by the Special Secretary, Chikitsa Anubhag-8, Secretariate, U.P. Lucknow on 31st December, 2004 refusing to commute the sentence by exercising power u/s 433(d) of the Code of Criminal Procedure (hereinafter called as "Cr.P.C.") as per the recommendation made by the High Court vide order dated 28th April, 2004 in the revisional jurisdiction u/s 397/401 Cr.P.C. i.e. Criminal Revision No. 763 of 1985 (Rajendra Prasad v. State of U.P.) and Criminal Revision No. 764 of 1985 (Radhey Shyam v. State of U.P.) along with other matter being Criminal Revision No. 762 of 1985 (Lajja Ram alias Lila Ram v. State of U.P.). However, so far as the Criminal Revision No. 762 of 1985 in connection with Lajja Ram alias Lila Ram is concerned, the same is not before us. Therefore, our consideration of the cause is only restricted to the others i.e. Rajendra Prasad and Radhey Shyam respectively in Criminal Revision No. 763 of 1985 and Criminal Revision No. 764 of 1985. So far as the other prayer is concerned, the same is in respect of release of the additional fine of Rs. 5,000/-, which has already been deposited by the petitioners in pursuance of the direction given by the Court in the aforesaid

order dated 28th April, 2004.

3. From the order dated 28th April, 2004 as passed by the learned Single Judge in connection with the revisions u/s 397/401 Cr.P.C, we find that in the case of food adulteration learned Court below scaled down the period of sentence of six months to three months simple imprisonment upon imposing fine of Rs. 2000/-. The High Court in the aforesaid order has imposed additional fine with a direction upon the revisionists to approach the State Government u/s 433(d) Cr.P.C. for commutation of simple imprisonment for the aforesaid period to fine. The recommendation of the learned Single Judge in the revision application is as follows:

I, therefore, recommend the State Government to release the applicant revisionists by taking into account the deposit of additional fine of Rs. 5000/- from each of the accused and that an appropriate order be passed by the State Government to that effect within a period of three months. The applicant revisionists shall deposit in the trial court under two heads the fine imposed by the court i.e. Rs. 2000/- each as also additional fine of Rs. 5000/- each within a period of four weeks from today and apprise the State Government of having discharged their obligation. On doing so the applicant revisionists need not be arrested. Revisions are disposed of accordingly.

4. The cause of action of the petitioner is that the State received the additional fine of Rs. 5,000/- but refused to convert the simple imprisonment to fine without assigning any reason. In the order impugned the appropriate Government expressed view that it would not be appropriate to convert the simple imprisonment to fine.

5. The word "may" has been specifically incorporated u/s 433 for the appropriate Government to commute sentence. We are well aware by the interpretation of law that "may" includes "may not". Therefore, one part is crystal clear that appropriate Government can not be compelled to pass a favourable order. Hence, no enforceable legal right can arise for the purpose of invocation of writ jurisdiction. The petitioner is fortified with three judgments of the Supreme Court reported in *BADRI PRASAD V. STATE OF MP* N. Sukumaran Nair Vs. Food Inspector, Mavelikara, and Santosh Kumar Vs. Municipal Corporation and Another, . But all the three matters arose out of criminal appeals. Yet the parties were directed to approach the State Government under Clause (d) of Section 433 Cr.P.C. No such judgments say that if after recommendation the appropriate Government refuses to pass an favourable order, a valuable legally enforceable right can arise to approach the writ court. In other words, no such judgments deal with post scenario effect of the refusal to attract writ jurisdiction.

6. Learned Counsel appearing for the petitioner has given very much emphasis on the point that unless and until ground for refusal is backed by the reason/s, the same will be violative of principle of natural justice.

7. Learned Counsel appearing for the petitioner relied upon various judgments

reported in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, *Madhya Pradesh Industries Ltd. v. Union of India and Ors. Bharat Raja Vs. The Union of India (UOI) and Others*, *The State of Gujarat Vs. Patil Raghav Natha and Others*, *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, . *Travancore Rayon Ltd. Vs. Union of India (UOI)*, *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, . *Krishna Swami Vs. Union of India and another*, . *Subhash Chandra Choubey and Others Vs. State of Bihar and Others*, . *Vasant D. Bhavsar Vs. Bar Council of India and Others*, . and *MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another*, to establish the necessity of giving reasons at the time of passing order by the administrative authority in discharging judicial or quasi judicial functions. It is specifically said that it is an obligation upon the authority to give reasons. Reason means passing of a speaking order. Obligation to record the reasons operates against the possible arbitrary action. Reasons are links between the material and conclusion. It is like the principle of audi alteram partem. It is necessary for the purpose of making a rational nexus with the conclusion. Reason substitutes subjectively by objectively. It is a dispensable part of the sound judicial system. Undoubtedly the judgments are prescribing the correct proposition of law. But those are either arising out of disputes of civil nature or arising out of disciplinary proceeding which is existing. We also come to know from *S.N. Mukherjee Vs. Union of India*, , as referred by the learned Government Advocate, that in view of expanding horizon of the principles of natural justice, the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by the administrative authority. But there are certain exceptions. According to us, rules of natural justice are not embodied in the law yet it is an acceptable principle but that does not necessarily mean that it will override the legal necessity. Civil orientation of law can not be applied in commuting sentence of a convict. Power u/s 433 Cr.P.C. is a special power given to the appropriate Government to show mercy to the persons sentenced in the appropriate case. Thus, the Government can not be compelled to give reason of refusal by exercise of power under Article 226 of the Constitution of India. A person, who approaches the appropriate Government either directly or through a process of the Court, is, in fact, praying for mercy by such approach as a convict after completion of the trial and the decision taken by the appropriate court of law on the basis of the evidence. F.I.R. was lodged. Charge-sheet was framed. Prosecution was initiated. A trial was conducted. Ultimately the petitioners were convicted. These are the reasons to show mercy or not to show mercy by the appropriate Government. For an example, if after the death sentence one applies to the President of India for mercy and refused, can it be challenged before a writ court by saying that refusal is not backed by reasons? According to us, refusal is dependable upon the totality of the case but not independently ignoring the reasons of conviction. A convict has no right to seek explanation it is far to say such right is unfettered or not.

8. Moreover, reason may not be recorded in the communicating letter but based on the materials. If the material says that it would not be proper to commute to fine on the facts and circumstances, it is enough reasoning of the cause. No more reasons are required when the refusal is based on the entirety. The writ court is made for the purpose of establishing fundamental right and/or protecting from violation of principles of natural justice amongst others. Refusal to commute sentence by the appropriate Government is neither a fundamental right nor violation of principles of natural justice. The appropriate Government may or may not commute the sentence once imposed by the Court following the due process of law. The Supreme Court in 1997 SCC 88 Central Bureau of Investigation and Anr. v. Rajesh Gandhi and Anr. has already held that an accused can not have a say in who should investigate the offence he is charged with since it does not attract the principles of natural justice. If an useful thought is given on the criminal orientation of law applying the same principle, it would not be out of place to mention that a convict can not have better right than an accused.

9. Therefore, in totality we can not pass any affirmative order in favour of the petitioner/s. Hence, the writ petitions stand dismissed. Interim order, if any, stands vacated.

10. No order is passed as to costs.

11. However, passing of this order will not in any way affect the petitioner/s to approach any further to any competent authority of the State including the Chief Secretary for commuting sentence once again or for refunding the fine, if deposited since having no bar in such process.

12. Original records of the case are hereby returned to the learned Additional Government Advocate.