(1989) MPJR 616

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 1035 of 1986 (G)

Ramjiya @ Ramjilal		APPELLANT
	Vs	
State of M.P. and 3 Others		RESPONDENT

Date of Decision: April 25, 1989

Acts Referred:
Constitution of India, 1950 â€" Article 226#Madhya Pradesh Prisoners Release on Probation Act, 1954 â€" Section 2#Madhya Pradesh Prisoners Release on Probation Rules, 1964 â€" Rule 3, 4

Citation: (1989) MPJR 616

Hon'ble Judges: G.G.Sohani, Acting C.J.; Y.B. Suryavanshi, J; K.K. Verma, J; K.K. Adhikari, J; Faizanuddin, J

Bench: Full Bench

Judgement

Faizan Uddin, J.

This a reference at the instance of a Division Bench of this Court (Gwalior Bench) as on consideration of some decisions of Supreme Court, in the

opinion of the Division Bench, the case of Lalji v. State of M P. 1988 MPLJ 127 decided by a Full Bench of this Court required reconsideration

by a still larger Bench. The question which has been referred by the Division Bench for our opinion is as follows:

Whether this Court, on the writ side, can make any direction to the State Government and concerned authorities for reconsideration of any

application for release on probation made under M.P. Prisoners Release on Probation Act, 1954, when the Court finds that the application had

been illegally rejected and whether the decision in Lalji''s case 1988 MPLJ 127, lays down the law correctly?

Before we proceed to examine the correctness of Full Bench decision in Lalji''s case (supra) and answer the question referred for our opinion, it

would be relevant to set out the brief facts of this petition as well as the facts giving rise to this reference. The facts lie in a very narrow compass.

Some of the prisoners including the present Petitioner, who are suffering life imprisonment, made applications to the State Government, purporting

to be one u/s 2 of the M. P. Prisoners Release on Probation Act, 1954 (For brevity referred to as ''the Act'') read with Rule 4 of M.P. Prisoners

Release on Probation Rules, (For brevity referred to as ''the Rules'') for their release on licence. The Probation Board constituted under Sub-rule

(5) of Rule 6 did not recommend the release of the Petitioner and other prisoners on licence and, therefore, the Government accepting the

recommendations of the Probation Board, rejected the said explications for release on licence. The Petitioner as well as other prisoners whose

applications were rejected, challenged the order of the State Government and its officers in writ petitions under Article 226 of the Constitution and

sought a writ of certiorari to quash the said orders as well as a writ of mandamus directing the Government to reconsider the case for their

premature release under the provisions of the Act and the Rules framed thereunder.

During the course of the arguments, learned Deputy Advocate General, relying on the Full Bench decision of this Court in the case of Lalji (supra)

took the stand that a prisoner whose application for release on probation has been once rejected by the State Government, cannot apply for

second time for his release nor he can seek a writ or direction from the High Court against the State Government for reconsideration of his

application for release on licence and as such the relief is specifically barred under the provisions of the Act and the Rules framed thereunder.

Relying on certain decisions of Gwalior Bench of this High Court as well as decisions of the Supreme Court, the Division Bench felt that the Full

Bench decision rendered in the case of Lalji (supra) requires reconsideration by a Bench of 5 Judges in the wider interest of prison justice. This is

how this petition has been placed before this larger Bench of 5 Judges to answer the question quoted in the beginning of this order.

It is an undisputed fact that premature release of a prisoner on licence is governed by the provisions of the Act and the Rules framed thereunder.

We shall, therefore, first look to the relevant provisions governing the release of a prisoner on probation. Section 2 of the Act relates to the power

of the Government to release a prisoner by licence on certain conditions, on being satisfied as to the antecedent and conduct of the prisoner in the

prison if he is likely to abstain from crime and lead a peaceable life in future. Section 9 of the Act empowers the Government to make rules

consistent with the Act for the purposes of giving effect to the provisions of the Act. Sub-section (1) of Section 9 reads as under:

Section 9 (1)-The Government may make rules consistent with this Act-for the form and conditions of licence on which prisoners may be released.

Further Rule 6 provides the procedure for making an application for release on licence by an eligible prisoner and the manner in which it is to be

processed and dealt with by different authorities and the Probation Board. Rule 4 prescribes the eligibility of a prisoner for his release on licence. It

lays down that except those prisoners who are specified in Rule 3, may be released by the Government on licence, if he has served out one third of

his sentence of imprisonment or a total period of Five Years with remissions, whichever is less. Rule 3 lays down an embargo on the release of

certain classes of prisoners under the provisions of the Act, the relevant part of which is reproduced hereunder:

Rule 3-Classes of prisoners not to be released. The following classes of prisoners shall not be released under Act:

(a) XX XX XX

(b) XX XX XX

(c) Those, whose applications for release, other than an application for remission of sentence u/s 8, were on a previous occasion rejected by the

Government;

(d) XX XX XX

(e) XX XX XX

(f) XX XX XX

Explanation-The rule in Clause (c) precludes a convict from himself applying a second time for release u/s 2 of the Act, but the Government may

direct the Inspector General of Prisons to place any case, which has already been once rejected, for reconsideration before the Board.

Now a plain reading of the relevant part of Rule 3 reproduced above distinctly and in quite unambiguous and explicit terms goes to show that the

provisions contained in Clause (c) lay down a clear embargo on the release of those prisoners whose applications for release on licence were

already considered and rejected by the Government on a previous occasion. This position is further invigorated and confirmed in still more clear

terms by the explanation attached to Rule 3 which explains the scope and ambit of the Rule in Clause (c) According to the explanation also, a

prisoner whose applications for his release on licence were considered and rejected by the Government on a previous occasion, is precluded from

making a second application for his release on licence. But the rule contained in Clause (c) does not preclude the Government itself from exercising

its discretion and issuing a suo motu direction to the Inspector General of Prisons to place the case of any such prisoner before the Probation

Board for reconsideration whose applications have been previously rejected. This is the only position which turns out on a bare and plain reading

of Clause (c) of Rule 3 together with the explanation attached thereto and that being so, there is hardly any reason to doubt the correctness of the

law laid down by the Full Bench of this Court in the case of Lalji (supra).

The referring Bench relying on the two decisions of the Supreme Court rendered in Writ Petition Nos 48-106 and 35-36 of 1985 (Galdu and Ors.

v. State of M. P.) decided on 13-5-1985 and Writ Petition Nos. 7727, 1733, 1746-47, 1754-55, 1761 etc. all of 1085, (Sewa Ram and Ors. v.

State of UP) decided on 9-5-1985. has expressed the view that the abovesaid decisions interdict the currency of this Court''s Full Bench decision

in the case of Lalji (supra) and as there is a conflict between the two decisions and. therefore, the referring Bench felt difficulty in ignoring the

Supreme Court decisions and give effect to decision in case of Lalji (supra). In our considered opinion, there is neither direct nor any implied

conflict in the two decisions. In both the aforesaid decisions of the Supreme Court, their Lordships found that the applications of the prisoners for

their release on licence were rejected without giving detailed reasons and, therefore, quashed the orders of the State Government and issued a writ

of mandamus directing the State Government and its concerned officers to reconsider the cases and dispose of the applications afresh giving

detailed reasons.

In any case, after the order rejecting the application for release on licence is quashed by the High Court for any reasons whatsoever, a writ or

direction can always be issued by the High Court in exercise of its jurisdiction under Article 226 of the Constitution to decide the application afresh

in view of the discussion following hereinafter.

There can be no legitimate dispute about the jurisdiction and powers of the High Court to issue writ and directions under Article 226 of the

Constitution. We do not feel it necessary to quote any authorities to unnecessarily burden this order, as it is now well settled that the High Courts in

exercise of their jurisdiction under Article 226 of the Constitution have the power to issue a writ of mandamus or to pass orders and give necessary

directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute

or a rule or a policy decision of the Government or where it has exercised such discretion mala fide or on irrelevant considerations or by ignoring

the relevant considerations and materials or has acted in such a manner as to frustrate the object of conferring such discretion or the policy for

implementing which such discretion has been conferred. It, therefore, necessarily follows that in cases where it is found that while deciding the

application of any prisoner for his release on licence under the Act and the rules made thereunder, the State Government its concerned officer,

authorities or the Probation Board, have acted arbitrarily, capriciously and mala fide ignoring the aforementioned principles then in all such cases as

well as in any other fit and proper case, a High Court can certainly intervere by exercising its jurisdiction under Article 226 of the Constitution and

issue a suitable writ or direction to the Government, its officers or public authority concerned, to compel the performance in a proper and lawful

manner. This is also the opinion expressed in brief in paragraph 8 of Lalji"s case (supra).

It may be made clear that the prisoner is only precluded from applying a second time for reconsideration before the Board. In other words, what is

barred under Clause (c) of Rule 3 read with the explanation is that the prisoner is precluded from making a second application with a simpliciter

prayer for reconsideration of his case without anything else. But where the order itself rejecting his application for release on licence, is attacked or

challenged in a petition under Article 226 of the Constitution on the ground that it is arbitrary, capricious, mala fide based on irrelevant

considerations ignoring the relevant considerations and materials or otherwise bad in law in any manner, then in that event, the High Court certainly

has the jurisdiction to go into the question and if it finds, the order to be bad on any grounds, it may quash the same and issue necessary writ or

direction to the State Government and its officers concerned to decide the case afresh. But even in such cases there is no question of applying the

second time, as after the order itself is quashed, it is the same application which is revived and which has to be decided afresh according to writ or

direction given by the High Court. Thus the bar is attracted only in applying the second time and reconsideration of the case on such second

application, but not in reconsideration of the very same application which is revived after the order rejecting it is quashed with a direction to decide

afresh. This is also the view, expressed in nutshell by the Full Bench in the case of Lalji (supra) and, therefore, we are of the view that it lays down

the correct law.

In the light of foregoing discussion, our opinion and answer to the question referred to this Bench is as indicated above.