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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.03.2022

PRONOUNCED ON: 15.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P. No.8237 of 2020
&
W.M.P. Nos.9842 and 9845 of 2020

Dr. Esther, MBBS, DGO (F/A-70 years/2020)
W/o Dr. T. Marimuthu
No.22/4, BKV Nagar,
III Street, Adyar,
Chennai 600 020

....Petitioner

vs.

- 1 The State of Tamil Nadu
represented by the
Additional Chief Secretary to Government
Department of Home (Prison IV)
Fort St. George,
Chennai 600 009
- 2 The Additional Director General of Police
Inspector General of Prisons
Egmore, Chennai 600 008
- 3 The Superintendent of Prisons
Central Prison-I
Puzhal
Chennai 600 066

....Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to G.O. (D) No.372, Home (Prison-IV) Department dated 22.07.2019 and for a direction to the respondents to release the petitioner's son John David, detenu no.4897, confined at the Central Prison - I, Puzhal.



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For petitioner : Mr. A. Ramesh, Sr. Counsel
for Mr. G.R. Hari

For respondents : Mr. Hasan Mohamed Jinnah
assisted by
Mr. R. Muniyapparaj
Additional Public Prosecutor

ORDER

P.N.PRAKASH, J.

This writ petition has been filed seeking quashment of G.O. (D) No.372, Home (Prison-IV) Department dated 22.07.2019, in and by which, the State Level Committee's recommendation for premature release of John David (Life Convict Prisoner No.4897), the son of the petitioner herein, has been turned down and for a mandamus to the respondents to release John David in terms of G.O. (Ms.) No.64 Home (Prison-IV) Department dated 01.02.2018 (for short "G.O. 64").

2 The brief facts leading to the filing of this writ petition are as under:

2.1 John David faced a prosecution in S.C. No.63 of 1997 before the Principal Sessions Court, Cuddalore (for short "the trial Court") for the alleged murder of one Navarasu, a I year student of MBBS course in Annamalai University and the son of a retired Vice Chancellor of Madras University.

2.2 Eventually, by judgment and order dated 11.03.1998, he was found guilty by the trial Court of the offences under Sections 364, 342, 302 and 201 IPC and was sentenced to various terms of imprisonment, the maximum being, imprisonment for life for the offences under Sections 364 and 302 IPC.

2.3 The Madras High Court allowed his appeal in CrI.A. No.267 of 1998 on 05.10.2001 and the Supreme Court, on 20.04.2011, in CrI.A.No.384 of 2002, reversed the acquittal order of the Madras High Court and restored the conviction and sentence imposed on John David by the trial Court, pursuant to which, John David is now undergoing the sentences.

2.4 Be that as it may, to commemorate the birth centenary celebrations of Dr. M.G. Ramachandran, the Government of Tamil Nadu issued G.O.64, for premature release of the convict prisoners fixing several eligibility conditions.



2.5 Since the case of John David was not considered by the authorities for premature release by extending the benefit under G.O. 64, his mother, the petitioner herein, filed H.C.P. No.525 of 2019 seeking premature release of her son.

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2.6 During the pendency of the said habeas corpus petition, the State Government passed G.O.(D) No.372, Home (Prison-IV) Department dated 22.07.2019, rejecting the recommendation of the State Level Committee for premature release of John David, challenging which, the present writ petition has been filed for the relief, as stated in the opening paragraph of this order.

3 Heard Mr. A. Ramesh, learned Senior Counsel representing Mr.G.R. Hari, learned counsel on record for the petitioner and Mr. Hasan Mohamed Jinnah, learned Public Prosecutor, assisted by Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents/State.

4 The State has filed a counter affidavit dated 25.08.2021 and an additional counter affidavit dated 31.01.2022 in defence of the impugned order. The operative portion of the impugned order reads as under:

"3. The State Level Committee constituted in the Government Order second read above has recommended for the premature release of the life convict prisoner No.4897, John David, son of David Marimuthu, confined in Central Prison-I, Puzhal.

4. The Government have examined the State Level Committee's recommendation for the premature release of the life convict prisoner No.4897, John David with relevant records. The life convict prisoner No.4897, John David, son of David Marimuthu, confined in Central Prison-I, Puzhal was convicted by the Principal Sessions Judge, Cuddalore on 25.04.2011 in Sessions Case No.63 of 1997 under Section 302, 342 364, 201 of IPC. As the life convict prisoner No.4897, John David, Son of David Marimuthu by using doctor's knife severed the head and torso of Navarasu, (junior student of MBBS in Annamalai University, Chidambaram), son of Dr.P.K.Ponnusamy, then Vice Chancellor of Madras University and thrown the severed parts in various places. In this case, the above life convict prisoner is involved in a brutal murder/heinous crime. Considering the cruel nature of the offence committed by him, the Government has decided to reject the State Level Committee's recommendation for premature release of the Life Convict Prisoner No.4897, John David, son



of David Marimuthu, confined in Central Prison-I, Puzhal and order accordingly.

(By order of the Governor)

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Niranjan Mardi
Additional Chief Secretary to Government"

5 At the outset, Mr. A. Ramesh, learned Senior Counsel appearing for the petitioner, brought to the notice of this Court, the track record of John David and submitted that after John David was acquitted by the High Court, he did not at all get involved in any offence and after the judgment of the Supreme Court reversing the acquittal made by the High Court and confirming the judgment and order of conviction and sentence passed by the trial Court, he surrendered and his conduct in the prison thereafter has been exemplary. He placed before this Court the details of educational qualifications John David had acquired while in prison and also the conduct certificate dated 29.12.2017 given by the Superintendent of Prisons, Central Prison - I, Puzhal, which reads thus:

"CONDUCT CERTIFICATE

... ..

He is a well behaved and obedient person and he has sincerely carried out the work allotted to him in an appreciable manner. He was released on leave on many occasions and he has returned to prison on time without any issues.

He has also shared his knowledge with his fellow inmates, teaching them on English and Computer Science.

He is well reformed now and fit to be reinstated into the society.

His conduct is good and satisfactory."

Therefore, according to Mr. A. Ramesh, since John David has turned into a new leaf, the State Government should have considered his case favourably and released him under G.O. 64. In support of his contention that John David should have been released prematurely based on his good conduct in the prison, Mr. Ramesh placed reliance on the judgment of the Supreme Court in Satish @ Sabbe vs. The State of Uttar Pradesh [2020 SCC OnLine SC 811] and Home Secretary (Prison) and Others vs. H.Nilofer Nisha [(2020) 14 SCC 161].



6 Next, Mr. Ramesh took this Court through the impugned Government Order and submitted that the Government had misdirected itself by saying that "John David by using doctor's knife, severed the head and torso of Navarasu", which is factually incorrect, inasmuch as there is no reference to the usage of doctor's knife in the alleged act of John David, but, on the contrary, the findings of the trial Court shows that the knives viz., M.Os.9 to 11, were used for cutting fruits and they were not surgical instruments. This according to Mr. Ramesh, shows non-application of mind on the part of the authorities.

7 Finally, Mr. Ramesh contended that the State Government had released the accused involved in far more heinous offences like the ones in infamous Dharmapuri bus burning case and Melavalavu case, which is discriminatory.

8 Per contra, Mr. Hasan Mohamed Jinnah, learned Public Prosecutor, refuted the aforesaid contentions and submitted that the Government had rejected the case of John David based on the manner in which the crime was committed and not on the basis that it was committed with a doctor's knives. He also submitted that there cannot be any negative equality under Article 14 of the Constitution of India.

9 We initially propose to address two arguments of Mr.A.Ramesh, viz., his reliance on Satish @ Sabbe (supra) and release of the accused in Dharmapuri bus burning case and Melavalavu case.

10 As far as the judgment in Satish @ Sabbe (supra) is concerned, the issue before the Supreme Court was non-application of Section 2 of the Uttar Pradesh Prisoners Release on Probation Act, 1938, by the executive authorities. This is limpid from paragraph 16 of the judgment of the Supreme Court, which reads thus:

"16. It is no doubt trite law that no convict can claim remission as a matter of right. However, in the present case, the circumstances are different. What had been sought and directed by this Court through repeated orders was not premature release itself, but due application of mind and a reasoned decision by executive authorities in terms of existing provisions regarding premature release. Clearly, once a law has been made by the appropriate legislature, then it is not open for executive authorities to surreptitiously subvert its mandate. Where the authorities are found to have failed to discharge their statutory obligations despite judicial directions, it would then not be inappropriate for a Constitutional Court while



exercising its powers of judicial review to assume such task onto itself and direct compliance through a writ of mandamus.”

(emphasis supplied)

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In Tamil Nadu, we do not have similar provisions as in the State of Uttar Pradesh and hence, this judgment may not be of much avail to John David. In fact, in the same judgment, the Supreme Court has clearly held that no convict prisoner can claim remission as a matter of right. Thus, the case of John David should be decided only within the four corners of G.O. 64.

11 As regards the second argument of Mr. Ramesh, as rightly contended by the learned Public Prosecutor, there cannot be negative equality. At this juncture, apropos it is to allude to paragraph 28 of a very recent judgment of the Supreme Court in R. Muthukumar and Others vs. Chairman & Managing Director, TANGEDCO & Others [2022 SCC OnLine SC 151]:

“28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.....”

Therefore, just because the Government had fallen in error in releasing the accused in the infamous Dharmapuri bus burning case and Melavalavu case, the same error cannot be allowed to be perpetrated and relief granted to John David.

12 Mr. A. Ramesh placed strong reliance on a Division Bench judgment of this Court in K.Rajasekar vs. State and Others (MANU/TN/0641/2022), in which, one of us (PNPJ), was a Member, in support of his contention relating to equality under Article 14 of the Constitution of India.

13 In Rajasekar (supra), the husband, Rajasekar, and his wife, Shanthi, on account of abject poverty, smothered their three month old child and killed her. The Government granted remission to Rajasekar, but, refused to grant remission to Shanthi, on the ground that the crime was a heinous one. In that case, both of them were convicted under Section 302 read with 34 IPC, as nobody knew, who amongst the two had actually smothered the child, as that was done in secrecy. Therefore, on those facts, this Court held that, if according to the Government, the act of the husband was not heinous, the



Government cannot be heard to say that, the act of the wife was heinous and deny her premature release.

14 As regards the submission of Mr. A. Ramesh that John David has turned into a new leaf and hence, he should not be deprived of the benefit of G.O. 64, it is true that the conduct of John David in the prison has been exemplary, as could be seen from the conduct certificate issued by the Superintendent of Prisons, Central Prison-I, Puzhal, extracted in paragraph 5 (supra) and that is the reason why the State Level Committee had recommended his premature release. However, be it noted, the State Government and the Governor are not bound by the recommendations of the State Level Committee, as the exercise of power for premature release of a convict prisoner under G.O. 64 is under Article 161 of the Constitution of India. This is manifest from paragraph 5 of G.O. 64. That apart, G.O. 64 clearly states as follows:

"5(V) The above cases shall be examined with reference to the above guidelines on a case to case basis.

(VIII) The life imprisonment prisoners cannot claim premature release as a matter of right."

The State Level Committee which is composed of the Inspector General of Prisons and the Deputy Inspector General of Prisons (Headquarters) can only recommend a case to the State Government and cannot exercise the power under Article 161 of the Constitution of India. The Governor of the State would exercise the power under Article 161, *ibid.*, on the recommendation of the Cabinet. Thus, the Cabinet has the authority to accept or reject the recommendation of the State Level Committee and accordingly, give their advice to the Governor. In the instant case, it is obvious that the Governor has chosen to reject the recommendation of the State Level Committee qua premature release of John David, by the impugned Government Order.

15 Further, in Nilofer Nisha (supra), it has been clearly held at paragraph 26 as under:

"26. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules."



In this case, the Government exercised its powers via the impugned order and what remains to be done by this Court is to see whether the exercise of powers by the authorities was in accordance with G.O. 64.

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16 As contended by Mr. A. Ramesh, it is true that in the impugned order, it is stated that John David had used a doctor's knife, which is factually incorrect. However, we find that the impugned order is not predicated only on this erroneous fact. The other facts, viz., the head and torso of Navarasu was severed and the severed parts were thrown in various places and were recovered by the police, have been accepted by the trial Court and the Supreme Court as proved facts. What had weighed with the Government for refusing to grant the relief under G.O. 64 is the brutal and cruel manner in which the murder of Navarasu had been committed.

17 Now, the question is, can this Court, in exercise of powers under Article 226 of the Constitution of India, step into the shoes of the Governor and decide about the sufficiency of the reasons given in the impugned order. The answer to this question is available in *Epuru Sudhakar and another vs. State of Andhra Pradesh and Others* [(2006) 8 SCC 161], which has been extracted in the preamble portion of G.O. 64 itself. Nonetheless, the said portion is reproduced for ready reference.

".....The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness 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 commutations." (emphasis supplied)

Ergo, this Court cannot examine the sufficiency of the facts for quashing the impugned Government Order.

18 As regards the reliance placed by the learned Senior Counsel on *Nilofer Nisha* (supra), the Supreme Court, in that case, proceeded to exercise its powers under Article 142 of the Constitution of India on a case-to-case basis and directed the release of the convict prisoners therein. We do not have the powers of the Supreme Court to engage in such an exercise, however sympathetic we may be towards John David. In fact, in *Nilofer Nisha* (supra), which arose from this Court, this Court had ordered premature release of convict prisoners under G.O.64, challenging which, the State went on appeal to the Supreme



Court. After discussing the legal position, the Supreme Court, in paragraph 47, has allowed the State's appeals, but has, under Article 142 of the Constitution of India, gone into the case of each convict prisoner and has granted relief.

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19 That apart, in Sikkander vs. State, represented by its Secretary to Government of Tamil Nadu and Others (2021 SCC Online Mad 6586), a Division Bench of this Court, in which, one of us (PNPJ) was a Member, has discussed all the aspects relating to premature release of convict prisoners under G.O.64 and the law laid down therein is a binding precedent.

20 In view of the foregoing discussion, we find no ground whatsoever to interfere with the impugned Government Order.

In the result, this writ petition fails and is accordingly dismissed as being devoid of merits, however, sans costs. Connected W.M.P. stand closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

cad
To

- 1 The Additional Chief Secretary to Government
Department of Home (Prison IV)
Fort St. George, Chennai 600 009
- 2 The Additional Director General of Police
Inspector General of Prisons
Egmore, Chennai 600 008
- 3 The Superintendent of Prisons
Central Prison-I
Puzhal, Chennai 600 066
- 4 The Public Prosecutor
High Court of Madras
Chennai 600 104

+3ccs to Mr. G.R. Hari, Advocate, S.R.No.17211

W.P. No.8237 of 2020

GPL[co]
NSK 25/03/2022