IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

WP No.21783 of 2018 & batch

Between:

PULI RAMADEVI & OTEHRS

...Petitioners

&

THE STATE OF ANDHRA PRADESH
Rep. BY ITS PRINCIPAL SECRETARY HOME
(PAROLES) DEPT., AMARAVATHI & OTHERS

...Respondents

DATE OF JUDGMENT PRONOUNCED: 31-10-2018

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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A. RAJASHEKER REDDY, J

***THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

+ WP No.21783 of 2018 & batch

% 31-10-2018

PULI RAMADEVI & OTEHRS

...Petitioners

VERSUS

$ THE STATE OF ANDHRA PRADESH
Rep. BY ITS PRINCIPAL SECRETARY HOME
(PAROLES) DEPT., AMARAVATHI & OTHERS

...Respondents

< GIST:

> HEAD NOTE:

! Counsel for Petitioners: Sri P. Gangarami Reddy

^Counsel for Respondents: GP for Home (AP)

? Cases referred

1. (2016) 7 SCC 1
2. (1998) 8 SCC 539

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.21783; 20942; 22636; 22637; 22672; 22703; 22735; 22838; 22881; 22893; 24594; 24674; 24836; 24847; 24855; 24864; 24906; 24974; 24947; 24986; 25044; 25287; 25312; 25331; 25388; 25484; 25502 of 2018

COMMON ORDER ::

These writ petitions are filed by the near relatives of the life convicts against whom convictions are recorded and sentenced to undergo imprisonment for life. To appreciate the *lis* in the matter, facts in WP No.21783 of 2018 are adverted to as it includes the cause in other cases.

2. The grievance of the petitioners is that the convicts in question have undergone the sentence of imprisonment for more than 10 years and they are entitled for grant of special remission in the light of the guidelines issued in GO Ms.No.8, Home (Paroles) Department, dated 23-01-2018, but the cases of the convicts, whose release is being sought by the petitioners, have not been considered, reasons not being disclosed, for grant of special remission and their release from jails. Hence, these writ petitions.

3. Heard learned counsel for the petitioners and the learned Government Pleader for Home. Perused the record produced in the matter.

4. It is canvassed by the learned counsel for the petitioners that the Government vide GO Ms.No.8, Home (Paroles) Department, dated 23-01-2018, devised guidelines for grant of special remission to the life convict prisoners on the occasion of the Republic day, 2018; for that purpose an internal Scrutiny Committee was constituted which scrutinised the list of life convict prisoners and submitted a list of 149 life convict prisoners eligible for grant of special remission to the Standing Committee constituted in terms of GO Ms.No.8, Home (Paroles) Department, dated 23-01-2018, but the Standing Committee could recommend for grant of special remission only to 49 life convict prisoners as against the 149 life convict prisoners forwarded by the internal Scrutiny Committee. It is strenuously contended by the counsel appearing for the petitioners that Clause 7 of the said GO, stipulated the eligibility criteria for the premature release of life convicts by grant of special remission and all the life convicts prisoners whose cases were recommended by the internal Scrutiny Committee fulfilled the eligibility criteria, but their cases were not considered without there being any objective rational except assigning societal interest. It is also contended that

none of the life convicts fall under Clause 8 of the said GO, for not being considered for grant of special remission; that grant of special remission is not a matter of right, but the convicts before this Court, through their representatives, were singled out and no compelling reasons are assigned for not considering their cases though the internal Scrutiny Committee considered them to be eligible for grant of special remission on the occasion of Republic day, 2018.

5. *Per contra,* adverting to the counter averments made in the case by the 3rd respondent, learned Government Pleader for Home submits that the respondent-Standing Committee reviewed the cases of 149 life convicts prisoners in accordance with the guidelines issued in GO Ms No.8, dated 23–01-2018 and recommended for release of 49 life convict prisoners and deferred the remaining 100 life convict prisoners having regard to various factors *viz.,* age of the prisoners, gruesomeness of the modus operandi adopted by them in committing the crime, mitigating social factors and the nature of offences in which the life convicts were involved. It is also stated that premature release of the life convicts is not a matter of right and it is only a concession being extended to them by the State as part

of the reformation and transformation of its subjects. It is also stated that the cases of the life convicts not considered this time will be reviewed again along with the list of other life convicts to be furnished by the Department. That the writ petitions are merit less and liable to be dismissed.

6. It is to be seen that the Government vide GO Ms.No.8, dated 23–01–2018 has taken a decision, subject to review of cases and subject to certain conditions, to grant special remission to life convicts and for their premature release on the occasion of the Republic day on 26–01–2018.

7. Clause 7 of the GO provides the eligibility criteria and the life convicts who are entitled to be released. Likewise, Clause 8 of the GO, stipulates life convicts who shall not be released by grant of such special remission. It is relevant here to quote the text of Clauses 7 and 8 of the GO, which reads as under:-

> *"7. Accordingly, relaxing the orders issued in the reference 1st read above, the Government hereby issues the following guidelines giving one time exemption to consider special remission in the cases of following categories of prisoners who have been convicted by Civil Courts of criminal jurisdiction. These guidelines will be applicable to the following life convicts undergoing life sentence, keeping in view of their good behaviour, subject to conditions as specified at para-8 below:-*

a) All convicted women prisoners sentenced to imprisonment for life, including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) who have undergone an actual sentence of 5 years including remand period and total sentence of 7 years including remission as on 26-01-2018 shall be released.

b) All convicted male prisoners sentenced to imprisonment for life including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and who have undergone an ***actual sentence of 7 years*** *including remand period and* ***total sentence of 10 years*** *including remission as on 26-01-2018 shall be released.*

c) Old and decrepit prisoners as defined in Rule 321 (h) of Andhra Pradesh Prison Rules, 1979, read with G.O.Ms.No.44, Home (Prisons.B2) Department, dated:16-03-2007;

d) All convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) aged more than 65 years and have undergone an actual sentence of 5 years including remand period and total sentence of 7 years including remission as on 26-01-2018 shall be released.

8. The remission of sentence in para (7) above shall apply to prisoners, who have been convicted by Courts situated within the State of Andhra Pradesh and are undergoing sentence in Andhra Pradesh and in other States, but shall not apply to the following two categories of prisoners, namely:

CATEGORY I: *Specified by Supreme Court order dated* ***23-07-2015*** *in W.P. (Crl.) No.48/2014.*

a) where life sentence has been awarded specifying that:-

(i) the convict shall undergo life sentence till the end of his life without remission or commutation;

(ii) the convict, shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or like.

b) where no application for remission or commutation was preferred, or considered suo motu by the concerned State Governments/ authorities.

c) where the investigation was conducted by Central Investigating Agency like the Central Bureau of Investigation.

d) where the life sentence is under any Central law or under Section 376 of the Indian Penal Code, 1860 or any other similar offence.

CATEGORY II:

i. Prisoners convicted and sentenced by courts situated outside the State of Andhra Pradesh.

ii. Prisoners convicted of offences against laws relating to a matter to which the executive powers of the Union extends;

iii. Prisoners involved in and convicted for offences related to communal incidents;

iv. Life convicts who are punished for any prison offence during the last 3 preceding years and those who are punished for any serious prison offence like revolt / organising revolt against the prison administration anytime during their entire period of stay in the prison.

v. Prisoners who are released on parole / furlough and who commit / attempts any of the offences punishable under any law for the time being in force.

vi. Life convicts who have escaped from custody during preceding 3 years and have not surrendered voluntarily.

vii. Prisoners convicted under the Essential Commodities Act, 1955.

viii. Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act, 1985, the Andhra Pradesh Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1993, the Prevention of Terrorism Act, 2002 and the Special Acts enacted for Prevention of Terrorism and Mafia and other organized crimes who had been sentenced to imprisonment for life.

ix. Life convicts who have committed offence / offences against girls upto 18 years of age and boys upto 16 years of age.

x. Life convicts who are convicted for Kidnapping and related offences U/s 363- A, 364, 364-A, 366, 366-A, 366-B, 367, 368, 369, 372 and Section 373 of the Indian Penal Code, 1860.

xi. Life convicts convicted in crimes against women under section 376 IPC.

xii. Professional killers who have been guilty of murder by being hired.

xiii. Prisoners convicted under waging or attempting to wage war, or abetting the waging of war, against the Government of India.

xiv. Prisoners convicted of murder of Public Servants on duty.

xv. Prisoners sentenced to death sentence, which is later commuted to life sentence.

xvi. Life convicts prisoners who are at large on Parole/Furlough/Bail at the time of issuance of Government Orders."

8. A reading of the above clauses, particularly Clause 7 (b) it is understood that all convicted male prisoners sentenced to imprisonment for life and who have undergone an actual sentence of 7 years including remand period and total sentence of 10 years as on 26-01-2018 shall be released subject to review of cases by the Standing Committee constituted for that purpose. Admittedly, all the life convict prisoners whose cases were forwarded by the internal Scrutiny Committee satisfy the condition in sub-Clause (b) of Clause 7 of the GO. It is not the case of the respondent-Director General of Prisons and Correctional Services that none of the life convicts prisoners fall under the restrictions imposed in Clause 8 and not satisfied the condition in sub-Clause (b) of Clause 7 of the GO. The recommendations made by internal Scrutiny Committee is based on best available evidence more particularly regard being had to the behaviour and conduct of the lift convicts. But, no plausible reasons are stated by the 2nd respondent-Standing Committee at Government level for

rejection of grant of special remission to the other life convicts. When once the eligibility criteria is framed under Clause 7 of the GO, making a class among class of convicts that too without giving specific reasons for rejection of special remission is not commendable.

9. This Court is not oblivious of the fact that Court should not interfere in matters either grant/refusal of special remission to the convicts and the terms of remission or otherwise be left to the Executive. A Constitutional Bench of the Supreme Court in ***UNION OF INDIA vs. V. SRIHARAN***[1] while considering the rights of convicts for grant of remission at para 259 observed thus:-

> *"259. The convict undergoing the life imprisonment can always apply to the authority concerned for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably. This was settled in Godse v. State of Maharashtra, AIR 1961 SC 600, which view has since then been followed consistently in State of Haryana v. Mahender Singh , (2007) 13 SCC 606, State of Haryana v. Jagdish, (2010) 4 SCC 216, Sangeet vs. State of Haryana, (2013) 2 SCC 452 and Laxman Naskar v. Union of India, (2000) 2 SCC 595. The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation as ruled in Godse v. State of Maharashtra, AIR 1961 SC 600. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the authorities concerned, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to*

[1] *(2016) 7 SCC 1*

competent authority and have his case considered in a fair and reasonable manner."

10. In ***ASHOK KUMAR BARIK vs. STATE OF ORISSA***[2] same ratio is laid down by the Supreme Court. But in this case, the Government itself issued guidelines in GO Ms.No.8 and specified the conditions for grant of specific remission, as such it is incumbent upon the 2nd respondent to follow the guidelines laid down therein while considering cases of convicts for premature release, but they can not pick and chose without reference to the guidelines laid down in the GO. The 1st respondent issued GO Ms.No.8, dated 23-01-2018 with a vowed object and the internal Scrutiny Committee recommended based on the guidelines framed in the GO in that behalf. In para 2 of the GO itself provides the justification for pre-mature release of life convicts, which is extracted hereunder for better appreciation of the issue:-

> 2. The special problems that face the life-term prisoners not only affect the prisoners as individuals but also the entire correctional system. International instruments and national policies suggest that deprivation of liberty may only be justified if accompanied by periodic review and assessment procedures that provides for options of release in due course of time with justifiable reasons. Absolute incarceration of individuals till the end of lives is no way acceptable for civilized communities. It is not only the

[2] (1998) 8 SCC 539

> humanitarian reasons that make pre-mature release of lifers inevitable, but also the cost-effectiveness of imprisonment. To incarcerate a person for life without the possibility of being released not only ignores two of the purposes of imprisonment, i.e., rehabilitation and reintegration into the society, but also places burdens on the State exchequer. Hence it is imperative that inmates who are undergoing life imprisonment should be given a chance for *'life'* outside, instead of a *'life'* inside."

11. Though the power to review the cases forwarded by the internal Scrutiny Committee vests with the Standing Committee constituted under Clause 12 of the GO, but right accrued to the eligible convicts to be considered for premature release cannot be nibbled without objectively examining their case. The policy framed by the Government is in tune with the International conventions on life and liberty of the citizens including prisoners, to which India is a signatory. At the same time, this Court is not compassionate and considerate of the lift convicts who are enduring nightmare for the gruesome offences committed by them, but it is only on the principle of fair play, legitimate expectation and the guidelines framed by the Government, their cases have to be examined having regard to the conditions stipulated therein. No compelling reasons are discernable for not recommending their cases even on a perusal of the record produced in the matter. Review

power vested in the Standing Committee cannot be construed to lay down fresh conditions/guidelines, and it is to scrutinise and ensure conformation of the eligibility conditions already laid down by the Government in the GO Ms.No.8.

12. In view of the above facts and circumstances, the writ petitions are allowed. Miscellaneous petitions, if any pending in these cases shall stand disposed of. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 31-10-2018
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.21783; 20942; 22636; 22637; 22672; 22703; 22735; 22838; 22881; 22893; 24594; 24674; 24836; 24847; 24855; 24864; 24906; 24947; 24986; 25044; 25287; 25312; 25331; 25388; 25484; 25502 of 2018

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Dated: 31-10-2018

NRG