



W.P.(MD) No.17946 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MR.D.KRISHNAKUMAR,

THE ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.17946 of 2018

K.R.Raja

... Petitioner

-Vs-

1.The State of Tamil Nadu represented by,

The Home Secretary,

Prison Department,

Secretariat, Fort St. George,

Chennai – 600 009.

2.The Additional Director General of Police /

The Inspector General of Prisons,

CMDA Tower -II, No.1,

Gandhi Irwin Road,

Chennai – 600 008.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the Rule No.797(9) of the Tamil Nadu Prison



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Rules, 1983 to the extent of disqualifying the women prisoners as inmates in Open Air Prisons as illegal and against law and justice, consequently direct the respondents to take action to open at least one Open Air Prison for Women in the State of Tamil Nadu within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani
For Respondent No.1 : Mr.P.Thilak Kumar,
Government Pleader
For Respondent No.2 : Mr.S.Ravi,
Additional Public Prosecutor

ORDER

[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]

The prayer sought for in this Writ Petition is for a Writ of Declaration, to declare Rule No.797(9) of the Tamil Nadu Prison Rules, 1983 to the extent of disqualifying the women prisoners as inmates in Open Air Prisons as illegal and against law and justice and for a consequential direction to the respondents to take action to open at least one Open Air Prison for Women in the State of Tamil Nadu within the time stipulated by this Court.

2.When the writ petition was taken up for hearing, the learned Counsel for the petitioner fairly conceded before this Court that the first limb of the prayer



has already been looked into by another Division Bench of this Court and this Court has passed orders on 10.09.2018, wherein in paragraphs 10 to 12, it has been stated as follows:

“10.In the light of the aforesaid pronouncements, we are of the view that the discrimination sought to be made under the Prison Rules with respect to the women prisoners, third genders, prisoners having any other case pending in a Court, 'A' Class prisoners and political prisoners, as per Rule 797 of the Prison Rules cannot be sustained.

11.We pass the aforesaid order, by keeping in mind not only the objects enshrined under Chapter XXXIV of the Prison Rules, which speaks about the Open Air Prisons, but also the consequential concession given to the inmates to enjoy the status, which is also inclusive of remission. We keep in mind that the role of Court stops with the declaring a Rule as unconstitutional, but, it does not extend to creating one, which is a legislative's work.

12.In such view of the matter, we direct the respondents to take appropriate steps to have a re-visit of Rules 796 and 797 of the Prison Rules with respect to eligibility of prisoners mentioned therein and accordingly add them into Rules 796 of the Prison Rules, while deleting Rule 797 of the Prison Rules, making them ineligible, in the light of



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the order passed by us. Needful will have to be done within a period of twelve weeks from the date of receipt of a copy of this order.”

3.Subsequent to the direction given by this Court in the present Writ Petition, the Government has considered the observations made by this Court and passed G.O.(Ms)No.367 [Home Department] dated 03.09.2021, amending Rules 794 & 797 of the Tamil Nadu Prison Rules, 1983.

4.In the light of the above, there is no bar for the women prisoners also to be eligible for Open Air Prison and therefore, the said prayer has now become infructuous.

5.Insofar as the next limb of the prayer with regard to opening of at least one Open Air Prison exclusively for women is concerned, at this juncture, we cannot pass any positive direction, directing the Government to establish an Open Air Prison exclusively for women, since the Government has to examine the feasibility of such request made by the petitioner.



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6. Therefore, we direct the first respondent / Home Secretary to consider the request of the petitioner with regard to opening of at least one Open Air Prison exclusively for Women in the State of Tamil Nadu and to take appropriate decision based on expert opinions.

7. Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs.

[D.K.K., A.C.J.] & [R.V., J.]

26.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

MR



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To

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State of Tamil Nadu,
Prison Department,
Secretariat, Fort St. George,
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2.The Additional Director General of Police /
The Inspector General of Prisons,
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D.KRISHNAKUMAR, A.C.J.

AND

R.VIJAYAKUMAR, J.

MR

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