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LIFE CONVICT LAXMAN NASKAR
v.
STATE OF WEST BENGAL AND ANR.

SEPTEMBER 4, 2000

B

[S. RAJENDRA BABU AND SHIVARAJ V. PATIL, JJ.]

C

Constitution of India—Article 32—West Bengal Correctional Services Act XXXII of 1992—Section 61(1)—Life convict applying for premature release—On basis of remissions earned—Jail authorities observing in favour of life convict—Review Committee rejecting release on different Consideration—Whether he is entitled for automatic release—Held, no—Separate order should be made by appropriate Government—Further held, reasons given by government palpably wrong—Matter remitted to State Government fresh consideration.

D

The petitioner, undergoing imprisonment for life, has filed a writ petition in this Court seeking release from jail, on the ground that under Section 61(1) of the West Bengal Correctional Services Act XXXII of 1992, which came into force with effect from April 14,2000, he is entitled to be released prematurely inasmuch as he had served the sentence and earned remissions. On an earlier petition when the matter had come up before this Court an order had been made directing the Government to re-consider the case for premature release of all life convicts who had approached the Court. Thereafter, the Government constituted a Review Committee and also issued certain guidelines as to the basis on which a convict can be released prematurely. Though in the present case, the report of the jail authorities was in favour of the petitioner, the Review Committee constituted by the Government recommended to reject the claim of premature release of the petitioner for different reasons.

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Allowing the writ petition the Court

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HELD : 1. In view of the legal position explained by this Court it may not help the petitioner even on the construction on Section 61(1) of the West Bengal Correctional Service Act XXXII of 1992 with reference to explanation thereto that for the purpose of calculation of the total period of imprisonment under this Section the period of imprisonment for life shall be taken to be

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equivalent to the period of imprisonment for 20 years. Therefore, solely on the basis of completion of a term in jail serving imprisonment and remissions earned under the relevant rules or law will not entitle and automatic release, but the appropriate Government must pass a separate order remitting the un-expired portion of the sentence. [66-D-E] A

State of Madhya Pradesh v. Ratan Singh, [1976] 3 SCC 470; *Naib Singh v. State of Punjab*, [1983] 2 SCC 454 and *Gopal Vinayak Godse v. State of Maharashtra*, [1961] 3 SCR 440, relied on. B

2. The reasons given by the Government, are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still the potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government. [67-G-H; 68-A-B] C D E

The order made by the Government was quashed and the matter was remitted to it again to examine the case of the petitioner in the light of what has been stated earlier and the comments made in this order as to the grounds upon which the Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Service Act XXXII of 1992 and to decide the matter afresh within a period of three months. [68-C-D] F

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 110 of 2000. G

(Under Article 32 of the Constitution of India.)

B.S. Malik and Santosh Singh for the Petitioner.

Altaf Ahmed, Additional Solicitor General, and Tara Chandra Sharma for H

A the Respondent.

The Judgment of the Court was delivered by

B **RAJENDRA BABU, J.** This writ petition filed under Article 32 of the Constitution seeks for the release of the petitioner who is undergoing imprisonment for life after having been convicted under Section 302 I.P.C. read with Section 34 I.P.C.. The claim of the petitioner is that he has undergone the following period of actual sentence and earned remissions :-

| | | <i>YEAR</i> | <i>MONTHS</i> | <i>DAYS</i> |
|---|--|-------------|---------------|-------------|
| C | (a) From 25.6.1982 To 1.5.2000 including under trial period confinement. | 17 | 10 | 6 |
| | (b) Remissions earned or Govt. Remissions granted upto 31.12.1999 | 5 | 8 | 29 |
| D | (c) Total sentence including remissions | 23 | 7 | 5 |

E The petitioner also claims that under Section 61(1) of the West Bengal Correctional Services Act XXXII of 1992, which on Presidential assent being given came to force with effect from April 14, 2000, he is entitled to be released inasmuch as he had served the sentence and earned remissions as detailed above and was entitled to be released as on September 27, 1996. The details are set forth hereunder :-

| | | <i>YEAR</i> | <i>MONTHS</i> | <i>DAYS</i> |
|---|--|-------------|---------------|-------------|
| F | (i) Length of life imprisonment under the definition of punishment vide explanation is : | 20 | 0 | 0 |
| G | (ii) Deduct the period of remission earned or granted under section 58 or section 59 | 5 | 8 | 29 |
| | | 14 | 3 | 1 |
| | (iii) Deduct the period of set off under section 428, CrPC 1973 | 0 | 2 | 8 |
| H | (iv) Total amount of actual sentence the | 14 | 0 | 24 |

petitioner herein was liable to undergo

| | DAYS | MONTHS | YEAR | |
|--|----------------------------------|--------|------|---|
| (v) Sentence of the petitioner started from the date of his sentence on 3.9.1982 | 3 | 9 | 1982 | A |
| (vi) Add the amount actual sentence to be undergone from item (iii) above | 24 | 0 | 14 | B |
| (vii) Date of Release on which the Superintendent of jail was liable to release the petitioner, rule 771 now under section 61(1) read with Rule 571 in chapter XIII West Bengal Jail Code. | 27 that is, 27th September, 1996 | 9 | 1996 | C |

After examining the legal position as to the nature of the powers arising under Section 432 Cr.P.C. read with Article 161 of the Constitution and the relevant rules relating to remission of sentences, it is observed in the *State of Madhya Pradesh v. Ratan Singh*, [1976] 3 SCC 470, as under :

“(1) That a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the Administrative Rules framed under the various Jail Manuals or under the Prison Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure, 1898;

(2) That the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner.”

In *Naib Singh v. State of Punjab*, [1983] 2 SCC 454, it was noticed that a distinction between ‘imprisonment for life’ and ‘imprisonment for a term’ has been maintained in the Indian Penal Code in several of its provisions and moreover, whenever an offender is punishable with ‘imprisonment for life’ he is not punishable with ‘imprisonment which may be of either description’ within the meaning of Section 60 I.P.C. and, therefore, we cannot come to the

A conclusion that the Court, by itself, could release the convict automatically before the full life term is served. This aspect was highlighted in *Gopal Vinayak Godse v. State of Maharashtra & Ors.*, [1961] 3 SCR 440, wherein it was held that sentence for 'imprisonment for life' ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this Section does not entitle the convict to be released automatically before the full life term is served. It was observed that though under the relevant rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose. In view of this legal position explained by this Court it may not help the petitioner even on the construction placed by the learned counsel for the petitioner on Section 61(1) of the West Bengal Correctional Services Act XXXII of 1992 with reference to explanation thereto that for the purpose of calculation of the total period of imprisonment under this Section the period of imprisonment for life shall be taken to be equivalent to the period of imprisonment for 20 years. Therefore, solely on the basis of completion of a term in jail serving imprisonment and remissions earned under the relevant rules or law will not entitle an automatic release, but the appropriate Government must pass a separate order remitting the un-expired portion of the sentence.

If what we have stated above is the correct position in law then what arises for consideration in this case is whether there has been due consideration of the case of the petitioner by the Government. On an earlier occasion when the matter had come up before this Court an order dated February 15, 2000 had been made directing the Government to re-consider the cases for premature release of all life convicts who had approached the Court earlier. Thereafter, the Government constituted a Review Committee consisting of the following members to examine the matter and make a report thereof to the Court :-

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|---|---------------------------------------|----------|
| G | (1) Home Secretary | Chairman |
| | (2) Judicial Secretary | Convenor |
| | (3) I.G. of Prisons, West Bengal | Member |
| H | (4) Secretary Home (Jails) Department | Member |

- | | | |
|--|--------|---|
| (5) D.G. & I.G. of Police, West Bengal | Member | A |
| (6) Commissioner of Police, Calcutta | Member | |
| (7) Chief Probation Officer | Member | |

This Court also issued certain guidelines as to the basis on which a convict can be released prematurely and they are as under : B

- “1. Whether the offence is an individual act of crime without affecting the society at large.
2. Whether there is any fruitful purpose of confining of this convict anymore. C
3. Whether there is any chance of future reoccurrence of committing crime.
4. Whether the convict has lost his potentiality in committing crime.
5. Socio Economic condition of the convict’s family.” D

In the present case, the report of the jail authorities is in favour of the petitioner. However, the Review Committee constituted by the Government recommended to reject the claim of premature release of the petitioner for the following reasons :

1. That the police report has revealed that the two witnesses who had deposed before the trial court and the people of the locality are all apprehensive of acute breach of peace in the locality in case of premature release of the petitioner; E

2. That the petitioner is a person of about 43 years and hence he has the potential of committing crime; and F

3. That the incident in relation to which the crime had occurred was the sequel of the political feud affecting the society at large.

If we look at the reasons given by the Government, we are afraid that the same are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that H

- A the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government.

- On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner. In the circumstances, we
- C quash the order made by the Government and remit the matter to it again to examine the case of the petitioner in the light of what has been stated by this Court earlier and our comments made in this order as to the grounds upon which the Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Services Act XXXII of 1992 and to decide the matter afresh
- D within a period of three months from today. The writ petition is allowed accordingly. After issuing *rule* the same is made absolute.

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Petition allowed.