

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

WRIT APPEAL NO.1887 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.2641 of 2014 dated 25.07.2017.

The respondent herein filed the said Writ Petition seeking a mandamus to the appellants herein to release him, and set him at liberty forthwith, declaring the action of the respondents (appellants herein) in not releasing him by extending him the benefit of the guidelines issued in G.O.Ms.No.220 Home (Parole) Department dated 28.09.2013 by accepting the recommendations of the Selection Committee, and deleting his name while issuing orders in approving the recommendations of the Committee vide G.O.Ms.No.286 Home (Parole) Department dated 21.12.2013 on the occasion of Gandhi Jayanthi, 2013, as illegal and arbitrary.

The petitioner was Accused No.6 in SC.No.42 of 1989. He was convicted and sentenced to life imprisonment for the offence under Section 302 of the Indian Penal Code (IPC), and for two years for the offence under Section 148 IPC. The Government of Andhra Pradesh issued G.O.Ms.No.220 dated 28.09.2013 framing guidelines for grant of 'one time exemption', for remission of the unexpired portion of the sentence, in the case of certain categories of prisoners. Para-3(b), of the guidelines in G.O.Ms. No.220 dated 28.09.2013, stipulated that 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 had undergone an actual sentence of 7 years including the remand period and a total sentence of 10 years including remission as on 02.10.2013, should be released. Para-3(c) stipulated that old and decrepit prisoners, as defined in Rule 321(h) of the Andhra Pradesh Prison Rules, 1979 read with G.O.Ms.No.44, Home (Prisons.B2) Department, dated 16.03.2007, shall also be entitled for remission. The respondent herein had undergone a total sentence of ten years, including remission, as on 02.10.2013. He had, thereby, fulfilled the conditions stipulated in para-3 of G.O.Ms.No.220 dated 28.09.2013 for grant of remission of the unexpired portion of his sentence.

Para-4 of G.O.Ms.No.220 dated 28.09.2013, however, stipulated that remission of sentence, in terms of para (3), shall not apply to the categories of prisoners specified in para-4. Para-4 (xv) stipulated that prisoners, convicted of murder of Public Servants on duty, would not be entitled for remission of the unexpired portion of their sentence under G.O.Ms.No.220 dated 28.09.2013.

The deceased was the President of a Primary Agricultural Co-operative Society, and the learned Single Judge has, in the order under appeal, proceeded on the premise that the deceased was a public servant. Since Para-4 (xv) of G.O.Ms.No.220 dated 28.09.2013 does not extend the benefit, of para-3 of the said G.O, to prisoners convicted of murder of Public Servants on duty, the learned Single Judge has, in the order under appeal, examined whether the deceased, a public servant, was on duty when he was murdered. The learned Single Judge has extracted para-22 of the judgment in CrI.A.No.256 of 1991 dated 31.12.1992 wherein it was

observed that the evidence showed that P.Ws.1 to 3 and the deceased were waiting in the office of P.W-4 for the caste certificates and voters list of their followers. Based on this finding of the Division Bench, the learned Single Judge held that the visit of the deceased (President of a Primary Agricultural Co-operative Society) to the MRO's office was not in connection with his duties, but only to obtain the caste certificates and voters list to enable his supporters to file nominations in the panchayat elections.

The learned Single Judge has, in our view rightly, observed that obtaining caste certificates and voters list, to enable his supporters to participate in the panchayat elections, was no part of the duties of the deceased as the President of a Primary Agricultural Co-operative Society. We are in agreement with the views expressed by the learned Single Judge that the reasons given by the authority, for rejecting the petitioner's request for grant of remission in terms of G.O.Ms.No.220 dated 28.09.2013, does not merit acceptance.

The fact, however, remains that the learned Single Judge has allowed the Writ Petition which, in effect, means that the respondent herein has been granted remission of the unexpired portion of sentence of life imprisonment. This Court, while exercising jurisdiction under Article 226 of the Constitution of India, would not don the robes of the competent authority in granting remission, nor would it substitute its views for his. While rejection of the respondent's request for grant of remission was no doubt contrary to the guidelines issued in G.O.Ms.No.220 dated 28.09.2013, the learned Single Judge ought to have directed the respondents to consider the petitioner's request for grant of

remission afresh, and in accordance with law, bearing in mind that he does not fall within the prohibited categories referred to in para-4 (xv) of G.O.Ms.No.220 dated 28.09.2013.

If, as is now contended before us by Sri K.Sanjeev, learned counsel for the respondent, that A-1, A-3 and A-4 in the said Sessions Case, who were also sentenced to life imprisonment along with respondent who is A-6 therein, were granted remission earlier in the year 2009 is true, the question whether the respondents could have singled out the petitioner for adverse treatment and deny him alone the benefit of remission of the remaining period of sentence, would necessitate examination by the appellants herein.

We deem it appropriate, therefore, to direct the appellants to consider the respondent-writ petitioner's request for grant of remission of the remaining portion of his sentence, in accordance with law without treating him as falling under Para-4 (xv) of G.O.Ms.No.220 dated 28.09.2013. Consideration of the respondent-writ petitioner's claim for remission shall be completed with utmost expedition and, in any event, within three (3) months from the date of receipt of a copy of this order.

The order of the learned Single Judge is modified to the extent indicated hereinabove, and the Writ Appeal stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(M.S.K.JAISWAL, J)

29th January 2018
RRB