

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.9887 of 2015

ORDER :

The petitioner questions the G.O.Ms.No.30, Home (Paroles & HRC) Department, dated 18.03.2015, declining to grant remission to him in terms of G.O.Ms.No.189 Home (Prisons-C) Department, dated 07.08.2004.

2. The brief averments of the writ petition are that, the petitioner, as Accused No.4 in S.C.No.5 of 1994 on the file of the II Additional Sessions Judge, Kadapa, was convicted for the offences punishable under Sections 148 and 302 IPC, vide judgment dated 27.02.1998 and sentenced to undergo imprisonment for life. Challenging the same, the petitioner and other accused filed Crl.A.No.409 of 1998 and batch, which was partly allowed by this Court vide judgment dated 11.02.1999, wherein the petitioner was acquitted for the offence punishable under Section 302 IPC and conviction was modified for an offence punishable under Section 304-II IPC and he was sentenced to undergo Rigorous Imprisonment for a period of four years and also to pay a fine of Rs.5,000/-, in default to suffer Rigorous Imprisonment for one year. As against the said judgment, the petitioner along with others filed Crl.A.Nos.1342-1343 of 1999 before the Hon'ble Supreme Court, in which, initially bail was granted to the petitioner and he was released from the jail on 01.02.2000. However, subsequently, the said criminal appeal was dismissed vide judgment dated 18.11.2004. The petitioner states that by the time of his release, he has already undergone a sentence of 2 years, 7 months and 24 days, including the judicial remand and remission.

3. The petitioner states that on the occasion of Independence Day – 2004, the then Government of Andhra Pradesh, with an intention to grant special remission to certain prisons, issued G.O.Ms.No.189, dated 07.08.2004, setting out, in detail, its policy and also setting out, in detail, the prisoners, who are eligible to be released on that special occasion. The petitioner placed strong reliance upon Clause 2(a) of the said G.O., which reads as follows:

“2. Accordingly, Government issue the following guidelines to consider the cases of following categories of prisoners in the State who have been convicted by civil courts of criminal jurisdiction to remit and reduce the sentences on the scales specified below in addition to the remission normally admissible to prisoners and granted to them on the

other important occasions earlier:

(a) All the convicted prisoners other than life convicts who have undergone half of the sentence including remission as on 31.07.2004.

(b) and (c).....”

4. The petitioner states that since his case clearly fits into the criteria, as prescribed above, he is entitled for grant of special remission. However, as his case was not considered, he along with others filed W.P.No.7795 of 2010 and batch and the same was allowed by a common order dated 13.12.2013. The operative portion of the said order is extracted hereunder, for convenience:

“14. In the instant case, the Petitioners are not claiming the remission for the period they were on bail but they are claiming the benefit of the Government order on the ground that they have completed half of the sentence including the remission as on 31.07.2004. There is no dispute that they have undergone half of the sentence as on 31.07.2004. In the facts and circumstances of the case, the Petitioners are entitled for the benefit of G.O.Ms.No.189, Home (Prisons-C) Department, dated 07.08.2004, and consequently the Non-bailable Warrants (NBWs) issued by the learned II Additional Sessions Judge, Kadapa at Proddatur are liable to be recalled. The 1st respondent shall consider the case of the Petitioners in accordance with the above said G.O. and pass appropriate orders thereon within a period of three (3) months from the date of receipt of a copy of this order.

Accordingly, W.P.No.7795 of 2010 is allowed. W.P.No.5440 of 2010 is dismissed.”

5. In view of the aforesaid direction, the 1st respondent considered the case of the petitioner afresh, who again declined to grant remission to the petitioner and issued the impugned G.O.Ms.No.30, dated 18.03.2015, on the ground that the petitioner was found involved in six criminal cases from the year 1992 onwards. Accordingly, the petitioner was stated to have been arrested again on 20.03.2015 and sent to Central Prison, YSR Kadapa District, for serving the remainder of sentence.

6. The present writ petition is, therefore, filed contending that the impugned G.O. is contrary to the policy of the Government as declared in G.O.Ms.No.189, dated 07.08.2004, as well as contrary to the judgment of this Court in earlier W.P.No.7795 of 2010, dated 13.12.2013.

7. The respondents have filed a counter affidavit, wherein it is stated that as on 01.02.2000, the petitioner has undergone a total sentence of 2 years, 7 months and 24 days and the reasons in support of the impugned G.O., are set out in para-6 (ii) and (iii), which are extracted hereunder:

“ii. Though the petitioner undergone half of the sentence, at the time of issue of the said Government Orders, the petitioner was on bail and knew thoroughly that he should come back to prison to get the entitlement of the benefit of remission. Then the Superintendent

of Jails concerned shall immediately make an endorsement on the committal warrants and to forward the same to the concerned courts with a request to cancel the bail orders. In the instance case, the petitioner did not adhere to this procedure. Therefore, the petitioner is not eligible for grant of remission in the terms of the G.O.Ms.No.189, Home (Prisons-C) Department, dated 07.08.2004 r/w G.O.Ms.No.192, Home (Prisons-C) Department, dated 10.08.2004.

iii. The petitioner was having record of criminal cases right from 1992 onwards and as detailed below:

Sl.No.	Name of the Police Station	Cr.No.	Section of Law	Muddala Venkata Subba Reddy shown as accused	Stage of the case
01.	M a n n u r PS, Rajampet Rural/ Rajampet Sub-Division	45/92	147, 148, 302 r/w. 149 IPC and 120(B) IPC, Sec.25 (1B)(a) and 27 of Arms Act. PRC.No.19/1992-J F C M , Rajampet, SC.No.5/1994-2 nd ADJ, Kadapa.	A-4	A .4 Mudda Venkata Subbareddy along with A.3 (Gangireddy), A.5 (M. Srinivasulu Reddy), A.2, A.6 and A.7 sentenced to life, dt.27.02.1998. During appeal it was modified to 4 years RI & fine of Rs.5,000/- by High Court in CrI.A.No.409/98.
02.	Pullampet PS, Rajampet Rural/ Rajampet Sub-Division	47/93	147, 148, 341, 323 r/w. 149 IPC, Sec. 3(X) of SC, ST (POA) Act, 1989. SC.No.45/1996 – 1 st ADJ Court, Kadapa	A.3	All accused acquitted by 1 st ADJ, kadapa dt.20.9.2002 vide in SC.No.45/96.
03.	Pullampet PS, Rajampet Rural/ Rajampet Sub-Division	10/94	147, 148, 307, r/w. 149 IPC, PRC.5/97, JFCM, Rajampet. SC.No.427/97, ASJ, Rajampet.	A.3	The accused A.1 and A.2 convicted u/s. 235(2) CrPC and fined sentenced 5 years imprisonment and fine Rs.1,000/-. Case was acquitted on A.3 to A.8 vide SC.No.427/97, ASJ, Rajampet, dated 2.8.2000.
04.	Pullampet PS, Rajampet Rural/ Rajampet Sub-Division	37/94	342, 323, 307, r/w. 34 IPC, and Sec.27 of Arms Act. PRC.6/94, JFCM, Rajampet. SC.No.378/1995, ASJ, Rajampet.	A.1	All accused acquitted by ASJ, Rajampet, dt.8.2.1996 in SC.No.378/98.
05.	Pullampet PS, Rajampet Rural/ Rajampet Sub-Division	42/94	34(2), 35(e) of AP Excise Act and Sec.20 (1)(2)(ii) of AP Forest Act. CC.No.92/96, Spl.JFCM, Kadapa.	A.4	All accused were acquitted u/s. 255(1) CrPC by Spl.JFCM, Kadapa, vide in CC.No.92/96, dt.3.5.199.
06.	Pullampet PS, Rajampet Rural/ Rajampet Sub-Division	62/95	1 4 7 , 148, 353, 307, 114 r/w. 149 I P C , Sec.25(1B) and 27 of Arms Act, Sec.5 & 6 of ES Act, Sec.34(A) of AP Excise Act. PRC.115/2005, ASJ, Rajampet.	A.1	All accused were acquitted by ASJ, Rajampet in SC.No.115/15.

07.	Pullampet PS, Rajampet Rural/ Rajampet Sub- Division	45/96	1 4 7 IPC, and Sec.3(X) of SC, ST (POA) Act. Later charge sheet was laid u/s.3(1) (X) of SC, ST (POA) Act. SPl.SC.No.214/96, 1 st ADJ Court, Kadapa.	A.3	All accused A.1 to A.4 were convicted u/s. 235 (2) Cr.PC and fined Rs.400/- for each by 1 st ADJ, Kadapa, vide SC.No.214/96, dated 7.9.2000.
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Therefore, the contention of the petitioner that he was not having any criminal record right from 1995 to 2013 is not correct as majority of cases were as furnished above. It is pertinent to mention here that the universal procedure for grant of remissions is only based on the good behaviour of the prisoner in the jail which is now being followed even in India too.”

8. It would be evident therefrom that one of the grounds urged in support of the impugned G.O., is that the petitioner continued to remain on bail at the time of issuance of G.O.Ms.No.189, dated 07.08.2004, and since he is not undergoing sentence at that time, he is not eligible for remission. The second reason given is with regard to seven criminal cases filed against the petitioner and on the ground of his having been found involved in the aforesaid criminal cases. It is stated that the petitioner is not entitled for remission, as the requirement of good behaviour by the prisoner is lacking in the case of the petitioner.

9. Sri D. Prakash Reddy, learned Senior Counsel, instructed by Sri P. Nagendra Reddy, learned counsel for the petitioner, contends that the basis for issuance of the impugned G.O.Ms.No.30, dated 18.03.2015, is clearly unsustainable, as the benefit of G.O.Ms.No.189, dated 07.08.2004, cannot be denied merely on the ground that the petitioner was granted bail pending appeals. He would further submit that by grant of bail, the conviction of the petitioner was not suspended and, admittedly, the petitioner has undergone more than half of his sentence, thereby qualifying him for remission under the policy of the Government in G.O.Ms.No.189, dated 07.08.2004. He also submits that institution of criminal cases against the petitioner is also of no consequence, inasmuch as the counter affidavit (which is reflected above) itself show that the first item relates to the case on hand, wherein the petitioner was convicted for four years and he has already undergone more than half of the sentence. So far as the other criminal cases from item Nos.2 to 7 are concerned, counter affidavit itself says that the petitioner was acquitted in all the cases, except in item No.7, wherein a fine of Rs.400/- was imposed on him. The learned Senior Counsel would, therefore, submit that though involvement of the petitioner

in the criminal cases was cited as a ground for refusal, even before the impugned G.O., was issued on 18.03.2015, the respondents were aware that the petitioner was acquitted in all the criminal cases under item Nos.2 to 7, and hence, the reasons given in the impugned G.O., are clearly unsustainable.

10. The learned Senior Counsel placed reliance upon a decision of this Court in W.P.No.7795 of 2010 and batch, dated 13.12.2013, wherein this Court held that the petitioners therein are entitled for the benefit of G.O.Ms.No.189, dated 07.08.2004, and consequently, gave a direction to the 1st respondent to consider the case of the petitioner in accordance with the said G.O. The learned Senior Counsel would submit that the said order having become final, the 1st respondent was duty bound to consider the case of the petitioner for grant of remission in terms of G.O.Ms.No.189, dated 07.08.2004, and ought not to have denied the same on invented new grounds.

11. On the other hand, the learned Special Government Pleader appearing for the 1st respondent justifies the impugned G.O., on the ground that lack of good behaviour on the part of the petitioner, as a prisoner, is evident from his involvement in several criminal cases, as noted in the counter affidavit. It is, therefore, clear that the petitioner has a criminal record right from 1995 to 2013 and hence he cannot claim good behaviour for seeking remission. The learned Special Government Pleader also placed reliance upon a judgment dated 25.04.2014 of the Hon'ble Supreme Court in UNION OF INDIA v. V. SRIHARAN @ MURUGAN & ORS. in Writ Petition (Crl.) No.48 of 2014, in which, the petitioner therein had challenged the Government Order declining to grant remission, wherein after considering the matter at length, the Hon'ble Supreme Court framed seven questions and referred the case to the Constitutional Bench. The learned Special Government Pleader states that similar issue already being pending before the Constitutional Bench, the petitioner is not entitled for any relief, until the Constitutional Bench lays down a law on the subject.

12. I am of the view that both the contentions of the learned Special Government Pleader are not sustainable.

13. *Primarily*, as the reasons given in the impugned G.O.Ms.No.30, dated 18.03.2015, viz., the petitioner's involvement in six cases from 1992 onwards and thereby not desirable to extend the benefit of remission to him, is factually as well as legally unsustainable. As noted from the extracted part of the counter affidavit above, the

petitioner was acquitted in five, out of six criminal cases and only in one case, he was imposed a fine of Rs.400/-. Whether it is still open for the respondents to treat the petitioner as having a criminal record and thereby deny the benefit remission to him has clearly to be answered against the respondents and in favour of the petitioner. Having been acquitted in the said criminal cases, it cannot be said that the petitioner is disentitled for remission on that ground.

14. *Secondly*, the ground mentioned in the counter affidavit that the petitioner was on bail and, as such, he is not entitled for remission, is not found in the impugned G.O., and consequently, the counter affidavit cannot supplement the reasons for the impugned G.O. (See MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER – (1978) 1 SCC 405).

15. *Thirdly*, the decision of this Court in W.P.No.7795 of 2010 and batch, dated 13.12.2013, the operative portion of which is already extracted above, shows that this Court held that the petitioner is entitled for the benefit of G.O.Ms.No.189, dated 07.08.2004, and directed the 1st respondent to consider the case of the petitioner in accordance with the aforesaid G.O. The said order has, admittedly, attained finality.

16. For the aforesaid reasons, the impugned G.O., cannot be sustained.

17. The writ petition, therefore, deserves to be allowed and the impugned G.O.Ms.No.30, Home (Paroles & HRC) Department, dated 18.03.2015, is set aside to the extent of petitioner. Consideration of the petitioner's case for grant of remission in terms of G.O.Ms.No.189, dated 07.08.2004, shall, therefore, be re-examined by the 1st respondent in the light of the directions of this Court in W.P.No.7795 of 2010 and batch, dated 13.12.2013 and the findings herein.

18. Keeping in view the fact that the petitioner has, admittedly, completed more than half of the sentence and is continuing to remain in prison, the 1st respondent is directed to consider the petitioner's case and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

JUSTICE VILAS V. AFZULPURKAR

16.09.2015.
Msr

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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Msr