
(2006) 05 AHC CK 0235

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 1021 of 2003

Ram Deo, Kali Charan and Kripa Shanker

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 161

Citation : (2006) 9 ADJ 564 : (2006) CriLJ 3328

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

Bench : Division Bench

Advocate : Devendra Swaroop, for the Appellant; A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Amitava Lala and Shiv Shanker, JJ.—The petitioners made the following prayers:

a. issue a writ, order or direction in the nature of mandamus directing the respondents not to arrest the petitioners and refrain from taking any action revoking their orders of release under the Government Order dated 11.1.2000 to 25.1.2000.

b. issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the present case.

c. award the cost of the petition to the petitioners.

2. The aforesaid writ petition was filed on 17.2.2003 when the aforesaid two Government Orders were already struck down by Division Bench of this Court in the matter of Mirza Mohammad Husayn v. State of U.P. 2002(44) ACC 81 (SC). Therefore, the Government Orders, which were struck down by Division Bench of this Court were no more available at the time of making this writ petition. Hence, the only relevant part of consideration is whether the petitioners will be arrested or not. Factually, they were convicted and their orders of conviction were upheld by the appellate court. The Government Orders, which were struck down by the

High Court, were general in nature, applicable in respect of all the persons, who are in jail having 60 years age for the male prisoners and 50 years age for the female prisoners. The Division Bench held that for the purpose of pardoning individual cases are to be considered by the Government in view of Article 161 of the Constitution of India. Another Division Bench followed the ratio as reported in 2004 (49) ACC 2641, Bachchey Lal v. State of U.P., Lucknow and Ors.

3. Article 161 of the Constitution of India speaks that the Government has power to grant pardon etc. and suspend to commute sentences in certain cases. We are also of the view such power is to be exercised on the basis of individual cases and following process laid down in the Code of Criminal Procedure. It is also significant to note that the appropriate Government may or may not accept the pardon. Therefore, at this juncture, the High Court cannot calculate the period of imprisonment and hold by itself that on the individual cases of the petitioners, they will be sent for further imprisonment or they will be pardoned. It is for the essential function of the Government nor for the writ court. Striking down by the general order passed by the Government does not mean considering the individual cases, has been usurped. Therefore, remedy is open for the petitioners to approach before the appropriate Government for consideration of their individual case.

4. Thus, having heard the learned Counsels appearing for the contesting parties and in disposing of the writ petition, we direct the petitioners to approach the Government individually annexing copy of the order within a period of one month from this date. Upon receiving such individual application/s, appropriate Government will consider the same within a period of one month from the date of such application/s by giving fullest opportunity of hearing and taking decision in accordance with law. For the purposes of effective adjudication, a copy of the writ petition along with its annexure can also be treated as part and parcel of the application.

5. The writ petition stands disposed of.

6. However, no order is passed as to costs.