

(2013) 01 RAJ CK 0149
In the Rajasthan High Court
Case No : Civil Writ Petition No. 19884 of 2012

Sonu @ Raghuvendra

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) CriLJ 3889 : (2013) 4 RLW 2973 : (2013) 2 WLN 6

Hon'ble Judges : Veerendr Singh Siradhana, J; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Anshuman Saxena with Mr. Omprakash Choudhary, for the Appellant; Rekha Madnani, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Heard finally. Convict/petitioner Sonu @ Raghuvendra S/o Late Shri Kailash Chand Saini, has preferred this writ petition to issue appropriate writ, order or direction, directing the respondents to transfer the petitioner to Open Air Camp.

2. It is contended in the writ petition that petitioner has already served out more than 12 years and 6 months of imprisonment without remission and he became eligible for his transfer to Open Air Camp under the provisions of the Rajasthan Prisoners Open Air Camp Rules, 1972 (hereinafter referred to as "the Rules of 1972"), but neither the application of petitioner is being accepted for his transfer to Open Air Camp, nor the respondents are considering his case to transfer him to Open Air Camp, as he is unmarried and he is being treated as ineligible, in view of Rule 3(m) of the Rules of 1972.

3. The respondents have filed their reply to writ petition mentioning therein that petitioner is unmarried, therefore, in view of Rule 3(m) of the Rules of 1972 he is ineligible for Admission to open air camp. A copy of letter dated 08.01.2013, written by the Superintendent, District Jail, Alwar to the Government Advocate, Rajasthan High Court, Jaipur, has also been annexed as Annexure-R/1, with reply

to writ petition, wherein it is specifically mentioned that since petitioner is unmarried, therefore, he is ineligible for consideration of his case under the provisions of the Rules of 1972.

4. we have considered the submissions of the learned counsel for the parties.

5. From the submissions of the learned counsel for the parties, it is clear that case of petitioner for his transfer to Open Air Camp under the Rules of 1972, is not being considered by the respondents on the ground that he is ineligible because of Rule 3(m) of the Rules of 1972.

6. Rule 3(m) of the Rules of 1972 reads as under:-

3. Ineligibility for admission to open air camp.-The following classes of prisoners shall ordinarily be not eligible for being send to Open Camp:-

(a).....

.....

(m) Prisoners who are unmarried.

7. The Division Bench of this Court in Kishna Vs. State of Raj. and Others, while considering the Rules of 1972, held that Rule 3 is directory in nature. Para 11 of the judgment is reproduced as under:-

11. Coming to the scheme of 1972 Rules it may be noticed that eligibility incorporated in Rule 3 is directory in nature. The persons mentioned in the said rule are although normally not eligible for being sent to Open Camp, they may however be sent when special circumstances exists. In view of the Rules 7,8,9 and 10, the prisoners can keep their families with them in Open Camp. Suitable accommodation for this purpose shall be allotted to the prisoners for this purpose and they shall have to make their own cooking arrangement for their food from their own cooking arrangement for their food from their own earning from the work distributed to them. Work in any form can be allotted to the prisoner.

8. The Division Bench of this Court in Mahendra Kumar Vs. Director General Prisons and Others, considered the word "ordinarily" used in Rule 14 of the Rajasthan Prisoners Release on Parole Rules, 1958 and while following the earlier judgment of Division Bench of this Court in Mohan Lal and Others Vs. Bhawani Shanker and Another, held that word "Ordinarily" does not mean "Necessarily". Para 4 of the judgment is reproduced as under:-

4. A perusal of Rule 14 of the Rules of 1958 would clearly manifest that it is ordinarily that a convict shall not be allowed parole on the ground of stipulated in sub-clause (a) to (d). The word "Ordinarily" does not mean "Necessarily". The language provided in the Rules of 1958 is not mandatory and it is still in the discretion of the concerned authorities to grant parole even though the case of convict may be covered in any of the sub-clauses mentioned above. That apart, the vigor of Rule is set-off if a person has already undergone one fourth of the

sentence including remission and the Superintendent of Jail recommends the case with the consultation of the District Magistrate with special reasons therefor. The petitioner admittedly has undergone one fourth sentence including remissions and the Superintendent, of Police has given reasons which are not at all relevant nor reasonable for rejecting the prayer of parole. No report from the Superintendent of Jail has been obtained. A Division Bench of this Court in the case of Mohan Lal and Others Vs. Bhawani Shanker and Another, has held that, the fact that a prisoner is residing in another State would not be an absolute bar for grant of parole. In the case aforesaid, Clause (a) of Rule 14 of the Rules of 1958 was pressed into service in denying the parole to the petitioner.

9. In view of above judgments of this Court, it is clear that Rule 3 of the Rules of 1972 is not mandatory and is directory in nature and the word used "ordinarily" does not mean "necessarily".

10. The Division Bench of this Court in Geeta Devi Vs. State of Rajasthan, considered the constitutional validity of Rule 3(m) of the Rules of 1972 and declared it as violative of Article 14 of the Constitution of India, being arbitrary and discriminatory. Para 16 of the judgment is reproduced as under:-

16. In totality, we are of the considered opinion that the classification of the prisoners made under Rule 3(m) of the Rules of 1972 on basis of marital status is a irrational and is having no nexus with the object sought to be achieved by the Rules of 1972. The classification impugned is discriminatory and arbitrary too and as such i.e. in violation of Article 14 of the Constitution of India. The Rule concerned, therefore, is declared bad and as such is set aside.

11. From the above, it is clear that it is a settled preposition of law that Rule 3 of the Rules of 1972 is not mandatory and it is only directory. It is also settled that the word "ordinarily" used in Rule 3 of the Rules of 1972 does not mean "necessarily". Rule 3(m) of the Rules of 1972 has already been declared as discriminatory, arbitrary and contrary to Article 14 of the Constitution of India.

12. Despite aforesaid authoritative pronouncements by this Court, the respondents are acting contrary to the settled preposition of law, which cannot be appreciated in any manner whatsoever. We are seeing that number of writ petitions of this nature are being filed before Principal Seat of this Court at Jodhpur as well as before this Bench at Jaipur and Courts are unnecessarily being burdened with such futile litigation. This Court is issuing directions every time in each case for accepting such applications from convict and to consider the same as per law, resulting in wastage of precious time of this Court.

13. Even otherwise, as per the Rules of 1972, it is a duty of the Superintendent of the concerned jail to accept such application of convict and concerned authority/Committee is required to consider the case of such a convict and in case, he is not found eligible for his transfer to Open Air Camp, then by assigning reasons, his candidature may be rejected, but in any circumstance, the concerned authority cannot refuse to accept and consider the application filed by

a convict.

14. In view of above discussion, we allow this writ petition and direct the respondents to consider the case of convict/petitioner for his transfer to Open Air Camp, in accordance with law, as early as possible, but not later than a period of three months from the date of receipt of a copy of this order. Registry is directed to send a copy of this order to the Principal Secretary, Home Department, Government of Rajasthan, Jaipur and Director General of Prisons, Rajasthan, Jaipur. They are directed to circulate a copy of this order along with necessary instructions to the Superintendent of all the concerned jail in the State of Rajasthan.