

A.F.R.

Reserved

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 10924 of 2019

Petitioner :- Sanjay Verma

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Murlidhar Misra

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Surendra Singh-I,J.

Per : Hon'ble Surendra Singh-I, J.

Heard Sri Akash Mishra, holding brief of Sri Murlidhar Misra, learned counsel for the petitioner and Sri Ratan Singh, learned A.G.A. for the State of U.P.

2. Vide order dated 25.04.2019, learned counsel for the petitioner was permitted to implead Man Singh, S/o Jordan Singh. Pursuant to the aforesaid order, Man Singh was impleaded as respondent no. 5 and notice was issued against him.

3. Vide order dated 16.03.2023, the Court held about the service of notice on respondent no. 5 as follows :-

“We find that notices were issued to the respondent no.5-Man Singh vide order dated 25.04.2019 and as per office report dated 01.05.2019 notices were issued to him by registered post A.D. fixing 20.05.2019. As per office reports dated 18.05.2019 and 24.07.2019 neither acknowledgement nor undelivered cover has been received back. Till date no one has put in appearance on behalf of the respondent no.5.

Accordingly, service upon respondent no.5 is deemed to be sufficient.”

4. This writ petition has been filed by the petitioner, Sanjay Verma who was fatally injured in the related Sessions Trial No. 41/2007 in which convict respondent no. 5, Man Singh's sentence was remitted. The petitioner has prayed to :

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned Government Order dated 01.02.2019 (Annexure No. 1 to the writ petition) passed by Vishesh Sachiv, Karagar Prashashan Evam Sudhar Anubhag-2, Uttar Pradesh Shashan, Lucknow;

(ii) issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case;

(iii) award the cost of the petition to the petitioners.

5. The Governor of the State of U.P. has remitted the remaining part of the sentence of Man Singh exercising his power under Article 161 of the Constitution of India. The Special Secretary, Jail Administration & Reforms has issued impugned order no. 314/22-2-2019-17(150)/2019, Lucknow dated 01.02.2019 granting aforesaid remission to convict respondent no. 5, Man Singh, son of Jardan Singh, lodged in Central Jail, Agra, who was convicted and sentenced with life imprisonment in S.T. No. 41/2007 u/s 148, 307/149, 302/149 I.P.C. and 25 of Arms Act by Additional Sessions Judge, Jhansi vide order dated 20.08.2009 and whose conviction was upheld by this Court vide judgement and order dated 12.09.2017.

6. It has been submitted by learned counsel for the petitioner that released convict respondent no. 5, Man Singh, has a criminal history of 27 cases which were not taken into consideration while impugned order granting remission to respondent no. 5, Man Singh, was passed. The criminal history is as follows :-

(i) Case Crime No. 204/1985 u/s 147, 148, 307, 323 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(ii) Case Crime No. 257/1987 u/s 147, 148, 149, 307, 448, 427 I.P.C. and 24 of Cable Trespass Act, Police Station- Seepari Bazar, District- Jhansi.

(iii) Case Crime No. 259/1990 u/s 452, 323, 504 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(iv) Case Crime No. 299/1990 u/s 452, 323, 504 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(v) Case Crime No. 257/1990 u/s 147, 148, 149, 307, 332 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(vi) Case Crime No. 70/1991 u/s 307, 302 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(vii) Case Crime No. 150/1992 u/s 147, 148, 149, 302, 506 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(viii) Case Crime No. 205/1992 u/s 302, 120-B, 148 I.P.C. (Aajeevan Karavas) 09.09.03, Police Station- Seepari Bazar, District- Jhansi.

(ix) Case Crime No. 208/1992 u/s 3(1) Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Seepari Bazar, District- Jhansi.

(x) Case Crime No. 719/1993 u/s 323, 504, 506 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xi) Case Crime No. 39/1994 u/s 147, 148, 149, 302, 307, 504, 506, 427 I.P.C. and S.C/S.T. Act, Police Station- Seepari Bazar, District- Jhansi.

(xii) Case Crime No. 190/1998 u/s 302, 34 I.P.C. (Aajeevan Karavas) 11.08.04, Police Station- Kotwali, District- Jhansi.

(xiii) Case Crime No. 304/1999 u/s 147, 148, 149, 302, 307, 504, 506, 427 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xiv) Case Crime No. 425/2002 u/s 3 of U.P. Goondas Act, Police Station- Seepari Bazar, District- Jhansi.

(xv) Case Crime No. 686/2002 u/s 2/3 Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Seepari Bazar, District- Jhansi.

(xvi) Case Crime No. 687/2002 u/s 2/3 Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Seepari Bazar, District- Jhansi.

(xvii) Case Crime No. 807/2003 u/s 110 of Cr.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xviii) Case Crime No. 828/2003 u/s 147, 148, 149, 307, 504, 506 I.P.C. & 7 of Criminal Law Amendment Act, Police Station- Seepari Bazar, District- Jhansi.

(xix) Case Crime No. /2004 u/s 41, 102 Cr.P.C. and 411 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xx) Case Crime No. 413/2004 u/s 379 I.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xxi) Case Crime No. 167/2004 u/s 110 Cr.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xxii) Case Crime No. 172/2002 u/s 107/116 Cr.P.C., Police Station- Seepari Bazar, District- Jhansi.

(xxiii) Case Crime No. 1463/2006 u/s 147, 148, 149, 307, 302 I.P.C. & 7 of Criminal Law Amendment Act (Ajeevan Karavas date 26.08.2009), Police Station- Kotwali, District- Jhansi.

(xxiv) Case Crime No. 85/2006 u/s 452, 323, 506B, 294, 227 I.P.C. and 25/27 Arms Act, Police Station- Tharet, District- Datiya (M.P.).

(xxv) Case Crime No. 1538/2006 u/s 25 Shastra Act, Police Station- Kotwali, District- Jhansi.

(xxvi) Case Crime No. 1591/2006 u/s 2/3 Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Kotwali, District- Jhansi.

(xxvii) Case Crime No. 75/2007 u/s 3(2) of National Security Act, Police Station- Kotwali, District- Jhansi.

7. It has also been submitted by learned counsel for the petitioner that due to indiscriminate firing by respondent no. 5, Man Singh and other convicts, the petitioner, Sanjay Verma received grievous injuries and his bodyguard, Ajay Goswami died of gunshot wounds. It has also been submitted that convict respondent no. 5, Man Singh was previously convicted in four sessions trials u/s 302 I.P.C. with life imprisonment and in one case under Uttar Pradesh Gangsters and Anti-Social Activities

(Prevention) Act, 1986, for 10 years imprisonment. The impugned U.P. Government Order dated 01.02.2019 has concealed these facts. The S.L.P. No. 1144/2018 filed by respondent no. 5, Man Singh against his conviction and sentence was dismissed by Hon'ble Supreme Court vide order dated 05.03.2018.

8. In the counter affidavit filed on behalf of the State, it has been admitted that respondent no. 5, Man Singh has been released vide G.O. No. 314/22-2-2019-17(150)/2019, Lucknow dated 01.02.2019 passed by Special Secretary granting remission to the petitioner. It has also been submitted that the impugned order dated 01.02.2019 has been passed by the Government of U.P. in accordance with the policy dated 01.08.2018. It has also been submitted that the power of remission is vested in the Governor under Article 161 of the Constitution of India for premature release of the convict persons and the impugned order was validly passed under Article 161 of the Constitution of India. In paragraph no. 9 of the counter affidavit, it has been admitted that at the time of release, respondent no. 5, Man Singh was confined in Central Jail, District- Agra. He was forwarded to Central Jail, Agra with two conviction warrant i.e. S.T. No. 41 of 2007 relating to Case Crime No. 1463 of 2006 u/s 148, 307/149, 302/149 I.P.C. and 25 Arms Act, P.S.- Kotwali, District- Jhansi where he was undergoing life imprisonment as awarded to him vide order dated 20.08.2009 and the second conviction warrant was with regard to G.S.T. No. 89 of 2007 in connection with Case Crime No. 1591 of 2006 u/s 3(1) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S.- Kotwali, District- Jhansi wherein vide judgement and order dated 01.09.2017, convict respondent no. 5, Man Singh was awarded 10 years of imprisonment by the trial court. In paragraph no. 10 of the counter affidavit, the criminal history of respondent no. 5, Man Singh as given in the writ petition has been admitted. In paragraph no. 11 of the counter affidavit, it has been submitted that respondent no. 5, Man Singh, has been validly released after grant of remission in compliance of Clause 2-C of policy dated 01.08.2018 as mentioned in G.O. No. 564/2018/1106/22-02-2018-07G/2018 as he had undergone the sentence of 12 years 2 months without remission and 14 years 6 months and 10 days

with remission. The Medical Board had given an opinion that the convict is having “congestive heart failure”. It has also been submitted that convict Man Singh, was qualified to be released under Clause 2-C of policy dated 01.08.2018 and he was rightly released by the impugned order dated 01.02.2019. In the counter affidavit, Government Order dated 01.08.2018 issued by the Karagar Prashashan Evam Sudhar Anubhag-2, Uttar Pradesh Shashan, Lucknow has been attached as Annexure No. 1. The relevant provisions of Government Order under which convict respondent no. 5, Man Singh, has been released is as follows :

2 (ग) आजीवन कारावास की सजा से दंडित ऐसे सिद्धदोष बंदी जिनका अपराध आगे धारा-3 में वर्णित प्रतिबंधित श्रेणी में इंगित किसी भी उपनियम से अच्छादित नहीं है तथा जो निम्न में से किसी बीमारी से ग्रसित हो एवम जिनके संबंध में उत्तर प्रदेश जेल मैनुअल के विवरण संख्या 195 में प्रवेशित मेडिकल बोर्ड द्वारा उक्त बीमारी से गंभीर होने का प्रमाण पत्र दिया गया हो और जिनके द्वारा विचाराधीन अवधि सहित 10 वर्षा की अपरिहार सजा तथा 12 वर्षा की सपरिहार सजा व्यतीत कर ली गई हो :

- 1- Advanced bilateral pulmonary tuberculosis
- 2- Incurable malignancy
- 3- Incurable Blood diseases
- 4- Congestive heart failure
- 5- Chronic epilepsy with mental degeneration
- 6- Advanced leprosy with deformities and trophic ulcer
- 7- Total blindness of both eyes
- 8- Incurable paraplegias and hemiplegics
- 9- Advanced Parkinsonism
- 10- Brain Tumor
- 11- Incurable Aneurysms.
- 12- Irreversible Kidney failure.

3. प्रतिबंधित श्रेणी (Prohibited Class which is applicable to respondent no. 5, Man Singh is) :

(x) ऐसे सिद्धदोष बंदी जिन्हें एक से अधिक आपराधिक प्रकरणों में आजीवन कारावास के दंड से दंडित किया गया है ।

9. According to the aforesaid government notification, respondent no. 5, Man Singh's remaining period of sentence was remitted by the Governor under Article 161 of the Constitution of India as Man Singh had fulfilled the following requirements as per the provisions mentioned in the G.O. :-

(i) he had undergone the sentence of 12 years 2 months without remission;

(ii) the medical board had given an opinion that the convict is suffering from 'congestive heart failure' which is one of the disease mentioned in the G.O.

10. The provisions regarding grant of pardons, etc., by Governor of a State is given in Article 161 of the Constitution of India which is as follows :-

161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.- The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter of which the executive power of the State extends.

11. Under this Article, the Governor has the power to grant pardons etc., and to suspend, remit or commute the sentence of any person convicted of any offence against any law "relating to a matter to which the executive power of the State extends".

12. According to Article 162 of the Constitution of India, the executive power of the State extends to matters with respect to which the Legislature of a State has power to make laws.

13. The exercise or non-exercise of pardon power by the President or Governor, as the case may be, is not immune from judicial review. The grounds for judicial review has been laid down in **Satpal Vs. State of Haryana, (2000) 5 SCC 170** which has been referred to with approval by the Constitution Bench in **Bikas Chatterjee Vs. Union of India and Another (2004) 7 SCC 634** wherein it was held as under :-

9. In a Division Bench decision of this Court in **Satpal Vs. State of Haryana (2000) 5 SCC 170**, these very grounds have been restated

as: (i) the Governor exercising the power under Article 161 himself without being advised by the Government; or (ii) the Governor transgressing his jurisdiction; or (iii) the Governor passing the order without application of mind; or (iv) the Governor's decision is based on some extraneous consideration; or (v) mala fides. It is on these grounds that the Court may exercise its power of judicial review in relation to an order of the Governor under Article 161, or an order of the President under Article 172 of the Constitution, as the case may be.

14. In **Epuru Sudhakar and Another Vs. Govt. of A.P. and Others (2006) 8 SCC 161**, it was held as under :-

34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

- (a) that the order has been passed without application of mind;
- (b) that the order is mala fide;
- (c) that the order has been passed on extraneous or wholly irrelevant considerations;
- (d) that relevant materials have been kept out of consideration;
- (e) that the order suffers from arbitrariness.

15. The same view was reiterated in **Narayan Dutt and others Vs. State of Punjab and another, (2011) 4 SCC 353**.

16. In **Maru Ram Vs. Union of India, AIR 1980 SC 2147**, the Apex Court expressly stated that the power of pardon, commutation and release under Article 72 (also under Article 161) cannot run riot and must keep sensibly to a steady course and that public power "shall never be exercisable arbitrarily or malafide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power."

17. In **Swaran Singh Vs. State of U.P., (1998) 4 SCC 75** where the Governor grants remission of sentence to a convict in ignorance of the fact that several other criminal cases were pending against him. The court invalidated the remission and observed that if the power under this article "was exercised arbitrarily", malafide or in absolute disregard of the finer canons of the constitutionalism, the byproduct order cannot get the approval

of law and in such cases, the judicial hand must be stretched to it.” Thus, the exercise of Governor’s power under Article 161 is subject to judicial review.

18. This is an admitted fact that respondent no. 5, Man Singh has been convicted in S.T. No. 41 of 2007 relating to Case Crime No. 1463 of 2006 u/s 148, 307/149, 302/149 I.P.C. and 25 Arms Act and sentenced vide judgement and order dated 26.08.2009 u/s 302/149 I.P.C. for life imprisonment and a fine of Rs.1,00,000/-.

19. In **Gopal Vinayak Godse Vs. State of Maharashtra, AIR 1961 SC 600**, the Apex Court has held “a sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment of the whole of the remaining period of the convicted persons natural life.”

20. The respondent no. 5, Man Singh was remitted the remaining period of his life imprisonment after a period of 12 years and 2 months by the Governor under Article 161 of the Constitution of India. The rules mentioned in the G.O. for remitting sentence of a convict requires fulfilment of following conditions :-

- (i) the convict had undergone imprisonment for a period of 10 years without remission;
- (ii) he was suffering from one of the disease mentioned in the G.O.;
- (iii) his case is not covered by any of the provisions mentioned in the prohibited class of convicts;

The clause (x) of the prohibition class in the aforesaid G.O. dated 01.08.2018 mentions that the convict should not have been convicted in more than 1 criminal case with the sentence of life imprisonment.

21. Although the convict Man Singh fulfils the requirement relating to period of sentence undergone by him and his suffering from one of the disease “congestive heart failure” mentioned in the G.O., but his sentence cannot be remitted as his case is covered under clause (x) of the exempted class of convicts. Respondent no. 5, Man Singh has been convicted and sentenced to life imprisonment in following two S.T. cases :

(i) S.T. No. 41 of 2007 and

(ii) S.T. No. 26 of 1995, State of U.P. Vs. Sardar Singh and Others u/s 302, 120-B, 149 I.P.C. relating to P.S.- Seepari Bazar, District- Jhansi. The petitioner has filed the judgement of the 2nd S.T. at pages 107 to 154 of Annexure No. 10 of the writ petition.

22. Thus, respondent no. 5, Man Singh was not entitled for remission of sentence under the provisions of the impugned order issued under G.O. dated 01.08.2018 passed under Article 161 of the Constitution of India. Apart from this, in the impugned order by which the respondent no. 5, Man Singh has been granted remission in his sentence, there is no notice of the fact that he has a criminal history of 26 other criminal cases against him. As it has been held by the Apex Court in **Swaran Singh (supra)** that where the Governor granted remission of sentence to a convict in ignorance of the fact that several other criminal cases were pending against him, the byproduct order cannot get the approval of law and in such cases, judicial hand must be stretched to it.

23. From the above mentioned facts and circumstances of the case, we are of the considered opinion that respondent no. 5, Man Singh was not entitled to remission of sentence as this case was covered by the prohibition no. (x) mentioned in above G.O. dated 01.08.2018 and while granting remission, his 26 other criminal cases was not brought to the notice of the Governor.

24. Thus, the impugned order dated 01.08.2018 by which respondent no. 5, Man Singh was granted remission of sentence was without authority of law and is liable to be set-aside.

25. Accordingly, the writ petition stands allowed. The aforesaid impugned order no. 314/22-2-2019-17(150)/2019, Lucknow dated 01.02.2019 granting remission to respondent no. 5, Man Singh is hereby quashed and set-aside.

26. The respondent no. 5, Man Singh shall surrender before the Sessions Judge, Jhansi within 30 days from today and he will be sent to Central Jail, Agra, to undergo the remaining part of his sentence. In case, the respondent no. 5, Man Singh does not surrender within the aforesaid period, the

Sessions Judge, Jhansi will take coercive measure to ensure his appearance before the court and send him to Central Jail, Agra for undergoing his remaining sentence.

27. Copy of the order be sent to Sessions Judge, Jhansi for necessary compliance.

Order Date :- 19.4.2023

KS