

(1997) 01 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27695 of 1995

Ramaswamy

APPELLANT

Vs

The Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 30-01-1997

Acts Referred:

Citation : (1997) 1 ALT(Cri) 928 : (1997) CriLJ 3256

Hon'ble Judges : Syed Shah Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Advocate : K. Sesharajyam, for the Appellant; A.A.G., for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The short question that arises for consideration in this writ petition is whether the requirement of giving an opportunity to show cause, contemplated in Rule 973 of the Andhra Pradesh Prisons Rules, 1979 (for short "the Prison Rules") can be deemed to have been complied with by affording an oral opportunity.

2. The petitioner is the prisoner (convict No. 9328, Central Prison, Warangal). He was sentenced to life imprisonment. Accordingly he was sent to jail on September 26, 1984. He would complete that sentence on September 25, 2004. However, in view of the orders of the Government issued in G.O.Ms. No. 3 (Home (P) Department) dated 17-1-1995 and G.O.Ms. No. 4 (Home (P) Department) dated 17-1-1995, the petitioner was entitled to be released, if as on January 14, 1995 he had undergone ten (10) years of imprisonment after granting remission. The petitioner claimed, that he had complied with the requirements of the Government Orders and sought a direction to the respondents to release him from the prison.

3. In the counter-affidavit, it is stated, inter alia, that the petitioner has completed, after taking into account the period of remission, only nine years, nine months and twenty two days as on 14-1-1995. It is also mentioned that the petitioner has over-stayed 674 days, when he was released on parole. For that

he was punished by imposing cut of remission of 1245 days and he was also removed from the remission roll. The punishment was imposed under Rule 973 of the Prison Rules.

4. Rule 973 of the Prison Rules reads as follows :

973. If a prisoner who is released on furlough/leave commits a breach of any of the conditions of furlough/leave the following punishments or any of them may, in the discretion of the Superintendent of the Prison be awarded to the Prisoner, after giving him an opportunity to show cause as regards the breach of the conditions :-

1. A maximum cut of five days remission for each day of overstay.
2. Withholding the concession of either interviews or letters or both a maximum period of three months.
3. Non-inclusion of furlough/leave period towards sentence.
4. Warning.
5. Reduction from the grade of "Night Watchman" or "Convict Overseer" or "Convict Warder" to convict if applicable.

Provided that if a prisoner who is released on furlough/leave does not return to the prison at the time specified in that behalf he may be arrested by any Police Officer and brought back to prison to undergo the sentence.

5. From a plain reading of the above Rule, it is clear that if a prisoner, who is released on furlough or leave, is guilty of breach of any of the conditions of furlough/leave, the Superintendent of the Prison may award any of the following punishments after giving him an opportunity to show cause with regard to the breach of conditions. The punishments for breach of any of the conditions of furlough/leave are as follows :

1. A maximum cut of five days remission, for each day of overstay.
2. Withholding the concessions of either interviews or letters or both a maximum period of three months.
3. Non-inclusion of furlough/leave period towards sentence.
4. Warning.
5. Reduction from the grade of "Night Watchman" or "Convict Overseer" or "Convict Warder" to convict if applicable.

The proviso entitles the police to arrest the prisoner who has committed the breach of condition of furlough and bring him back to the prison to undergo the punishment.

6. In the counter affidavit, it is stated that the petitioner was given an oral

opportunity to show cause against the breach of condition, viz., overstay during the period of parole.

7. Smt. Sesharajyam, learned counsel for the petitioner, submits that the opportunity to show cause, under Rule 973 of the Prison Rules, has to be given in writing and that was not done. Sri Narender, learned counsel appearing for the learned Additional Advocate General, contends that in the jail, the practice is to give an oral opportunity and accordingly the petitioner was also give an oral opportunity.

8. We may add in the reply affidavit filed by the petitioner giving of oral opportunity is denied.

9. Having regard to the tenor of the rule, in our view, giving of opportunity can only mean giving notice in writing, calling upon the petitioner to show cause with reference to the alleged violation of the condition which should be stated in the notice and it should also be stated what punishment is proposed to be imposed from among the punishment mentioned in Rule 973 of the Prison Rules, referred to above, duly specifying the time within the cause should be shown, The authority should take into consideration the nature of the condition breached and its impact on the jail discipline, the reason given by the prisoner, his past conduct including violation of Conditions, if any, in the past and then impose reasonable and just punishment which should neither be too lenient nor disproportionate to the gravity of the breach. We would make it clear that cut of remission of five days is the maximum penalty and the same need not be imposed in every case. Having regard to the nature of the breach, the reason for the breach explained in the explanation, the cut of can be imposed, which should not, in any, event, exceed five days. It is always open to the Jail Superintendent to impose cut of less than five days having regard to the above said circumstances. No mathematical precision can be demanded in such cases, what all is required is a fair and reasonable consideration of all the facts and passing of order in writing supported by reasons. The order should also be communicated to the concerned prisoner.

10. Admittedly, in this case no such procedure has been followed. We, therefore, hold that imposing the punishment of cut of as many as 1245 days is illegal and unsustainable. We leave it open to the Superintendent of Prisons, if he proposed to impose the cut of remission for the above said breach of condition to issue a show cause notice to the petitioner in writing, calling upon him to submit his explanation within a reasonable time in writing, consider the same as to how much cut of remission should be imposed in the light of the above observations.

11. Inasmuch as it has been seen that the requirements of G.O. Ms. No. 3 (Home (P) Department) dated 17-1-1995 and G.O.Ms. No. 4 (Home (P) Department) dated 17-1-1995, referred to above are not fulfilled in the case of the petitioner, he is not entitled to be released from the prison.

12. The writ petition is partly allowed as indicated above. There shall be no order

as to costs.

13. Petition partly allowed.