



WEB COPY



W.P.No.17332 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

W.P.No.17332 of 2024

Archunan

... Petitioner

Vs

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2. The Director General of Police &
Director General of Prisons and Correctional Service,
Whannels Road,
Egmore, Chennai – 600 008.

3. The Superintendent of Prisons,
Central Prison-I,
Puzhal, Chennai 600 066.

.... Respondents

PRAYER: This Writ Miscellaneous Petition filed under Article 226 of
Constitution of India to issue a Writ of Certiorarified Mandamus to call for



W.P.No.17332 of 2024

the records relating to the impugned order in G.O.(D).No.586, Home(Prison-IV) Department, dated 16.05.2024 passed by the 1st respondent and quash the same and directing the respondents to release the petitioner, namely Archunan, Son of Madasamy, aged 46 years Ct.No.4004, now confined in the Central Prison-1, Puzhal, Chennai-66 under the scheme of G.O.(Ms).No.488 for premature release of life convicts.

For Petitioner : Mrs. S.Nadhiya
For Respondents : Mr. E.Raj Thilak,
Additional Public Prosecutor

ORDER

(Order of the Court is made by *S.M.SUBRAMANIAM, J.*)

The writ on hand has been instituted to assail the rejection order seeking premature release of convict prisoner in G.O.(D) No.586, Home(Prison-IV) Department, dated 16.05.2024.



W.P.No.17332 of 2024

2. It is not in dispute that the petitioner/convict prisoner is actually undergoing imprisonment for the past 14 years 8 months 17 days. The application was submitted seeking premature release under the scheme issued in G.O.(Ms).No.488 Home (Prison-IV) Department dated 15.11.2021. On the date of application, seeking Premature release, the petitioner was found eligible to avail the benefit of the scheme. The Government considered the application. The State Committee recommended the case of the petitioner for premature release under G.O.(Ms)No.488 Home (Prison-IV) Department dated 15.11.2021. The file was circulated and the Chief Secretary, Secretary, Legal Affairs approved the recommendations of the State Committee and thereafter, the Hon'ble Minister for Law and the Hon'ble Chief Minister approved the recommendations of the State Committee for premature release of the convict prisoner. Finally, the file was circulated to the Hon'ble Governor for approval. The Hon'ble Governor opined that the case of the petitioner need not be considered since the premature release of the convict prisoner would be prejudicial to justice.



W.P.No.17332 of 2024

2. The reason stated is that the petitioner has involved in the offence of house breaking, robbery and murder. Citing the nature of the offence committed, i.e. house breaking, robbery and murder, the Hon'ble Governor disapproved the decision of the State Committee as approved by the State Cabinet. Consequently, the Government issued the impugned G.O. rejecting the claim of the petitioner for premature release. Thus, the present petition came to be instituted.

3. The learned counsel for the petitioner would submit that the coaccused in the same case, namely, Suresh , S/o. Seetharaman, life convict Prisoner No.4003 was prematurely released on the occasion of the 113th birthday of Dr.Peraringnar Anna on 15.09.2021 vide G.O.(Ms).No.510 Home(Prison-IV) Department dated 06.09.2024. Relying on the said Government Order, the learned counsel for the petitioner would submit that the case of the petitioner has been discriminated without any valid reason and thus, the impugned order is to be set aside.



W.P.No.17332 of 2024

4. Mr. Raj Thilak, learned Additional Public Prosecutor appearing for

the respondents would submit that the recommendations of the State Committee was duly approved by the competent authority and finally by the State Cabinet. In view of the descending note made by the Hon'ble Governor, the impugned order of rejection has been issued.

5. We have carefully gone through the original files. The eligibility for premature release of the petitioner is not in dispute with reference to the conditions stipulated in G.O.(Ms.)No.488. The State Committee recommended the case of the petitioner for premature release. The file was circulated. The Deputy Secretary, the Principal Secretary, Home Department, the Secretary, Law Department, the Chief Secretary have approved the recommendations of the State Committee for premature release of the petitioner. The file was circulated to the Hon'ble Minister of Law and thereafter to the Hon'ble Chief Minister. Pertinently, the Hon'ble Law Minister and Hon'ble Chief Minister approved the recommendations of the State Committee for premature release of the petitioner. Finally, it was circulated to the Hon'ble Governor for consideration. The Hon'ble



W.P.No.17332 of 2024

Governor opined that the case of the petitioner deserves no merit for consideration since the convict prisoner has involved in the case of house breaking, robbery and murder. Taking in exception to the nature of offence, the Hon'ble Governor had taken a descending view and disapproved the recommendations of the State Committee for premature release of the petitioner under the Scheme for remission.

6. The learned Additional Public Prosecutor would further submit that since the Hon'ble Governor has taken a descending view, the Government has issued the impugned G.O. and in all other aspects, the Government formed an opinion that the petitioner is eligible for premature release under the Scheme and the State Committee recommended the case of the petitioner, which was approved by the State Cabinet. Consequently, the Hon'ble Minister for Law and the Hon'ble Chief Minister approved the file.

7. In this backdrop, we would like to consider the implications of the descending opinion of the Hon'ble Governor counter to the decision taken by State Committee as approved by the State Cabinet. The Law regarding



W.P.No.17332 of 2024

the powers of the Hon'ble Governor with reference to the decision taken by the State Cabinet in the matter of premature release/remission has been settled by the Three Judges Bench of the Hon'ble Supreme Court in the case of ***A.G.Perarivalan /vs/ State through Superintendent of Police, CBI/SIT/MMDA, Chennai*** reported in ***(2023) 8 SCC 257***. The relevant paragraphs are extracted hereunder.

“ **18.** *The power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of an offence against any law related to which the executive power of the State extends is vested in the Governor under Article 161 of the Constitution. Article 162 makes it clear that the executive power of the State shall extend to matters with respect to which the legislature of the State has power to make laws. Article 163 of the Constitution provides that there shall be a Council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*

19. *The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the*



executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The Governor occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, “a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part”.

20. Under the cabinet system of Government as embodied in our constitution the Governor is the Constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the



President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso ©, 317, 352(1), 356 and 360, the satisfaction required by the Constitution is not the personal satisfaction of the President or of the governor but is the satisfaction of the President or of the Governor in the constitutional sense under the cabinet system of Government. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions.

.....24 . The law laid down by this Court, as detailed above, is clear and explicit. The advice of the State Cabinet is binding on the Governor in matters relating to commutation/remission of sentences under Article 161. No provision under the Constitution has been pointed out to us nor any satisfactory response tendered as to the source of the Governor's power to refer a recommendation made by the State Cabinet to the President of India. In the instant case, the Governor ought not to have sent the recommendation made by the State Cabinet to the President of India. Such action is contrary to the constitutional scheme elaborated above. It is relevant to point out that the recommendation made by the State Cabinet was on 09.09.2018, which remained pending before the Governor for almost two-and-a-half years without a



decision being taken. It was only when this Court started enquiring about the reason for the decision being delayed, the Governor forwarded the recommendation made by the State Government for remission of the appellant's sentence to the President of India.....

.....38. 1. The law laid down by a catena of judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.

38.2. Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby “ the Governor is but a shorthand expression for the State Government” as observed by this Court.

38.4. The judgment of this Court in M.P.Special Police Establishment has no applicability to the facts of this case and



neither has any attempt been made to make out a case of apparent bias of the State Cabinet or the State Cabinet having based its decision on irrelevant considerations, which formed the fulcrum of the said judgment.

38.5. The understanding sought to be attributed to the judgment of this Court in Sriharan with respect to the Union Government having the power to remit/commute sentences imposed under Section 302 IPC is incorrect, as no express executive power has been conferred on the Centre either under the Constitution or law made by Parliament in relation to Section 302. In the absence of such specific conferment, it is the executive power of the State that extends with respect to Section 302 IPC, assuming that the subject matter of Section 302 IPC is covered by List III Entry 1.

38.6. Taking into account the appellant's prolonged period of incarceration, his satisfactory conduct in jail as well as during parole, chronic ailments from his medical records, his educational qualifications acquired during incarceration and the pendency of his petition under Article 161 for two-and-a-half years after the recommendation of the State Cabinet, we do not consider it fit to remand the matter for the Governor's consideration. In exercise of our power under Article 142 of the Constitution, we direct that the appellant is deemed to have served the sentence in connection with Crime No.329 of 1991.



W.P.No.17332 of 2024

WEB COPY

The appellant, who is already on bail, is set at liberty forthwith. His bail bonds are called. “

8. Pertinently in the case of the ***State of Haryana and others /vs/ Raj Kumar @ Bittu*** reported in ***2021 (9) SCC 292***, the Apex Court reiterated that the power under Article 161 of the Constitution can be exercised by the State Governments, not by the Governor on his own. The advice of the appropriate Government binds the Head of the State, which reads as under:

“ 12. Thus, the power under Article 161 of the Constitution can be exercised by the State Governments, not by the Governor on his own. The advice of the appropriate Government binds the Head of the State. No separate order for each individual case is necessary but any general order made must be clear enough to identify the group of cases and indicate the application of mind to the whole group. Therefore, the policies of the State Government are composite policies encompassing both situations under Article 161 of the Constitution and Sections 432, 433 and 433-A of the Code. The remission under Article 161 of the Constitution will override Section 433-A of the Code, if the State Government decides to be governed of its constitutional power.

.....19. Section 433-A of the Code starts with a non-



obstante clause restricting the right of the appropriate Government, to suspend the sentence of imprisonment for life imposed on conviction of a person for an offence for which death is one of the punishments provided by law, that such person shall not be released from prison unless he has served at least 14 years of imprisonment. Therefore, the power of the appropriate Government to release a prisoner after serving 14 years of actual imprisonment is vested with the State Government. On the other hand, the power conferred on the governor, though exercised on the aid and advice of the State, is without any restriction of the actual period of imprisonment undergone by the prisoner. Thus, if a prisoner has undergone more than 14 years of actual imprisonment, the State Government, as an appropriate government, is competent to pass an order of premature release, but if the prisoner has not undergone 14 years or more of actual imprisonment, the Governor has a power to grant pardons, reprieves, respites and remissions of punishment or to suspend, remit or commute the sentence of any person de hors the restrictions imposed under Section 433-A of the Constitution. Such power is in exercise of the power of the sovereign, though the Governor is bound to act on the aid and advice of the State Government.



W.P.No.17332 of 2024

WEB COPY

9. The question arises whether High Court in exercise of powers of judicial review can interfere with the decision taken by the Hon'ble Governor under Article 161 of the Constitution of India. The answer is found in the case of ***Epuru Sudhakar and another /vs/ Government of Andhrapradesh and others*** reported in ***2006(8) SCC 161***, wherein the Court held as follows:

“ 34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

- a. that the order has been passed without application of mind;*
- b. that the order is mala fide;*
- c. that the order has been passed on extraneous or wholly irrelevant considerations;*
- d. that relevant materials have been kept out of consideration ;*
- e. that the order suffers from arbitrariness. “”*



W.P.No.17332 of 2024

WEB COPY

10. Holistic reading and consideration of the principles settled by the Apex Court of India, the question to be considered by this Court is whether Hon'ble Governor is bound by State's recommendations in the matter relating to premature release or not ?.

11. The Law laid down by a catena of Judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his power under Article 161 of the Constitution of India. It is held that non exercise of the Power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to the judicial to the review by the Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Hon'ble Governor to this effect.

12. The power under Article 161 of the Constitution can be exercised by the State Governments, not by the Governor on his own. The advice of the appropriate Government binds the Head of the State. No separate order



W.P.No.17332 of 2024

for each individual case is necessary, but any general order made must be clear enough to identify the group of cases and indicate the application of mind to the whole group. Therefore, the policies of the State Government are composite policies encompassing both situations under Article 161 of the Constitution and Section 432, 433 and 433(A) of the Code. The remission under Article 161 of the Constitution will override Section 433(A) of the Code, if the State Government decides to be governed of its constitutional Power.

13. The Judicial scrutiny on the Constitutional power to grant remission by the Governor under Article 161 is also settled by the Courts. In the case of ***Epuru Sudhakar*** cited supra, the principles are laid down that if the order has been passed on extraneous or wholly irrelevant considerations or relevant materials have been kept out of consideration, the Courts are empowered to exercise the powers of Judicial Review for interference.

14. The power of an appropriate Government to issue General or Special orders allowing remissions is traceable under Section 432 Cr.P.C.



W.P.No.17332 of 2024

and the policies in question were framed in exercise of the powers conferred on appropriate Government under Section 432 Cr.P.C. and hence, are statutory in nature. In the context of the above policy, the power under Article 161 can be exercised by the State Government, not by the Governor on his own. The advice of appropriate Government binds the Head of the State.

15. The co-convict in the present case, namely, Mr.Suresh S/o. Seetharaman, has already been prematurely released by the Government in G.O.(Ms).No.510 Home (Prison-IV) Department, dated 06.09.2024 on the occasion of the 113th birthday of Dr.Peraringnar Anna on 15.09.2021. The said fact was not considered by the Hon'ble Governor while deciding the issues. It would be insufficient to merely reject an application for premature release on the ground that the offence committed is heinous in nature. For the offence committed, the prisoner actually underwent imprisonment and the scheme itself provides eligibility criteria for grant of remission. When the scheme is approved by the Government and is of statutory in nature, thereafter, raising any doubt regarding the offence proved would have no



W.P.No.17332 of 2024

implication and thus, the extraordinary and exceptional circumstances must stand beyond the scrutiny of the scheme and in normal circumstances, such a stand would not only dilute the scheme of remission, but will defeat the scheme by itself. Therefore, we are not convinced with the decision taken by the Hon'ble Governor disapproving the recommendation of the State Committee and the approval granted by the State Cabinet signed by the Hon'ble Minister for Law and the Hon'ble Chief Minister and the Chief Secretary to Government of Tamil Nadu.

16. We are aware that the premature release is not an absolute right. The Government order issued in G.O.(Ms).No.488, Home (Prison-IV) Department, dated 15.11.2021, itself stipulates that the guidelines fringing into the eligibility of life convict for consideration of the Government and mere fulfilment of conditions prescribed in the guidelines does not confer any right for premature release of life convicts. Therefore, it is not an absolute right to be claimed by a convict prisoner. Since it is a scheme formulated by the State Government, which is statutory in nature, and when the High Court in exercise of the powers of Judicial Review finds that the



W.P.No.17332 of 2024

decision taken and the reasons stated for passing the impugned order are neither candid nor convincing, the Court is left with no option but to remand the matter back to the Government for recirculation and for fresh consideration.

17. Accordingly, this Writ Petition is allowed and the order impugned passed by the first respondent in G.O.(D).No.586, Home (Prison-IV) Department, dated 16.05.2024 is quashed and the first respondent/ Government is directed to recirculate the files and thereafter, take a decision afresh and issue orders on merits and in accordance with law as expeditiously as possible.

[S.M.S., J.]

[V.S.G., J.]

17.10.2024

To

1/2

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The Director General of Police &
Director General of Prisons and Correctional Service,

Page 19 of 21



W.P.No.17332 of 2024

Whannels Road,
Egmore, Chennai – 600 008.

WEB COPY

3. The Superintendent of Prisons,
Central Prison-I,
Puzhal, Chennai 600 066.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



W.P.No.17332 of 2024

S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

mrp

W.P.No.17332 of 2024

1/2

17.10.2024