

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14289-2017 (O&M)
Date of decision:30.11.2018

Ashok Kumar and another

.....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Aminder Preet, Advocate
for the petitioners.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Kuldip Singh, J. (Oral)

The petitioners have challenged the order dated 25.05.2017, endorsed on 23.06.2017 (Annexure P-4), passed by Additional Chief Secretary to Government of Haryana, Jails Department, vide which the previous order of remission has been recalled and they have been directed to surrender before the jail authorities.

The perusal of release order dated 04.04.2016 (Annexure P-2) shows that the Governor of Haryana was pleased to remit the unexpired portion of sentence passed on the petitioners by putting some conditions. One of the condition is as under:-

*“6. After the release, the prisoner shall surrender
when so desired by the Governor of Haryana during*

the unexpired portion of his sentence.”

The state in the reply has maintained that it has power to pass such order and that order was passed while examining the case of other convicts as it was found that it was a heinous crime.

I have heard learned counsel for the parties.

Admittedly, in this case, Governor of Haryana had granted remission to the petitioners and they were accordingly released. It was during the examination of case of other co-convicts that the State Level Committee decided to recall the order passed qua the present petitioners on the ground that 18 injuries were caused to the deceased and therefore they are required to undergo un-expired portion of the sentence i.e 14 years actual sentence and 20 years of total sentence as per Para 2 (a)(xiv) of the policy dated 12.04.2002. Admittedly, in this case before passing the adverse order, the petitioners were not notified nor they were heard.

Learned State counsel has contended that a mistake was committed and therefore that has been rectified.

On the other hand, learned counsel for the petitioners has argued that order of remission was passed by Governor of Haryana in the exercise of power under Section 161 of the Constitution of India. Therefore, the Additional Chief Secretary Government of Haryana was not competent to recall the same. It is further contended that once the sentence is remitted, it cannot be recalled the way it was done while reviewing the case of other convicts.

In any case, this Court is of the view that before the recalling the order of remission, the petitioners should have been heard by the State Level

Committee, so that they may be able to put forth their side of the case to prove that no error was committed while passing earlier order of remission and that orders are not required to be recall.

It being so, without commenting on merits of the controversy, impugned order dated 25.05.2017, endorsed on 23.06.2017 (Annexure P-4), passed by Additional Chief Secretary to Government of Haryana, Jail Department, is hereby quashed. The State Level Committee is directed to give an opportunity by hearing the petitioners namely Ashok Kumar and Amar Singh, before passing the order of recall and fresh order be passed in accordance with law. It is further directed that if any adverse order is passed against the petitioners, the said order will not be executed for the period of 30 days to enable the petitioners to approach this Court.

Petition is accordingly allowed to the above noted extent.

(KULDIP SINGH)
JUDGE

30.11.2018
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Whether speaking/ reasoned:	Yes
Whether Reportable:	No