

(1992) 09 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9891 of 1992

Smt. B. Shankaramma and Another

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Andhra Pradesh Borstal Schools Act, 1925 — Section 10, 8
Constitution of India, 1950 — Article 14, 16, 226
Criminal Rules of Practice and Circular Orders, 1990 — Rule 98
Penal Code, 1860 (IPC) — Section 302

Citation : (1993) 1 ALT 130

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : M. Surender Rao, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—First petitioner is the mother of the 2nd petitioner, who is adolescent convict undergoing imprisonment for an offence u/s 302 of the Indian Penal Code, committed by him in the year 1987. It is stated in the affidavit that the 1st petitioner hails from a poor family; her husband died when the 2nd petitioner was hardly two years old. Without the support of the husband, the first petitioner had to face difficulty in bringing up the 2nd petitioner and to provide him proper education. It is further stated that the 2nd petitioner studied upto 6th class only in a primary school at Kothapet and because of poverty, further studies could not be prosecuted by the 2nd petitioner. The family occupation of the petitioners is tapping. In order to augment, the family requirement, the 2nd petitioner was engaged in family occupation i.e., tapping of trees and selling the toddy. It is further stated that the 2nd petitioner was convicted and sentenced to undergo imprisonment for an offence u/s 302 IPC by judgment dt.10-4-1989 in Sessions Case No. 73/88 on the file of the learned Sessions Judge, Rangareddy District. Against the conviction and sentence, Criminal Appeal No. 500/89 was

filed and a Division Bench of this court confirmed the finding of the learned Sessions Judge. The 2nd petitioner is undergoing imprisonment right from 10-4-1989 i.e., the date of Judgment in S.C. No. 73/88. It is further stated that the 2nd petitioner is an adolescent and has not even completed 23 years of age as on today. As on the date of commission of the offence, it is averred, he was hardly 18 years. It is further averred that an obligation was cast on the trial Court under Rule 98 of the Criminal Rules of Practice, to consider whether the 2nd petitioner could be sent to Borstal School. It is also stated that the trial court has failed to apply its mind with respect to its powers vested in it u/s 8 of the A.P. Borstal Schools Act, 1925 (for short "the Act"). Under these circumstances, there is miscarriage of justice in so far as the 2nd petitioner is concerned.

2. It is further stated that the petitioners were advised in the year 1990 to make an application to the respondents seeking transfer of the 2nd petitioner from jail to the borstal school, so that he could stay there and reform himself. Under this background, the 1st petitioner seems to have made a representation to the 2nd respondent for considering the case of the 2nd petitioner for sending him to borstal school. On the basis of the application, the Superintendent, Central Prison, Chanchalguda, Hyderabad, seems to have written letter No.CPH/JCI/233/91, dt.9-1-91 to the District Educational Officer, Rangareddy district requesting him to send particulars of age and educational qualifications of the 2nd petitioner. The District Educational Officer in turn seems to have requested the Mandal Revenue Officer, Hayathnagar to furnish the said particulars. It is further averred that the 1st petitioner has obtained from the school bona fide certificate of the 2nd petitioner issued by the Head Master, CUPS, Kothapet (N) to the effect of the age of the 2nd petitioner. It is stated that the Probation Officer, Rangareddy district also seems to have recommended the case of the 2nd petitioner for being sent to borstal school and the Superintendent, Central Prison, Chanchalguda, Hyderabad also seems to have recommended that the 2nd petitioner be sent to borstal school. It is averred that despite receiving all the particulars, there was delay in the respondents taking appropriate action in time. Under these circumstances, W.P.No. 5633/92 was filed in this court. This court by an interim order directed the respondents to consider the representation of the petitioners dt.3-9-1990 and pass appropriate orders in accordance with law for transferring the 2nd petitioner to borstal school. It is now stated that pursuant to the said interim direction, the 1st respondent issued G.O.Rt. No. 2026, Home (Prisons-B) Department, dated 20-6-1992 rejecting to send the 2nd petitioner to borstal school. Questioning the said rejection order in G.O.Rt. No. 2026, the present writ petition is filed.

3. The 1st respondent has filed a detailed counter justifying the rejection order. As on the date of passing the impugned order, the 2nd petitioner had attained the age of 22 years and it was felt that one year period left, is not sufficient for the 2nd petitioner to get himself reformed.

4. Sri M. Surender Rao, learned counsel for the petitioners, while taking me

through the provisions of the A.P. Borstal Schools Act, 1925, contends that the 2nd petitioner is entitled to the benefits, which accrue to him according to this Act. In support of his contention, he has placed before me the decision of a Division Bench of this court in State of Andhra Pradesh and Others Vs. Komalla Krishnaiah, and sought indulgence of this court in view of the above decision.

5. On behalf of the respondents, the learned Government Pleader has stated that the respondents have examined the case of the 2nd petitioner and have come to the conclusion that the 2nd petitioner has a bad company and if he is set free, there is likelihood that he may again have the influence of bad company. This apart, the time left is too short and within which period the possibility of the 2nd petitioner getting reformed is remote. The learned Government Pleader has placed before me the decision of this court in W.A.No. 405/92 dt.21-7-1992, wherein in similar circumstances, the request of the petitioner therein was rejected on the ground that the period available was short.

6. In the judgment cited by the learned Government Pleader, the Division Bench rejected the request of the petitioner on the ground that as per the report available before the District Probation Officer, the date of birth of the petitioner therein was shown as 8-4-1969. By the time the request came up for consideration, he had completed 23 years of age. Under those circumstances, the request was rejected. The Division Bench also held that the petitioner had already completed 23 years of age by the date his request came up for consideration and felt that there was no illegality in rejecting the case of the petitioner therein. In my view, this decision has no application as far as the present case is concerned.

7. To the misfortune of the 2nd petitioner herein, his age seems to have not been brought to the notice of either the trial court, before which the Sessions Case was tried, or the Division Bench of this court, before which CrI. A.No. 500/ 1989 came up for consideration. Had it been brought to the notice of these courts, I am sure, the decision could have been otherwise. It is seen from the averments that the 1st petitioner was advised in the year 1990 about the Borstal Schools Act and the benefits that would accrue to an adolescent offender thereunder. Thereafter the 1st petitioner, being an illiterate woman, has made efforts through various forums, even by approaching this court by way of writ petition seeking a direction to the respondents to consider the case of the 2nd petitioner for transfer to any borstal school.

8. The A.P. Borstal Schools Act, 1925 is an enactment, which specially deals with the adolescent offenders. The purpose for which this enactment is brought out is to see that the adolescent offenders do not get themselves associated with hard-core criminals, but they could be sent to borstal schools, wherein the chances of their reforming are bright under the supervision of trained persons manning the schools. Even the intendment of criminal jurisprudence, in my view, is reformatory, but not deterrent. After all, it is the duty of the society, to see that even hard-core criminals are reformed by giving sufficient opportunity to mend

their ways. Under this background, even hard-core convicts are trained in almost all the jails to reform themselves. This being the intended goal, when dealing with the adolescent offenders, the benefits accrued to them under the Act has necessarily to be extended to such adolescent criminals. During the course of arguments, it was brought to my notice that the 2nd petitioner has successfully completed B.A. (External) examination, which is not disputed. That appeals to me an optimist as I am, I see there is a definite change in the attitude of the 2nd petitioner. He should not be deprived of reforming himself by allowing him to continue to stay along with hard-core criminals. By transferring him to any borstal school, I am sure, the 2nd petitioner would have lot of chances to reform himself in the atmosphere of staying in the borstal school. Under these circumstances, I am inclined to reject the contention of the respondents. I am also not inclined to accept the plea of the respondents that if the 2nd petitioner is set free after completing the period in borstal school, he would again be associated with bad company, in view of the fact that he has successfully completed graduation as a private candidate. This would definitely go to show that there is tremendous improvement in the attitude of the 2nd petitioner. In the circumstances, the impugned G.O. is set aside.

9. Having set aside the impugned CO., what could be the relief that the 2nd petitioner is entitled to in the circumstances where hardly three and half months period is left for his completing 23 years of age from now. No doubt, Section 10 of the Act empowers the Inspector-General to transfer adolescent prisoners to borstal schools and, therefore, normally courts should, at the most, direct the Inspector General of Police to consider the request of the adolescent prisoner to transfer him to borstal school. In the instant case, this court, in W.P.M.P. No. 7148/92 in W.P.No. 5633/92, directed the respondents to consider the case of the 2nd petitioner for sending him to borstal school, which was rejected by the impugned G.O. Admittedly the 2nd petitioner is completing 23 years of age by December, 1992. In my view, it would be a futile exercise if the respondents are again directed to consider the case of the 2nd petitioner for sending him to borstal school, as the time would run against the 2nd petitioner by the time the respondents take a positive decision. Under these circumstances, in my considered opinion, the course left to this court is to direct the respondents to transfer the 2nd petitioner forthwith to any borstal school. My view is also strengthened by the decision of a learned single Judge in W.P.No. 4155/91, which was confirmed by a Division Bench of this court in State of A.P. v. Komalla Krishnaiah (1 supra).

10. In view of the above discussion, I direct the respondents to transfer the 2nd petitioner forthwith from the Central Prison, Chanchalguda, Hyderabad to any borstal school for detention, without standing on technicalities, till he completes the age of 23 years and thereafter to set him at liberty.

11. The writ petition is accordingly allowed. No order as to costs.