
(1993) 12 MAD CK 0064
In the Madras High Court
Case No : H.C.P. No. 1230 of 1993

S. Selyaraj

APPELLANT

Vs

State of Tamilnadu and 3 others

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Citation : (1994) 1 LW(Cri) 119

Hon'ble Judges : Venkataswami, J;Swamidurai, J

Bench : Division Bench

Advocate : P.V. Bakthavatsalam, for the Appellant; A.N. Rajan, Government Advocate for Respondents 1 to 3 and Mr. K.S. Ahmed, Public Prosecutor (Pondicherry) for 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner who has been convicted to undergo imprisonment for a period of eight years by the learned Sessions Judge, Pondicherry in Bagur Police Crime No. 19/84 has filed this petition for issue of a writ of Habeas Corpus directing the respondents to remit the sentence of six months as per the order dated 31.5.1990 of the Government of Pondicherry in Honour of Dr. Ambedkar's Birth day.

2. The petitioner was lodged in Pondicherry Central Prison. Then on his request, he was transferred to Central Prison at Vellore, North Arcot Ambedkar District on 15.7.1986. His appeal was dismissed by this Court and he is now confined in Central Prison at Vellore from 26.9.1991. According to him, he is entitled to get general remission of six months as ordered by the Pondicherry Government in honour of Dr. Ambedkar's Centenary Celebration. The Government of Pondicherry on his request sent a copy of Pondicherry State Prison Rules stating that the said rules are applicable to prisoners who were convicted in the State of Pondicherry. The respondents have not considered his case for the abovesaid remission. The respondents have considered the remission of six months granted by the Pondicherry Government for another occasion (Chief Minister's Birthday)

on 17.2.1993. But they have unreasonably failed and neglected to consider the six months remission granted to all prisoners for Ambedkar Birthday on 31.5.1990.

3. This Court considered such remissions granted by the Government of Tamilnadu and remitted the sentences even though the prisoners were on bail during the appeal period (i.e. in CrI. R.C. No. 520/87 disposed of on 22.11.1991 by Padmini Jesudurai, J. and in CrI. R.C. No. 380/89 disposed of on 16.12.1992 by Arunachalam, J.). The petitioner has given repeated representations, but they are in vain.

4. The fourth respondent State of Pondicherry represented by its Secretary, Home Department has filed a counter affidavit through the Under Secretary to the Government contending as follows: The petitioner was convicted on 7.3.1985 by the learned Second Additional Sessions Judge, Pondicherry in S.C. No. 19 of 1984 and sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 100/- in default to undergo rigorous imprisonment for three months. On 7.3.1985 he was imprisoned in the Pondicherry Central Prison and he was transferred to Central Prison at Vellore on 15.7.1986. The Government of Pondicherry granted remission of sentence in respect of certain classes of prisoners on the occasion of the Centenary Celebration of Dr. Ambedkar and Paventher Bharathidasan as per G.O. Ms. No. 27, Home Department, dated 31.5.90. The Government of Pondicherry has granted another remission on the occasion of the Golden Jubilee Celebration of Quit India Movement as per G.O. Ms. No. 3, Home Department dated 5.2.1993 and not for the Chief Minister's Birthday as stated by the petitioner in his affidavit. The petitioner also admits that due remission has been given under this G.O. The petition filed by the petitioner is confined only to the remission granted as per G.O.Ms. No. 27 dated 31.5.1990 granting remission for a period of six months to the prisoners who are undergoing sentence for above five years and upto ten years. As on the relevant time granting remission as per G.O.Ms. No. 27 dated 31.5.1990, the petitioner was on bail and the prison officials as per Rule 328 of the Pondicherry Prison Rules 1969 (hereinafter referred to as the rules) could give effect to the remission only in respect of prisoners who are actually confined within the jail premises at the time of issuing the notification and in fact, rule 328(2) of the Rules clearly contemplates that unless the Government specifies that a particular remission applies to those who are released temporarily or on parole, such prisoners cannot make use of the remission. The petitioner was on bail at the relevant time of issuing the said order of remission by the Government and hence he is not eligible as per the rules. Hence the petition has to be dismissed.

5. Learned Government Pleader, Pondicherry State relies upon rules 328 and 329 of the rules which are quoted below: Rule 328 of the rules reads as follows:

Eligibility. (1) The Government Remissions can be awarded to such prisoners or categories of prisoners as the Government may decide.

(2) In case of prisoners, at the time of general grant of Government Remission who are released temporarily or on parole, specific orders of the Government about the award of this remission to such prisoners are necessary.

Rule 329 of the Rules reads as follows:

When granted Government Remission is granted on occasions of national importance or Public Rejoicing.

There are three kinds of remission, namely, ordinary remission special remission and Government remission. Rule 317 of the rules reads as follows:

317 Scale of ordinary remission. Ordinary remission shall be awarded on the following scales:

(a) For thoroughly good conduct and scrupulous attention to all prison regulations Two days per month.

(b) For due performance of the daily task or work allotted at the prescribed standard Two days per month.

Under R.323 of the Rules special remissions may be awarded for sixty days to prisoners in a year. According to learned Government Pleader, Pondicherry State, the petitioner is not entitled to special remission since at the time of the passing of the relevant Government Order referred to above, the petitioner was on bail and special orders of the Government for the award of this remission to such prisoners are necessary. As per rule 329 of the rules, Government remission is granted on occasions of national importance or Public Rejoicing. So if the Government remission is granted under R. 329 of the rules, rule 328(2) of the rules will not apply. It cannot be said that special remission granted as per G.O. Ms. No. 27, Home Department dated 31.5.1990 is not for a national importance. The said G.O. itself refers to special remission as a token of mercy on the occasion of Centenary Celebration of Dr. B.R. Ambedkar and Paventhar Bharathidasan. Rule 328(2) of the rules does not apply at all the Government remission granted under rule 329 of the Rules on the occasion of national importance. Therefore the contention of the learned Government Pleader Pondicherry State that the petitioner was on bail at the time of passing of G.O.Ms. No. 27 dated 31.5.1990 is unsustainable. The said G.O. Ms. No. 27, dated 31.5.1990 is applicable to prisoners convicted by the Courts of the Union Territory of Pondicherry and High Court at Madras. Admittedly, the petitioner was convicted by the Sessions Court at Pondicherry and subsequently he was transferred to Central Prison at Vellore. G.O. Ms. No. 27, Home Department dated 31.5.1990 would certainly apply to the case of the petitioner also and the non-consideration of the same by the respondents to apply the said G.O. to the case of the petitioner is illegal on the face of the records.

6. In the result, the petition is allowed with costs of Rs. 1,000/-.