

IN THE SUPREME COURT OF INDIA
AT NEW DELHI
CIVIL ORIGINAL JURISDICTION
[under order XXXVIII Rule 12 (1) (d) SCR, 2013]

PUBLIC INTEREST LITIGATION NO. 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF;

Petitioner

Versus

1. Union of India
Ministry of Home Affairs
North Block, New Delhi 110001
Through its Secretary

2. The Ministry of Law & Justice
4th Floor, A-Wing, Shastri Bhawan
New Delhi 110001
Through its Secretary

----- Contesting Respondents

To,

The Hon'ble Chief Justice and His Companion
Justices of the Hon'ble Supreme Court of India at
New Delhi.

The humble Petitioner above named,

MOST RESPECTFULLY SHOWETH;

1. The petitioner herein an Advocate by profession and is also a social activist.

The petitioner is not involved in any pending Civil, Criminal or Revenue litigation, which has or could have a legal nexus with the issue involved in the present petition. Concerned Authorities were not moved for the relief sought in the petition. The petitioner has no personal interest in the issue involved in the present petition. Rights guaranteed under Article 14 and 21 of the Constitution of India are being violated of the Convicts due to lack of framing of proper procedure, rules and guidelines in disposal of the mercy petitions of the convicts.

The petitioner has invoked the extraordinary writ jurisdiction of the Hon'ble Supreme Court of India and High Courts whenever the Fundamental Rights of the Citizens of India are being violated or in danger of being violated or if there is arbitrariness or discrimination in implementation and exercise of the Powers by the State or any

power or function of the State or its Authorities are unguided or un-channelized.

The petitioner by way of the present petition is invoking the extraordinary writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India seeking issuance of appropriate Writ / Order and Directions to the respondents in the nature of Mandamus for framing the specific procedure and guidelines for disposing the mercy petitions within a time bound period.

Since there is no specified written procedure and guidelines for disposing of the mercy petitions within a time bound manner, the same is resulting in arbitrariness in disposal of the mercy petitions. It also leads to undue delay in disposal of the mercy petitions and thus giving rise to public unrest and creates doubts and suspicion in the mind of Public at large. In quite a few cases there is a prolonged delay in disposal of the mercy petitions and in such cases the convicts are able to take the benefit of the delay and get their death sentences converted into imprisonment for life. The victims and their families feel cheated in such cases. For effective

disposal of the mercy petition in a time bound manner and for transparency therein it is must that specific procedure and guidelines for disposing the mercy petitions within a time bound period, are immediately framed and implemented.

1-A That the petitioner has not approached this Hon'ble Court seeking similar relief on any earlier occasion and has not approached the concerned authorities for similar relief.

2. That the power to grant pardon is an extraordinary power. Therefore this power be exercised by the concerned authority with great care and caution. The principles of natural justice demands that this power shall be exercised uniformly in each and every case. Its beneficiaries ought not to be the extraordinary persons but all deserving individuals.

3. That the extraordinary Constitutional power to grant pardon is conferred on the President of India.

4. That since this power is to be exercised only on the aid and advice of the council of ministers therefore there is definitely an apprehension that the power can be misused.

5. That apart from the apprehension of misuse and abuse of this power, the delay in disposal of the mercy petition by the President is another big problem.

6. That as per the Constitution, whenever a crime has been committed and the person concerned has also been punished by the court of law, he may present a mercy petition to the President of India under Article 72 of the Constitution of India.

7. That the petition prepared by the convicted person is to be presented to the President of India. But there is no specific procedure established for the same.

8. That the question as to whether there existed any procedure for filling and the disposal of mercy petitions was answered by the Ministry of Home Affairs on August 9, 2008. The Ministry accepted the fact that there is no written procedure to deal with mercy petition. The then Joint Secretary to the Home Ministry *Mr. Shashi Bhushan* gave this information to Central Information Commission (CIC) in reply to a petition filed by a resident of

Mumbai Mr. Vats Raj wherein he had demanded the information saying that "the procedure for examining mercy petitions by the Ministry of Home Affairs for sending recommendations to the President without delay is of official importance. He also wanted to know if the government is considering any proposal to review and revamp the procedure to speed up the process of dealing with mercy petitions. In reply to the first question the Ministry replied that "

It is pertinent to mention here that there is no written procedure followed for examining power to grant pardon or to suspend, remit and commute death petitions under Article 72 (of the Constitution, dealing with the president's sentences to a condemned prisoner), which could be provided to the appellant. The second question was also answered in the negative. Hence it is clear from the acceptance of the Home Ministry itself that there is no prescribed procedure to deal with mercy petitions.

9. That Since power of pardon under the constitution is executive in nature hence there is no

question of a personal hearing before the authorities, therefore this is quite possible that in absence of a prescribed form, the petitioner who filed a simple application may not provide the complete information because of illiteracy or unawareness or he may also act smartly by hiding certain information. The prescribed form will definitely help the petitioner and the President or the Governor as the case may be.

10 That The position in United States of America is altogether different. If a person has been convicted for an offence he can apply to the President for pardon on a prescribed form, which is easily available along with necessary instructions that are required to be followed.^ Similarly in England if a person is willing to seek pardon he is to file an application before the Home Secretary.

11. That when the United States and England have already framed the rules for the purpose of filing a mercy petition then similar Rules must be framed in India.

12. That The framing of rules is necessary for the purpose of transparency. Moreover a fair procedure

is the natural demand of Article 21 and no procedure itself indicates the possibility of arbitrary exercise of the power.

13. That It is evident that there is no written procedure for dealing with mercy petitions but in practice, whenever a person is punished, he or his relative may submit a mercy petition in writing to the President.

14. That all these petitions are received in the President's Secretariat on behalf of the President and are forwarded to the Ministry of Home Affairs for their comments and recommendations. As mentioned earlier that there is a separate section in the Ministry of Home Affairs where all these petitions are dealt with in details.

15. That After receiving such application the Ministry of Home Affairs scrutinize the application/petition. The scrutiny is done on the following points:

(a). Whether the condemned prisoner has been punished for an offence for which the Governor of the State concerned has power to grant pardon,

(b). If the offence is pardonable by Governor and whether the applicant first of all approached the Governor of the concerned State where he had been punished.

16. That on scrutiny if it is found that the offence committed by the person concerned falls within the pardoning power of the Governor but his application has already been rejected by the Governor or the offence committed by him does not fall under the jurisdiction of the Governor then the Ministry starts working on the Petition. But, if it is found that the offence committed by the person concerned falls within the pardoning power of the Governor and he directly approached the President for mercy then the Ministry of Home Affairs forward the application/petition to the Concerned Governor.

17. That once the scrutiny of mercy petition is complete and it is confirmed that the petition can only be disposed off under Article 72 of the Constitution of India, thereafter, the Ministry of Home Affairs writes to the concerned State or Union Territory Government to give opinion regarding the exercise of pardoning power in case of the person

concerned. On receiving such a letter the concerned government is bound to give its opinion to the Ministry of Home Affairs as soon as possible.

18. That however no specific time period has been fixed for submitting the opinion.

19. That After receiving the opinion from the concerned government i.e. the Government of State or Union Territory, the Ministry of Home Affairs prepares a "*Summary For The President*". This document contains the entire case.

20. That there is no fix format of this summary.

21. That generally it contains the following:

- i. the name, age parentage and address of the convicted person are mentioned in the summary and if the petition is filed by some relative his name and relation with the convict is also necessarily required to be mentioned in the summary.
- ii. the entire facts right from the commission of the crime to the conviction by trial court and the decisions of the appellate courts approached (if any). The

judgments of all courts are discussed at length.

- iii. the grounds taken by the petitioner in his petition for seeking the pardon.
- iv. the summary contains the scrutiny of the case on the basis of the grounds mentioned in mercy petition and the grounds framed by the ministry itself.

22. That although there are no statutory grounds/guidelines made for granting pardon but as per the statement of the Ministry itself "the broad guidelines generally considered while examining the mercy petition under Article 72 of the Constitution relate to personality of the accused such as age, sex or mental state of the accused, circumstances of the case, conduct of the offender, medical abnormality falling short of legal insanity and so on.

23. That in fact the broad guidelines generally considered (while examining the mercy petition in the Ministry of Home Affairs) states that the clemency is justified on the following grounds:

- i. Personality (such as age, sex or mental deficiency) or circumstances of the case (such as provocation or similar justification),
- ii. Cases in which appellate Court expressed doubt as to reliability of evidence but has nevertheless decided on conviction.
- iii. Cases in which it is alleged that fresh evidence is obtainable mainly with a view to seeing whether fresh enquiry is justified,
- iv. Where the High Court on appeal reversed acquittal or on appeal enhanced sentenced? v. Is there any difference of opinion in Bench of High Court Judges necessitating reference to third Judge?
- vi. Consideration of evidence in fixation of responsibility in gang murder case.
- vii. Long delay in investigation and trial etc.

24. That the major defect in these guidelines is that the government is not bound by these guidelines. These are basically the internal grounds that may or may not be taken into consideration as these grounds are not the statutory guidelines. As mentioned earlier that the ministry has accepted

that no guidelines have been framed for the exercise of the power and this lack of guidelines is a major cause of concern.

25. That finally the last part of the Summary for the President contains the recommendations regarding the acceptance or rejection of the petition. These recommendations are made after considering the case of the condemned prisoner under the seven guidelines framed by the Ministry.

26. That thereafter the Ministry forwards the brief summary of the entire case together with the recommendations to the President for final disposal.

27. That on receiving the summary prepared by the Ministry of Home Affairs the President of India goes through the entire case and takes the final decision.

28. That this order of the President is also contained in the "Summary for the President" after the "advice" of the Ministry.

29. That thus it is evident that there is no fixed procedure for the presentation of the mercy petition and the guidelines have also not been framed by

the Government of India for the exercise of the power of pardon.

30. That the Ministry of Home Affairs is the real authority who plays a great role in the disposal of mercy petitions.

31. That the power to grant pardon under Article 72 practically is being exercised by the Ministry of Home Affairs. It is the Ministry that plays a great role in deciding the mercy petition. So far as the delay in disposal of mercy petition is concerned it is this ministry who is responsible for the same. It is the fault of the Ministry that no rules have been framed for the exercise of the power. Moreover no statutory guidelines have been framed and the internal guidelines are not binding.

32. That the cases decided by the ministry clarify that if one person got relief on one ground the other person may not be entitled for relief on the same ground.

33. That the pendency of mercy petition before the President of India is one of the major problem. The petitions remain pending for years in the office of the President. In last 14 years only 4 petitions

were disposed of. This delay in the disposal of mercy petitions is helping the convicts only.

34. That there is an urgent need for framing the specific procedure and guidelines for disposing the mercy petitions within a time bound period.

35. That the petitioner files the present humble petition inter-alia amongst the following

GROUND

A. BECAUSE there is no specified written procedure and guidelines for disposing of the mercy petitions within a time bound manner, the same is resulting in arbitrariness and discrimination in disposal of the mercy petitions.

B. BECAUSE absence of specific Procedure, Rules and Guidelines also leads to undue delay in disposal of the mercy petitions.

C. BECAUSE undue delay in disposal of the mercy petitions gives rise to public unrest and creates doubts and suspicion in the mind of Public at large.

D. BECAUSE in quite a few cases there is a prolonged delay in disposal of the mercy petitions and in such cases the convicts are able to take the

benefit of the delay and get their death sentences converted into imprisonment for life.

E. BECAUSE the victims and their families feel cheated in such cases where due to delay in disposal of the mercy petition the death sentence are converted into sentence for imprisonment.

F. BECAUSE for effective disposal of the mercy petition in a time bound manner and for transparency therein, it is must that specific Procedure, Rules and Guidelines for disposing the mercy petitions within a time bound period, are immediately framed and implemented.

G. BECAUSE power of pardon under the constitution is executive in nature hence there is no question of a personal hearing before the authorities, therefore this is quite possible that in absence of a prescribed form, the petitioner who filed a simple application may not provide the complete information because of illiteracy or unawareness or he may also act smartly by hiding certain information. The prescribed form will definitely help the petitioner and the President or the Governor as the case may be.

H. BECAUSE the power of pardon under the constitution is executive in nature hence there is no question of a personal hearing before the authorities, therefore this is quite possible that in absence of a prescribed form, the petitioner who filed a simple application may not provide the complete information because of illiteracy or unawareness or he may also act smartly by hiding certain information. The prescribed form will definitely help the petitioner and the President or the Governor as the case may be.

I. BECAUSE the position in United States of America is that if a person has been convicted for an offence he can apply to the President for pardon on a prescribed form, which is easily available along with necessary instructions that are required to be followed. Similarly in England if a person is willing to seek pardon he is to file an application before the Home Secretary. When the United States and England have already framed the rules for the purpose of filing a mercy petition then India must also frame proper procedure, rules and guidelines for filing and disposal of the mercy petitions.

J. BECAUSE the framing of proper procedure, rules and guidelines is necessary for the purpose of transparency also. Moreover a fair procedure is the natural demand of Article 21 and absence of procedure, rules and guidelines itself indicates the possibility of arbitrary exercise of the power.

K. BECAUSE from the past experience it can be said that the power to grant pardon under Article 72 practically is being exercised by the Ministry of Home Affairs. It is the Ministry that plays a great role in deciding the mercy petition. So far as the delay in disposal of mercy petition is concerned it is this ministry who is responsible for the same. It is the fault of the Ministry that no rules have been framed for the exercise of the power. Moreover no statutory guidelines have been framed and the internal guidelines are not binding.

L. BECAUSE the cases decided by the Ministry proves the fact that if one person got relief on one ground the other person may not be entitled for relief on the same ground. There is always a possibility of arbitrariness and discrimination which

is in violation of Article 14 of the constitution of India.

M. BECAUSE the question as to whether there existed any procedure for filling and the disposal of mercy petitions was answered by the Ministry of Home Affairs on August 9, 2008.

The Ministry accepted the fact that there is no written procedure to deal with mercy petition.

The then Joint Secretary to the Home Ministry gave this information to Central Information Commission (CIC) in reply to a petition filed by a resident of Mumbai Mr. Vats Raj wherein he had demanded the information saying that "the procedure for examining mercy petitions by the Ministry of Home Affairs for sending recommendations to the President without delay is of official importance.

He also wanted to know if the government is considering any proposal to review and revamp the procedure to speed up the process of dealing with mercy petitions.

In reply to the first question the Ministry replied that "There is no written procedure followed for examining power to grant pardon or to suspend, remit and commute death petitions under Article 72

(of the Constitution, dealing with the president's sentences to a condemned prisoner), which could be provided to the appellant.

The second question was also answered in the negative. Hence it is clear from the acceptance of the Home Ministry itself that there is no prescribed procedure to deal with mercy petitions.

36. That the petitioner states on oath that there is no personal gain, private motive or oblique reason for the petitioner in filing the present PIL.

37. That the petitioner has not filed any other or similar writ petition before this Hon'ble Court or any High Court.

PRAYER

In the facts and circumstances of the present case and in the interest of justice this Hon'ble Court may be pleased to ;

- a. pass appropriate writ, order or direction in the nature of mandamus to the respondents for framing the specific procedure, rules and guidelines for disposing the mercy petitions within a time bound period; and

- b. pass appropriate writ, order or direction in the nature of mandamus directing the respondents to fix a time frame within which the mercy petition has to be decided and the consequences of not disposing of the mercy petitions within such time frame; and
- c. pass any other further order (s) as deemed fit and necessary by this Hon'ble Court in the interest of justice;

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS
IN DUTY BOUND SHALL EVER PRAY**

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