

A LAXMAN NASKAR ETC. ETC.
v.
UNION OF INDIA AND ORS.

[G.T. NANAVATI AND S.N. PHUKAN, JJ.]

B *Constitution of India—Art. 161—Premature release of life convicts—Scope of power under Art. 161—If Government has framed any rule or made a scheme for early release of such convicts, those rules or schemes to be treated as guidelines for exercising such powers.*

C These writ petitions were filed on behalf of ‘life convicts’ challenging order of the Government rejecting their prayer for premature release. All the ‘life convicts’ had completed continued detention of 20 years including remission earned. Their prayer for premature release was rejected mainly on the ground of objections by police which had reported about the chances of the petitioners committing crime again. The petitioners alleged that the
D Government acted on extraneous consideration while rejecting their prayers.

Allowing the writ petitions, this Court

E HELD : 1.1. Life sentence is nothing less than lifelong imprisonment and by earning remissions a life convict does not acquire a right to be released prematurely; but if the Government has framed any rules or scheme for early release of such convicts those rules or schemes will have to be treated as guidelines for exercising its powers under Article 161 of the Constitution and if according to the government policy/instructions in
F force at the relevant time the life convict has already undergone the sentence for the period mentioned in the policy/instructions, then the only right which a life convict can be said to have acquired is right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of Constitu-
G tion. When an authority is called upon to exercise its powers under Article 161 of the Constitution that will have to be done consistently with the legal position and the Government policy/instruction prevalent at that time. [797-G-H; 798-A-B]

H 1.2. In the instant case all the ‘life convicts’ had completed continued detention of 20 years including remission earned. The prayer of ‘life

convicts' for premature release was rejected mainly on the ground of objections by police. The police had only reported about the chances of the petitioners committing crime again. The Government did not consider the prayer for premature release as per the rules. The Government did not pay sufficient attention to the conduct-record of the petitioners while in jail nor did it consider whether they had lost their potentiality in committing crime. The relevant aspect, namely, that there is no fruitful purpose in confining them any more was also not considered nor the the socio-economic conditions of the convict's family were taken into account. Thus the orders of the Government suffer from infirmities and are liable to be quashed. Therefore, the authorities are directed to re-consider the cases for premature release of all 'life convicts' who had approached this Court. [799-C-F]

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (CRL.)
No. 64 of 1999. Etc. Etc.

Under Article 32 of the Constitution of India.

Balwant Singh Malik, Tapash Chandra Ray, A.S. Nambiar, V.C. Mahajan, Santosh Singh, Ms. Asha G. Nair, S. Wasim A. Qadri, Ms. Binu Tamta, A.K. Sharma, Ms. Sushma Suri, Satish Vig., T.C. Sharma, Somvir Singh Deswal, Ms. Kusum Singh, Lakhnan Singh Chauhan, Mrs. Santosh Singh and S.K. Dwivedi for the appearing parties.

The Judgment of the Court was delivered by

PHUKAN, J. By this common judgment we propose to dispose of six writ petitions filed under Article 32 of the Constitution as the points involved in all the petitions are common.

Writ petitions have been filed on behalf of "life convicts" as their prayer for pre-mature release was rejected by the Government of West Bengal. The common grievance is that though they are entitled for pre-mature release under relevant rules, their prayer was rejected by the Government on extraneous consideration.

It is settled position of law that life sentence is nothing less than lifelong imprisonment and by earning remissions a life convict does not acquire a right to be released prematurely; but if the Government has framed any rule or made a scheme for early release of such convicts then

A those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution and if according to the Government policy/instructions in force at the relevant time the life convict has already undergone the sentence for the period mentioned in the policy instructions, then the only right which a life convict can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. When an authority is called upon to exercise its powers under Article 161 of the Constitution that will have to be done consistently with the legal position and the Government policy/instructions prevalent at that time.

C Sub-rules (4) & (29) or Rule 591 of the West Bengal Rules relating to premature release of life convict run as follows :

D (4) - In considering the cases of prisoners submitted to it under sub-rules (1) and (2), the State Government shall take into consideration - (i) the circumstances in each case (ii) the character of the convict's crime, (iii) his conduct in prison and (iv) the probability of his reverting to criminal habits or instigating others to commit crime. If the State Government is satisfied that the prisoner can be released without any danger to the society or to the public it may take steps for issue of orders for his release under section 401 of the Code of Criminal Procedure, 1898."

F "(29) - Every case in which a convict, who has not received the benefit of any of the foregoing rules, is about to complete a period of 20 years of continued detention including remission earned, if any, shall be submitted three months before such completion by the Superintendent of the Jail in which the convict is for the time being detained, through the Inspector- General, for orders of the State Government. If the convict's jail records during the last three years of his detentions are found to be satisfactory the State Government may remit the remainder of his sentence."

G All the "life convicts" before us have completed continued detention of 20 years including remission earned.

H From the counter filed by the State, we find that the Government has also framed guidelines for this purpose. To consider the prayer for premature release of the "life convicts", police report was called for on the

following points :

(i) Whether the offence is an individual act of crime without affecting the society at large;

(ii) Whether there is any chance of future recurrence of committing crime;

(iii) Whether the convict has lost his potentiality in committing crime;

(iv) Whether there is any fruitful purpose of confining this convict any more;

(v) Socio-economic condition of the convict's family.

Though the police report did not cover all the above points, the prayer of "life convicts" for premature release was rejected mainly on the ground of objections by police. The police had only reported about the chances of the petitioners committing crime again. It becomes apparent from the record that the Government did not consider the prayer for premature release as per the rules. The Government did not pay sufficient attention to the conduct-record of the petitioners while in jail nor did it consider whether they had lost their potentiality in committing crime. The relevant aspect, namely, that there is no fruitful purpose in confining them any more was also not considered nor the socio economic conditions of the convict's family were taken into account. Thus the orders of the Government suffer from infirmities and are liable to be quashed.

In the result, we set aside all the orders of the State Government and direct the authorities to re-consider the cases for premature release of all "life convicts" who have approached us by filing present Writ Petitions as per relevant rules/guidelines within a period of one month from the receipt of this order.

The Writ Petitions are allowed to the extent indicated above.

R.A.

Petitions allowed.