



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Wednesday, the Twenty Seventh day of November Two Thousand Nineteen

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PRESENT
THE HON`BLE MR JUSTICE S.VAIDYANATHAN
AND
THE HON`BLE MR JUSTICE N.ANAND VENKATESH

WMP (MD) No.21587 of 2019
IN
WP (MD) No.24324 of 2019

P.RATHINAM . . . PETITIONER/PETITIONER

Vs

1 THE STATE OF TAMILNADU REP.
BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT,
FORT ST. GEORGE, CHENNAI-9

2 THE INSPECTOR GENERAL OF PRISONS,
TAMIL NADU GOVERNMENT, CHENNAI-8

3 THE SUPERINTENDENT OF PRISON
MADURAI CENTRAL PRISON, MADURAI DISTRICT

4 CHINNA ODUNKAN (LCT NO.3809)

5 SELVAM (LCT NO.3812),

6 MANOKARAN (LCT NO.3803),

7 MANIKANDAN (LCT NO.3801),

8 AZHAGU (LCT NO.3808),

9 CHOKKANATHAN (LCT NO.3811),

10 SEKAR (LCT NO.3813),

11 PONNAIAH (LCT NO.3799),

12 RAJENDRAN (LCT NO.3810),

13 RANGANATHAN (LCT NO.3804),

14 RAMAR (LCT NO.5222),



15 SAKKARAI MURTHY (LCT NO.3807),

16 ANDICHAMY (LCT NO.3802)

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of Interim Stay of operation of the G.O.Ms.No. 603-615 Home (Pri-IV) Department, dated 08.11.2019 on the file of the respondent No.1 pending disposal of the Writ Petition.

Prayer in WP(MD). 24324/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Government Order in G.Os.MS.No.603-615, Home (Pri-IV) Department, dated 08.11.2019 on the file of the respondent No.1 and quash the same as illegal. (Prayer Amended dated 25.11.2019 made in WMP(MD) 21588/2019 in WP (MD).24324/2019)

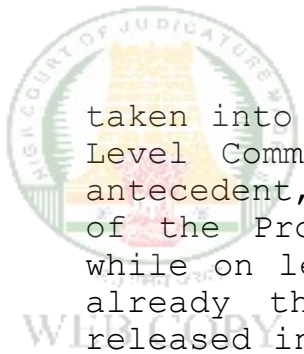
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.P.RATHINAM(PETITIONER IN PERSON, Advocate for the petitioner and of MR.VIJAY NARAYAN, Advocate General assisted by MR.K.DINESH BABU, Additional Public Prosecutor for R1 to R3, and of MR.VEERA KATHIRAVAN, Senior Counsel for M/S.veera Associates for R14 the court made the following order:-

This Miscellaneous Petition has been filed by the Petitioner / Party-in-person, seeking to stay the operation of the G.O.Ms.No.603 to 615, Home (Pri-IV) Department dated 08.11.2019 on the file of the 1st respondent.

2. Pursuant to the orders passed by this Court on 20.11.2019, the case was posted today with a direction to the 1st respondent to file a status report with regard to the queries raised by this Court in the said order. This Court had also directed the Deputy Superintendent of Police, Melur to serve the notice on the 13 detainees, whose release has been put to challenge in the present writ petition.

3. Mr.Vijay Narayan, the learned Advocate General appeared on behalf of the respondents and also placed before this Court the status report filed by the 1st respondent for and on behalf of the 2nd and 3rd respondents.

4. The learned Advocate General submitted that the case of all the 13 convicts was considered strictly in accordance with G.O.Ms.No.64, Home (Prison-IV) Department dated 01.02.2018. The learned Advocate General further submitted that before considering the release of the 13 convicts, the 1st respondent had

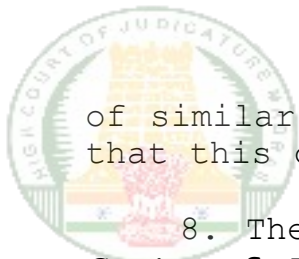


taken into consideration the recommendations of the 2nd and the State Level Committee, which had done a very detailed scrutiny of the antecedent, character, conduct in prison, verification of the report of the Probation Officer and also the character of the convicts while on leave. The learned Advocate General further submitted that already three of the convicts involved in the same case were released in the year 2008, pursuant to G.O.Ms.No.1155, Home (Prison-IV) Department dated 11.09.2008 and these persons are outside for the last 10 years and no law and order problem has arisen because of them till date.

5. The learned Advocate General submitted that the 1st respondent has followed the Government Orders in letter and spirit and has applied the same for each and every convict involved in this case and also considered the recommendations of the Committee and only thereafter they were considered for premature release. The learned Advocate General also submitted that the 1st respondent will file a detailed counter in the writ petition and also produce the entire files, including the recommendation that was made by the 2nd and the State Level Committee.

6. We have carefully gone through the status report filed by the 1st respondent for and on behalf of the 2nd and 3rd respondents. A close reading of the status report shows that the case of all the 13 life convicts, who have been released by the 1st respondent, has been considered purely based on the requirements of G.O.Ms.No.64, Home (Prison-IV) Department dated 01.02.2018. This Court, while considering the Criminal Appeals filed by the accused persons, had come to a categorical conclusion that the act of the accused persons is not merely to murder the deceased, but also to terrorise the entire Scheduled Caste Community who dated to stand in the Panchayat election. This Court also held that the entire incident had happened only to terrorise the Dalit Community and prevent them from participating in the election and the entire attack had occurred solely because they belong to a particular community. This Court further held that what the Ambalakarars could not achieve legally, has been achieved by resorting to violence and taking law into their own hands. This Court also expressed its anguish by stating that the prosecution has clearly proved the charge under Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but, however, since no appeal was filed by the State and the incident had happened nine years before, this Court was not in a position to convict the accused persons and punish them for the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. The above observation made by this Court in the Criminal Appeals clearly shows that this case cannot be looked from the angle of a regular murder case and this case clearly has an impact on the persons belonging to the downtrodden section of the society and the



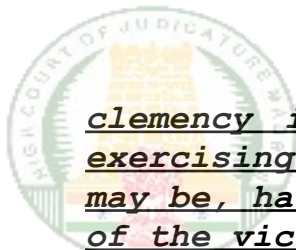
of similar nature. A reading of the status report prima facie shows that this case has not been strictly scrutinized from this angle.

8. The Hon'ble Supreme Court in **Epuru Sudhakar and another vs. Govt. of A.P. and others**, reported in **(2006) 8 SCC 161**, has dealt with this issue and has held as follows:

"64. The power to grant pardons and reprieves in India is vested in the President and the Governor of a State by virtue of Articles 72 and 161 of the Constitution respectively.

65. Exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public consideration alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriating of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of Exclusive Cognizance would not apply when and if the decision impugned is in derogation of a Constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutation.

66. Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an Executive action that mitigates or set aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendants guilt or innocence. The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter. It can no longer be said that prerogative power is ipso facto immune from judicial review. An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be the subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. **Therefore, the power of executive**



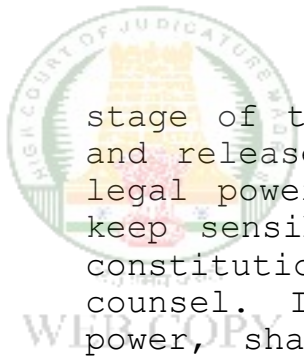
clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future. (emphasis supplied)"

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9. It will also be relevant to extract the lead opinion of Justice V.R.Krishna Iyer in Manu Ram's case, reported in (1981) 1 SCC 107, which reads as follows:

"4....A liberal or promiscuous use of the power of remission under Section 433(a) may mean that many a murderer or other offender who could have been given death sentence by the court but has been actually awarded only life sentence may legally bolt away the very next morning, the very next year, after a decade or at any other time the appropriate Government is in a mood to remit his sentence. Bizarre freaks of remissions,--such, for instance, as the impertinent happenstance of a Home Minister's 'hallowed' presence on an official visit to the Prison resulting in remissions of sentences--have been brought to our notice, making us stagger at the thought that even high constitutional powers are devalued in practice by those 'dressed in a little brief authority' thereby encouraging the fallacious impression that functionaries of our Republic are re-incarnated quasi-maharajas of medieval vintage. We will deal with it a little later under Article 161 of the Constitution but mention it here to prove what, perhaps, provoked Parliament to enact Section 433A. In many States, we are told, lifers falling within, the twin tainted categories routinely earned remissions under the extant rules resulting in their release in the matter of a few years. The penological sense of Parliament was apparently outraged by such extreme abbreviations of life sentences where the offence was grave as might have invited even death penalty. The same situation prevailed in regard to those who had actually been subjected to death penalty but, thanks to Section 433 (a), had a commuted sentence of life imprisonment. Taking cognizance of such utter punitive laxity in these two graver classes of cases, the Joint Committee, which went into the Indian Penal Code (Amendment) Bill, suggested that a long enough minimum sentence should be suffered by both classes of lifers. The draconian provision (as some counsel have described it) was the product of the Joint Committee's proposal to add a proviso to Section 57 of the Penal Code. Its appropriate place was in the Procedure Code and so Section 433-A was enacted when the Criminal Procedure Code was amended. It was a punitive prescription made to parliamentary measure which prohibited premature release before the lifer suffered actual incarceration for 14 years. No opposition to this clause was voiced in Parliament (Sixth Lok Sabha) so far as our attention was drawn, although that was, vocally peaking, a period of high tide of human rights (1978).

62. An issue of deeper import demands our consideration at this
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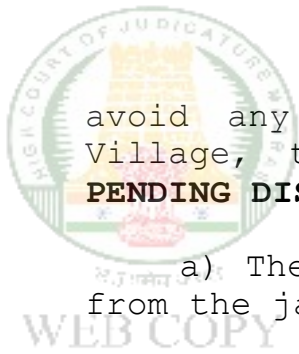


stage of the discussion. Wide as the power of pardon, commutation and release (Articles 72 and 181) is, it cannot run riot; for no legal power can run unruly like John Gilpin on the hone but must keep sensibly to a steady course. Here, we come upon the second constitutional fundamental which underlies the submissions of counsel. It is that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power...."

10. It is true that the Hon'ble Supreme Court has placed this power of remission and pardon at a higher pedestal. However, the exercise of such power can always become a subject matter of judicial scrutiny, if the relevant factors were not taken into consideration before the Government Order was passed for premature release. In this case, this Court wants to scrutinize the entire files and the recommendations made by the Committees and satisfy itself as to whether the 1st respondent had considered the effect of the decision to release the convicts, on the family of the convicts, persons belonging to the downtrodden community (SC/ST) in the concerned village and the society as a whole. In a case of this nature, these factors play a very important role, since it will set a precedent for future cases of similar nature. Unfortunately, in this case, three persons, who were involved in the same case, were released earlier in the year 2008 and now that is being shown as a precedent for releasing the remaining 13 convicts. A previous wrong cannot justify, perpetuating the same wrong in future, that is to say, two wrongs will not make things right. The release of three convicts did not become the subject matter of challenge earlier and therefore, it cannot become a binding precedent to justify the release of the 13 convicts.

11. Since this case involves the interest of persons, belonging to the marginalized section of the society and the society as a whole, where six persons belonging to Dalit Community, were butchered to death, this Court wants to test the Government Orders through which the lift convicts have been released. It may be necessary to formulate certain guidelines, whenever the power of remission or pardon is considered in cases where the crime has an impact on a section of the society or the society as a whole. In other words, a case of this nature should not be considered in the same manner in which a life convict, who has been convicted for murder, is considered.

12. Even though the petitioner / party-in-person has sought for the stay of the operation of the Government Orders, we are not inclined to grant any stay, since it will virtually amount to granting the final relief in the writ petition. That apart, the lift convicts have already been released from the jail after obtaining a bond for good conduct in terms of the existing rules. However,



avoid any unwanted law and order problem taking place in the Village, this Court wants to issue certain interim directions,
PENDING DISPOSAL OF THIS WRIT PETITION:

a) The Respondents 4 to 16, who are the life convicts released from the jail, shall not enter into Melavalavu Village;

b) The Respondents 4 to 16 shall stay at Vellore District and they shall report before the concerned District Probation Officer at Vellore twice a month, viz., on every 2nd and 4th Sundays;

c) The Respondents 4 to 16 shall also report before the Superintendent of Police, Vellore District twice a month, viz., on every 1st and 3rd Sundays;

d) The Respondents 4 to 16 shall give their residential address at Vellore and also their Mobile Numbers to the Superintendent of Police Vellore and the Superintendent of Police, Madurai and they shall not change their mobile numbers without the prior permission of this Court;

e) The Respondents 4 to 16 shall not move out of Vellore District without getting the leave of this Court;

f) In case of any change in their residential address, the same shall be duly intimated to the Superintendent of Police, Vellore and the Superintendent of Police, Madurai;

g) If the Respondents 4 to 16 are Passport Holders, they shall surrender their Passports to the Superintendent of Police, Madurai immediately;

h) The other conditions that have been imposed in the bond, that has been executed by the Respondents 4 to 16 has to be strictly followed:

i) Neither the petitioner nor any other organization shall rake up the issue of the release of life convicts in the Melavalavu murder case, through the print media or the social media and all the parties concerned shall await the final decision in the writ petition;

j) The Superintendent of Police, Madurai District shall ensure that no meetings are organized or no gatherings are allowed regarding this issue pending disposal of this writ petition and he shall ensure that the law and order is maintained at Melavalavu Village.

13. Mr. Veera Kathiravan, learned Senior Counsel has taken notice on behalf of six respondents and it was informed to this Court that the Deputy Superintendent of Police, Melur is yet to serve the notice on the other respondents. The notice shall be immediately served on the other respondents.



14. Mr. Veera Kathiravan, learned Senior Counsel submitted that three of the respondents, namely, R7, R10 and R14 are not living at Melavalavu Village.

15. The Respondents 1 to 3 are directed to file a counter affidavit in the writ petition on or before 02.01.2020. Similarly, the other respondents shall also file their counter affidavit, if any, before 02.01.2020.

With the above direction, the Miscellaneous Petition is disposed of accordingly. Post the main Writ Petition for final hearing on 06.01.2020.

sd/-
27/11/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, FORT ST. GEORGE, CHENNAI-9

2 THE INSPECTOR GENERAL OF PRISONS,
TAMIL NADU GOVERNMENT, CHENNAI-8

3 THE SUPERINTENDENT OF PRISON
MADURAI CENTRAL PRISON, MADURAI DISTRICT

4 THE PROBATION OFFICER, VELLORE REGION,
C43, POONGA NAGAR, PHASE III, VALLALAR SATHUVACHARI,
VELLORE 632009.

5. THE SUPERINTENDENT OF POLICE, VELLORE DISTRICT.

6. THE SUPERINTENDENT OF POLICE, MADURAI

+1. C.C. to MR.P.RATHINAM, P-in-P Advocate SR.No.20705
+1CC TO MR.KANAGARAJ, Advocate Sr. No. 20706
+1CC TO MR.VEERA ASSO., Advocate Sr. No. 20674

ORDER IN
WMP(MD) No.21587 of 2019
IN WP(MD) No.24324 of 2019
Date : 27/11/2019

TR/RSK/S-I (27.11.2019) 8P 7C