
Before V.S. Aggarwal, J

LAKHVINDER SINGH,— *Petitioner*

versus

STATE OF PUNJAB AND OTHERS— *Respondents*

Crl. M. 9452/M of 95

9th May, 1997

Constitution of India, 1950-Arts. 161 & 162-Code of Criminal Procedure, 1973—S.432—Conviction order by Court at Bangalore in Karnataka—Prisoner on request transferred from Karnataka to Punjab—Prisoner claiming remissions granted to prisoners convicted by Courts in Punjab—Such prisoner whether entitled to remissions—which State can grant remissions.

Held, that power of remission is conferred on the appropriate Government. A part or whole of the sentence can be remitted. The expression 'appropriate Government' includes the Government of the State within which the offender is sentenced and the order was passed. Herein the order has been passed by the Additional Sessions Judge, Bangalore and, therefore, appropriate Government would be the Government of Karnataka.

Article 162 of the constitution of India explains the extent of executive power of the State. It is limited to matters with respect to which the legislature has the power to make law. Admittedly, the Punjab Legislature will not have the power to make law for person convicted by the Court at Bangalore. He is being detained in Punjab because of the provisions of Transfer of Prisoners Act, 1950. The executive power of the Government of Karnataka extends to him. The petitioner is undergoing sentence in pursuance of the order passed by the Court at Bangalore. He is simply in custody in Punjab but not under the executive power of the State. This conclusion is clear and unambiguous. It will not be possible to draw any other conclusion because in that event there would be a conflict with the expression 'appropriate government' occurring under Section 432 of the Code of Criminal Procedure and Article 161 of

the Constitution of India.

(Para 8 & 11)

V.K. Jindal, Advocate, *for the petitioner*

H.S. Soan, Asstt. A.G., *for the respondent*

JUDGEMENT

V.S. Aggarwal, J.

(1) Lakhminder Singh petitioner was tried and held guilty of the offence punishable under Section 302 of the Indian Penal Code at Bangalore. It was alleged that the offence was committed on 22nd June 1987. The Learned Additional Sessions Judge, Bangalore held the petitioner guilty of the said offence on 5th January, 1989. The petitioner was sentenced to undergo rigorous imprisonment for life. The petitioner applied for his transfer to the State of Punjab. On 3rd April, 1992 the Inspector General of Prisons sent memo to Inspector General of Prisons, Karnataka. By virtue of the same consent was given for transfer of the conviction on reciprocal basis. The said consent reads :—

“Reference this office letter No. 5169-GI/G-6 dated 25th September, 1991 on the subject noted above.

2. This department has already conveyed concurrence,—
vide letter under reference the transfer of convict cited as subject to the state on reciprocal basis. Accordingly you are requested to make necessary arrangements for his transfer to this state at the earliest as the parents of the prisoner are pressing hard for the same.”

In pursuance of the said consent the petitioner was transferred to Central Jail, Gurdaspur in accordance with Transfer of Prisoners Act, 1950.

(2) By virtue of the present petition, the petitioner seeks that he has been deprived of the remission that are granted by the State of Punjab to its prisoners in pursuance of the remissions granted under Article 161 of the Constitution. In the alternative he contends that he should be given the remissions that are awarded to the prisoners of Karnataka and that the petitioner was deprived of the remissions granted to the prisoners of Punjab and that he is being discriminated.

(3) In the reply filed by the State of Punjab, the petition has been contested, Preliminary objections have been taken that the petitioner has no right to claim premature release. The petitioner has been sentenced to imprisonment for life and, therefore, he has no right to claim premature release. In accordance with Section 433-A of the Code of Criminal Procedure, the petitioner is required to undergo atleast 14 years sentence before he can claim premature release. So far as remissions granted to the prisoners in Punjab are concerned, the defence offered is that the petitioner is not entitled to the benefit of special remissions because under the instructions special remissions are granted only to those prisoners who have been convicted by the courts of criminal jurisdiction in the State of Punjab. The petitioner has been convicted and sentenced to life imprisonment by the court of Additional Sessions Judge, Bangalore. The instructions issued by the Governor of Punjab are not applicable to the petitioner. It is the State of Karnataka which is the appropriate authority. On merits similar pleas were offered. It was pointed that on the date the reply is filed the petitioner had undergone 8 years and 20 days of actual sentence. This excludes the under-trial period. He had earned 1 year, 11 months and 12 days remissions. The premature release of the petitioner can only be considered by the State of Karnataka. It is not disputed that the petitioner had been released on parole for a period of four weeks in pursuance of the direction given by this Court but it is insisted that the petitioner is not entitled to the special remissions claimed by him.

(4) Before proceeding further reference can well be made to the orders passed with respect to the special remissions by the Government of Punjab. On 27th January, 1994 the department of Home Affairs had issued the orders copy of which is Annexure P-4. The opening words of the same read :—

“In exercise of the powers conferred by Section 432 of the Code of Criminal Procedure, 1973, the Governor of Punjab is pleased to remit the portion of unexpired sentence of imprisonment for life in the case of those who fulfil the conditions stated below as on 16th January, 1994, the date on which the annual state level sports meet was held at Central Jail, Patiala, and to grant special remission to prisoners who have been convicted by Civil Courts of Criminal Jurisdiction in the State of Punjab as follows :” (emphasis added)

Similarly special remissions were granted on 6th March, 1993 and copy of the said order issued by the Government of Punjab is Annexure P-5. It opens with the following words :—

“In exercise of the powers conferred by section 432 of Code of Criminal Procedure, 1973, read with (Article 161 of the Constitution of India), the Governor of Punjab is pleased to remit the portion of unexpired sentence of imprisonment for life in the case of those who fulfil the conditions stated below as on 27th February, 1995, the date on which the annual state level sports meet was held at Central Jail, Patiala and to grant special *remission to prisoners who have been convicted by Courts of Criminal Jurisdiction in the State of Punjab as follows, namely :*” (emphasis added)

It is apparent from the relevant extract of the orders issued by the Government of Punjab that special remissions were granted to prisoners who have been convicted by the Courts of Criminal Jurisdiction in the State of Punjab. In other words, the said order does not award special remission to prisoners who have been convicted by courts of criminal jurisdiction which are not passed by the Courts in the State of Punjab.

(5) The first and foremost question in these circumstances that arises for consideration is as to if the petitioner is a prisoner in the State of Punjab. This controversy has to be adjudicated because of the plea raised that because the petitioner is a prisoner in the State of Punjab is entitled to all the remissions that would be made available to prisoners in the State of Punjab.

(6) The Prisons Act, 1894 defines a criminal prisoner under Section 3(2) of the said Act. The said definition reads :—

“3(2). “criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial.”

The convicted criminal prisoner had been defined under sub-section (3) of Section 3 and the said expression so defined is being reproduced below :—

“3(3). “convicted criminal prisoner” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882, or under the Prisoners Act, 1871.”

It is apparent from the said definition that a criminal prisoner is one who has been duly committed to custody by any order of the Court. The convicted criminal prisoner means a prisoner not sentenced of a court besides one who has been detained under provisions of Chapter VIII of the Criminal Procedure Code. Admittedly, the petitioner had been convicted by a court of competent jurisdiction at Bangalore. Even if he has been detained in Punjab, he would remain a convicted criminal prisoner because he is being detained in prison after he is convicted. In this regard, therefore, there is little controversy that can be raised. Learned counsel for the petitioner urged that the petitioner has been transferred under the Transfer of Prisoners Act, 1950. He relied upon the expression "until such person is discharged or removed in due course of law" and argued that since the petitioner is detained in Punjab prison under due process of law, he is entitled to all the special remission.

(7) To appreciate the said argument, reference can well be made to Section 3 of the Transfer of Prisoners Act, 1950 which reads:—

"3. Removal of prisoners from one State to another.

- (1) Where any person is confined in a prison in a State —
 - (a) under sentence of death, or
 - (b) under, or in lieu of, a sentence of imprisonment or transportation, or
 - (c) in default of payment of a fine, or
 - (d) in default of giving security for keeping the peace or for maintaining good behaviour.

the Government of that State may, with the consent of the Government of any other State, by order provide for the removal of the prisoner from that prison to any prison in the other State.

- (2) The officer-in-charge of the prison to which any person is removed under sub-section (1) shall receive and detain him, so far as may be, according to the exigency of any writ, warrant or order of the court by which such person has been committed, or until such person is discharged or removed in due course of law."

The said definition clearly shows that with the consent of an other State a prisoner can be transferred. He is to be detained as per order of the court by such person has been convicted and shall be discharged or removed in due course of law. To bring home the argument, the learned counsel relied upon the decision in the case of *Rajesh Puri v. State of Punjab*, Criminal Miscellaneous No. 10141-M of 1993, decided on 4th January, 1994. In the cited case the person concerned had been convicted for the offence punishable under Section 302 IPC. He was sentenced to undergo imprisonment for life by the Sessions Judge, Bikaner. He claimed that he should be released on parole. Parole was prayed because petitioner's plea was that his house has collapsed and he has to repair the same. One of the defences offered was that petitioner had been convicted by the Court at Bikaner and he had been transferred to Central Jail, Amritsar. Only the authorities of Rajasthan could grant him parole. The argument of the defence was rejected and it was held that the convict in that case was entitled to be released on parole because of Section 3(2) of the Transfer of Prisoners Act, 1950. In paragraph 7 the learned Single Judge of this Court held :—

“Apart from this, it is clear upon the transfer of a prisoner from the prisons of one State to that of another, sub-section (2) of Section 3 of Transfer of Prisoners Act, 1950 comes into play. On a plain construction of Section 3(2) of officer in charge of the prison to which a prisoner is removed or transferred under sub-section (1), has to receive and detain him in that prison, so far as may be (i) according to the exigencies of any writ, warrant or order of the Court, by which such person had been committed, or (ii) until such person was discharged or removed, in due course of law.”

It is apparent from perusal of the facts of the case and the conclusions arrived at that it is distinguishable. Special remissions are granted in exercise of the powers under Section 432 of the Code of Criminal Procedure or under Article 161 of the India Constitution by the Governor. The special power of remission cannot be equated with a right of a person to be released on parole. Temporary release on parole would be governed by the laws prevalent where the petitioner has been detained. This will not also be good in case of person who claims special remissions.

(8) In this regard reference can be made to Section 432 of the Code of Criminal Procedure. Sub-sections (1), (2) and (7) of Section 432 read :—

“432(1). When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(7) In this section and in Section 433, the expression “appropriate Government” means,—

- (a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;
- (b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.”

It is patently clear from aforesaid that power of remission is conferred on the appropriate government. A part or whole of the sentence can be remitted. The expression “appropriate Government” includes the Government of the State within which the offender is sentenced and the order is passed. Herein the order has been passed by the Additional Sessions Judge, Bangalore and, therefore, appropriate Government would be the government of Karnataka.

(9) This question had been considered by the Supreme Court in the Case *State of Madhya Pradesh v. Rattan Singh and others*, (1) Herein the person concerned was convicted by the Sessions Judge, Bhind in the State of Madhya Pradesh. He was sentenced to imprisonment for life. The accused person was transferred from Gwalior Jail to Amritsar. He represented that he should be released under the Punjab Jail Manual. The Government of Punjab

forwarded the application to the Government of Madhya Pradesh. The Government of Madhya Pradesh rejected the application. The accused filed a writ petition in this Court. The writ petition was allowed and the Government of Madhya Pradesh was directed to consider the case of the accused for being released. The State of Madhya Pradesh filed an appeal. In this backdrop of fact, the question arose if the appropriate Government was the State of Punjab or that the Government of the Madhya Pradesh. Section 401 of the Code of Criminal procedure, 1898 had been considered. The expression "appropriate government" occurring therein was similar to section 432 of the code of criminal procedure, 1973 with minor modification. The contention of the Madhya Pradesh Government was upheld that it was the appropriate government. while drawing the conclusions the supreme court held :—

“That the appropriate Government which is empowered to grant remission under section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor state and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and.”

Same question was again considered by the supreme Court in the case *State of M.P. v. Ajit Singh and others*,⁽²⁾ Herein also the prisoner had been transferred under the Transfer of Prisoners Act, 1950 from Gwalior to Punjab. The request of the prisoner for his release was rejected by the Madhya Pradesh government. he had filed a writ petition in this Court which was allowed. The order of the Madhya Pradesh Government had been quashed. The Supreme Court allowed the appeal and held that the appropriate Government was the Government of Madhya Pradesh. The Punjab Government was justified in making a request to Madhya Pradesh Government and a direction could not be issued to Punjab Government to consider the case of the said accused for his release. Similar view prevailed with the Supreme Court in the case of *Hanumant Dass v. Vinay Kumar and others*,⁽³⁾ It was held that under sub-section (7) of section 432 Cr. P.C. the appropriate Government means the Government wherein the conviction taken place. It is crystal clear from the aforesaid that the appropriate Government in terms of section 432 Cr. P.C. is the Government where the prisoner is convicted. Herein the petitioner was convicted

2. AIR 1976 SC 1855

3. AIR 1982 SC 1052

by the Additional Sessions Judge, Bangalore. Therefore, the Government of Karnataka would be the appropriate Government.

(10) The attention of the Court was drawn to the decision of the learned Single Judge of this Court in the case of *Harbhajan Singh & Anr. v. Union of India and Ors.*,⁽⁴⁾ In the cited case the person concerned was imprisoned for life by the Commanding Officer. His appeal was dismissed by the Chief of the Army Staff. The accused therein was transferred to the Punjab Jail under the Transfer of Prisoners Act. It was held that since the Punjab Jail Manual was applicable, the remission and procedure of the premature release shall be determined in accordance with Punjab Jail Manual. With respect one can add that keeping in view the various decisions of the Supreme Court quoted above, it cannot be taken to be a good law. Sub-section (7) of section 432 Cr. P.C. had not been taken note of. More close to the facts of the present case is the decision of this Court in the case of *Sampuran Singh v. State of Punjab and Ors.*,⁽⁵⁾ Herein the accused was punished by the Himachal Pradesh High Court. Under the Transfer of Prisoners Act, 1950 he was transferred to Punjab. It was held that the appropriate Government would be the Government of Himachal Pradesh. Keeping in view all the precedents quoted above, an irresistible conclusion would be that appropriate Government would be the Government of Karnataka who would grant the remission.

(11) However, it was pointed out that under Article 161 of the Constitution of India, the Governor can grant remission which in fact has been done in the case of remissions, copy of which is Annexure P-5. It was urged that the Government of Punjab had granted certain remission but could not confine the same to prisoners convicted by the Criminal Courts in Punjab. Article 161 of the Constitution of India refers to the powers of the Governor to grant remissions and pardon etc. It reads :—

“161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State

4. 1982(2) C.L.R. 705

5. 1987(1) R.C.R. 51

extends.

The said power which has been reproduced above indeed is unfettered by the provisions of Code of Criminal Procedure. But it extends to matter to which the executive power of the State extends. Article 162 of the constitution of India explains the extent of executive power of the State. It reads :-

“162. Extent of executive power of State.-subject to the provisions of this constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make, laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this constitution or by any law made by Parliament upon the Union or authorities thereof.”

The position become clarified from Article 162 of the Constitution reproduced above. It is clarified that it is limited to matters with respect to which the Legislature has the power to make law. Admittedly, the Punjab Legislature will not have the power to make law for a person convicted by the Court at Bangalore. He is being detained in Punjab because of the provisions of Transfer of Prisoners Act, 1950. The executive power of the Government of Karnataka extends to him. The petitioner is undergoing sentence in pursuance of the order passed by the Court at Bangalore. He is simply in custody in Punjab but not under the executive power of the State. This conclusion is clear and unambiguous. It will not be possible to draw any other conclusion because in that event there would be a conflict with the expression “appropriate Government” occurring under Section 432 of the Code of Criminal Procedure and Article 161 of the Constitution of India.

(12) The decision of the Division Bench of the Madhya Pradesh high Court in the case of *Sitaram Barelal v. State of Madhya Pradesh*, (6) will not come to the rescue of the petitioner because the cited decision was not concerning itself with the power of remission but was confined to Madhya Pradesh Prisoners Release on Probation Act. The petitioner cannot take advantage of the same. Therefore, when the Governor of Punjab granted remissions only to the prisoners who have been convicted by the Criminal Court in

Punjab, the action was in accordance with the provisions of the Constitution and law. There was no discrimination.

(13) Notice had been issued to the State of Karnataka. But it had not chosen to appear. Keeping in view the aforesaid, it is clear that the petitioner is entitled to the remission that may be granted by the Governor/Government of Karnataka but not by the Governor/Government of Punjab. The Jail authorities/State of Punjab should enquire from the Government of Karnataka as to what remissions are admissible to the petitioner, if any. The petitioner should be given the benefit of the same.

(14) Subject to aforesaid, the petition must fail and is dismissed.

S.C.K.

Before Ashok Bhan & N.K. Agrawal, JJ

M/S INTERNATIONAL SWITCHGEARS,—*Petitioner*

versus

THE UNION TERRITORY OF CHANDIGARH &
ANOTHER,—*Respondents*

CWP No. 6532 of 1997

19th August, 1997

Punjab General Sales Tax Act, 1948—S. 14—B—Punjab General Sales Tax (Amendment) Act, 1972, notified on 14th September, 1977 as applicable to the Union Territory of Chandigarh—Motor Vehicles Act, 1939—S. 2(8) and (18)—Notice u/s 14-B—The goods under detention being carried in an animal-driven cart—Expression 'goods vehicle' under explanation I of S. 14-B has been given the same meaning as assigned to it in S. 2(6) of the Motor Vehicles Act, 1939—S. 14(6) is not attracted when goods are being carried in an animal driven cart—Therefore, notice u/s 14-B is without jurisdiction & liable to be quashed.

Held, that it cannot be accepted that sub-section (6) of Section 14(B) would be attracted even in the case of an animal driven cart carrying the goods. In sub-section (7) again, the officer detaining the goods has been empowered to record the statement of the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessal. In these circumstances, the plea put forward by Revenue that vehicles other than goods vehicles