

MADHU LIMAYE

v.

THE SUPERINTENDENT, TIHAR JAIL, DELHI & ORS.

February 19, 1975

[K. K. MATHEW, V. K. KRISHNA IYER AND P. K. GOSWAMI, JJ.]

Constitution Article 32—Habeas Corpus—Punjab Jail Manual—Racial discrimination between Indian and European prisoners—Whether question raised can be determined if detenu released.

The petitioner filed the present Habeas Corpus Petition challenging his detention. The petitioner also challenged the provisions of the Punjab Jail Manual which creates artificial discrimination between Indian and European prisoners in the matter of treatment and diet.

The respondent contended that since the petitioner has been released the petition has become infructuous. The petitioner cited various authorities of this Court as well as of the Supreme Court of United States that where issues of great moment affecting liberty of the citizen are involved the decision should not be avoided even though the immediate prohibition which led to the filing of the writ petition has for the time being disappeared.

HELD : The Court would not decide the issue for two reasons. Firstly, the petitioner is no longer in prison and, secondly, the Learned Solicitor General assured the Court that he would draw attention of the Punjab Government to the need for revision of the impugned rules from the point of view of racial equality. The court hoped that the State Government would take up the reform of the law, eliminate the vice of inequality and update the regulations to be in keeping with the spirit and letter of the paramount law. [583D-E]

Petition dismissed.

ORIGINAL JURISDICTION : Writ Petition No. 318 of 1970.

Petition under Article 32 of the Constitution of India.

Santok Singh, for the Petitioner.

L. N. Sinha and *R. N. Sachthey*, for Respondents Nos. 1 & 3.

The Judgment of the Court was delivered by :

KRISHNA IYER, J.—Shri Madhu Limaya, M.P. moved this petition while he was prisoner, imbued more by the *pro bono publico* spirit than perhaps by his own invidious lot in jail. The gravamen of this public grievance in that a long silver jubilee span of years having elapsed after India became a Sovereign Democratic Republic, it is obnoxious that racial discrimination, smacking of colonial hang-over, should stubbornly resist arts. 14 & 15 of the Constitution and survive in the Punjab Jail Manual. If it were so, it were a matter to blush for, but the preliminary objection raised by the Solicitor General is that the petitioner having been freed from prison years ago, this Court should not be invited into an academic exercise on a constitutional issue. Of course, he concedes that the Court is not deprived of jurisdiction by the cessation of incarceration. An inflexible rule that as soon as a custodial term or prohibitory order expires the Court will not investigate its legality may well immunize ephemeral illegality against judicial review on unwitting infraction of the amplitude of the Court's powers. But there are cases and cases.

A Mr. Santok Singh, for the petitioner, has brought to our notice decisions of this Court and of the Supreme Court of the United States to press home his point that issues of such great moment affecting the liberty of the citizens should not be avoided even though the immediate prohibition which has led to the writ petition has, for the time being, disappeared (See *Carroll v. Commissioners of Princess Anne*⁽¹⁾ and *United States v. Phosphate Export Asso*⁽²⁾); also *Manu Limaye v. Ved Murti*⁽³⁾ and *Himat Lal K. Such v. Commr. of Police, Ahmedabad*⁽⁴⁾.

B The thrust of the charge of unconstitutionality made by Sri Madhu Limaye consists in the artificial discrimination between Indian and European prisoners in the matter of treatment and diet, going by the rules he has set out in his petition. It is true that many laws which do not square with the equality enshrined in Arts. 14 and 15 die hard until pronounced dead by the Court *Prima facie* the rules quoted are neither fair on their face nor equal in their bosom, as between Indians and Europeans. This white-complex has no right to remain extent in the rules, according to counsel for the petitioner. We have drawn the attention of the Solicitor General to what appears to be an obsolete but overlooked discrimination. We are not inclined to examine this matter more incisively for two reasons. The petitioner is no longer in prison. Even so may-be the matter can be competently scrutinised from the constitutional angle by this Court. But the learned Solicitor General assures us that he will draw the attention of the Punjab Government to the need for revision of the impugned rules from the point of view of racial equality. In the light of this submission we hope the State Government will take up the reform of the law, lop off dead wood, eliminate the vice of inequality and update the regulations to be in keeping with the spirit and letter of the paramount law.

C In view of this attitude of the Solicitor General, counsel for the petitioner himself expressed that he was not keen on going on with the case. We hope that the above observations would be sufficient for the high purpose the petitioner has in view.

D We accordingly dismiss the petition.

E
F
G P.H.P.

Petition dismissed

(1) 21 L. Ed. 2d. 325.

(3) A.I.R. 1971 S.C. 2481.

(2) 21. L Ed. 2nd. 344.

(4) [1973] 1 S.C.C. 227, 232