



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.04.2019

CORAM:

THE HONOURABLE **MR.JUSTICE N.KIRUBAKARAN**

and

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

W.P.(MD)Nos.9176 and and 9177 of 2019
and

W.M.P.(MD)Nos.7137 and 7138 of 2019

W.P. (MD)No.9176 of 2019:-

P.Rathinam ... Petitioner in W.P.(MD)No.9176 of 2019

A.Perumal ... Petitioner in W.P.(MD)No.9177 of 2019

Vs.

1.Union of India,
represented by the Principal Secretary,
Ministry of Social Justice and Employment,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi-110 001.

2.The Secretary to Government,
Home Department,
Fort St.George,
Chennai -600 009.

3.The Secretary to the Government,
Adi-Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai - 600 009.

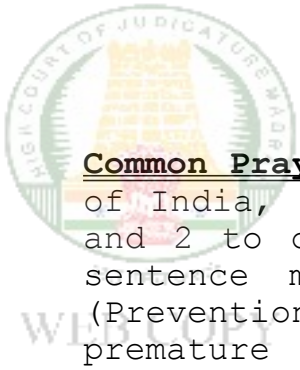
4.The District Collector,
Madurai District, Madurai.

5.The Deputy Superintendent of Police,
District Crime Branch,
Madurai District.

6.The Additional Director General of Police and
Inspector General of Police,
Tamil Nadu Prison Department,
Whannels Road,
Egmore, Chennai - 600 08.

7.The Superintendent of Prison,
Central Prison,
New Jail Road, Arapalayam,
Madurai-625 016.

... Respondents in both cases



Common Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 and 2 to declare that the prisoners undergoing the conviction and sentence made under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989, will be ineligible to claim premature release under G.O.(Ms.)No.64, dated 01.02.2018 of Home (Prison-VI) Department issued by the second respondent and any other subsequent Government Orders, schemes, etc.

For Petitioner	:Mr.P.Rathinam
(in W.P.(MD)No.9176 of 2019)	(Party in person)
For Petitioner	:Mr.T.Lajapathi Roy
(in W.P.(MD)No.9177 of 2019)	
For R1	:Mr.V.Krishnasamy
(in both cases)	Central Government Standing Counsel
For R2 to R7	:Mr.A.K.Baskara Pandian
(in both cases)	Special Government Pleader

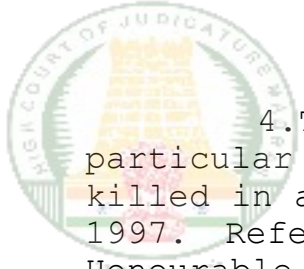
COMMON ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

These writ petitions are filed for a direction to the respondent Nos.1 and 2 to declare that the prisoners undergoing the conviction and sentence for the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989, will be ineligible to claim premature release under G.O.(Ms.)No.64, dated 01.02.2018 of Home (Prison-VI) Department issued by the second respondent.

2.Though both the writ petitions are filed simultaneously with more or less similar prayer, the first writ petition has been filed by an Advocate, who is practicing before the Principal Seat of this Court. The second writ petition has been filed by an Agriculturalist, who belongs to Scheduled Caste Community. Both the petitioners are interested in welfare, wellbeing and protection of rights of Scheduled Castes and Scheduled Tribes.

3.The second respondent, namely, the Secretary to the State Government, Home Department, issued a Government Order vide G.O.Ms.No.64, dated 01.02.2018, Home (Prison-VI) Department, categorising the prisoners convicted for specific offences as eligible for consideration for pre-mature release subject to certain conditions. The request of the petitioner in both the cases is that the prisoners, who are convicted for offences under the provisions of Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, herein after referred to as SC/ST Act), should be excluded from the purview of the said Government Order.



4. The petitioner in the first case is more concerned about a particular incident happened in Melavalavu, wherein, six Dalits were killed in a barbarian manner by the members of dominant community in 1997. Referring to the case history, it is contended that the Honourable Supreme Court confirmed this Court's judgment, by which, the accused were also found to have committed offences under Section 3(2)(v) of SC/ST Act. It is stated that the convicts in the Melavalavu incident were sentenced to undergo imprisonment for life. However, on account of Centenary Celebration of Former Honourable Chief Minister Late C.N. Annadurai, thousands of life convicts on the eve of Centenary celebration, including some of the life convicts, who were convicted in relation to the incident of Melavalavu Village, were released.

5. It is in this background, the learned Counsel for the petitioner pointed out that the offences against a Dalit is a heinous crime against the Society. The petitioner, who appeared as a party in person, contended that the offences against Dalit is not only against the victims, but also against the civilian society at large, as it has been pointed by the Honourable Supreme Court in the case of **Kamalanantha and others vs State of Tamilnadu** reported in **(2005) 5 SCC 194**.

6. In the second case, the petitioner is mostly concerned about discrimination shown to Scheduled Castes and Scheduled Tribes people throughout Country, particularly, at the place of worship. The petitioner has also come forward with a particular incident, where two dalit people had lost their lives, because of the attack by another community with deadly weapons. Referring to the nature of crime committed and the social impact pursuant to the offence against dalit, this petitioner is also aggrieved by pre-mature release of the convicts, because of Centenary Celebration of Great Leader C.N. Annadurai. Both the writ petitions appear to have been prepared by the same person, as most of the averments are same.

7. Sum and substance, the party-in-person in the first writ petition and the learned Counsel for the writ petitioner in the second writ petition contended that acts of atrocities perpetrated against the members of SC/ST community are increasing and that the Judiciary has to take serious note of it and prevent the pre-mature of release of convict, who were punished for the offences under the provisions of SC/ST Act. It is stated that the gravity of offence committed against the Scheduled Castes and Tribes and nature of impact created in the minds of victims and his family after a crime under the SC/ST Act cannot be measured. The apprehension of the petitioners is that the accused, who are now released, may take vengeance against the Adi Dravidar community people and that therefore, this Court should also consider the pre-mature release of accused in SC/ST cases, having regard to the overall background and the evil consequences. In both the cases, the respective petitioners have sent representations, on 20.03.2019 and 20.12.2018 to the official respondents.



8. The learned Counsel for the petitioner in W.P.(MD)No.9176 of 2019 relied upon the judgment of Honourable Supreme Court in the case of **State of Karnataka vs Appa Balu Ingale and others** reported in **1995 Supp (4) SCC 469**. No doubt, the Honourable Supreme Court in the said judgment has elaborated the practicing of untouchability by referring to incidents and the humiliation to countless dalits. The observation of the Honourable Supreme Court in the said judgment has no relevance to the present case, as the issue here is entirely different.

9. G.O.Ms.No.64, dated 01.02.2018, was issued by Home Department of the State Government, declaring pre-mature release of life convict prisoners on the occasion of Centenary Celebration of Bharath Rathna Dr.M.G.Ramachandran, former Chief Minister of Tamil Nadu.

10. Section 432 of Cr.P.C. empowers the Government that the Government may suspend the execution of sentence of conviction or remit the whole or any part of the punishment, to which, the accused is sentenced.

11. Under Section 433 of Cr.P.C., appropriate Government may commute a sentence of death for any other punishment provided under IPC; a sentence of imprisonment for life or a sentence of rigorous imprisonment.

12. The appropriate Government, by general Rules or special Rules, can give direction, as to the suspension of sentence and condition, on which petition should be presented and dealt with subject to the restrictions on the power of remission or commutation in certain cases under Section 433-A of Cr.P.C, Referring to the judgment of Honourable Supreme Court in **Criminal Appeal No.865 of 2016**, dated 08.09.2016, wherein, the State Government was directed to bring fresh circulars keeping in view the provisions contained in Section 433-A of Cr.P.C and other judgments of Honourable Supreme Court, the State Government has issued the impugned Government order, vide, G.O.Ms.No.64, dated 01.02.2018.

13. The remission of sentence or pre-mature release are matters relating to the policy of Government. The scope of judicial review in the matters like this is very limited. It is not the allegation of the petitioners that the impugned Government Order suffers from any illegality or *mala fide* or non-application of mind. Broadly, a decision of Government in a matter of administration of criminal law or policy decision, the judicial review is impermissible, unless, it is established that the decision is unconstitutional or violation of any statutory provisions. In the present case, the petitioners have not raised any ground by referring to any violation of law or any other legal grounds. Except focussing social discrimination and communal hatred, there is no



special reference to breach of fundamental right. It is stated that premature release of prisoners who are convicted for offences against SC / ST people may lead to further violence.

14. When an administrative decision is taken by the Government, this Court cannot intervene with the decision as such, acting as an appellate authority. It is not the case of the petitioners in both cases that the decision was taken by the Government for extraneous reasons or with ulterior motive. When the petitioners in the two writ petitions have come forward with the present writ petitions, for a public cause, they ought to have undertaken some search about the ill effects and social evils on account of premature release of convicts for offences under SC/ST Act. As it was pointed out earlier, the decision of the Government as such is not challenged on any ground, with reference to the violation of constitutional or statutory provision. It is true that the concept of premature release can be applied only in exceptional cases, where the gravity of the offence committed and the nature of impact, it creates in the victims and the society at large can be compromised for other valid reasons. However, this Court is not an expert to give suggestion to the Government as the matter requires to be considered in a different perspective involving several issues.

15. Hence this Court is not inclined to entertain these writ petitions. The writ petitioners have already submitted their representations before the Government, dated 20.03.2019 and 20.12.2018 respectively. Though the writ petitions are not entertained, the respondents are directed to consider the respective representations of the petitioners in the two writ petitions on merits and in accordance with law. The petitioners in both writ petitions are also entitled to submit further representations within a period of four weeks from the date of receipt of a copy of this order. Any such further representation if submitted, the same shall be considered by the second respondent in accordance with law. It is open to the second respondent to pass appropriate orders on the representation of the respective petitioners uninfluenced by any of the observations of this Court, purely in the interest of public and social order and other relevant factors, within a period of six months from the date of receipt of a copy of this order. With the above directions, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/ True Copy /

Sub Assistant Registrar (CS-)



To

1.The Principal Secretary,
Unio of India,
Ministry of Social Justice and Employment,
4th Floor, A-Wing, Shastri Bhawan,
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Central Prison,
New Jail Road, Arapalayam,
Madurai-625 016.

+2 CC to M/s.V.KRISHNASAMY, Advocate
(SR-61136, 61137[F] dated 15/04/2019)

+1 CC to M/s.SPL GP (SR-61290, 61266[F] dated 16/04/2019)

W.P.(MD)Nos.9176 and and 9177 of 2019
15.04.2019

ES/21.06.2019/6P/11C