A

STATE OF HARYANA

v.

MAHENDER SINGH AND ORS.

NOVEMBER 2, 2007

B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Sentence/Sentencing—Remission of sentence—State classifying category of life convicts for pre-mature release by executive C *instruction—Life convicts, convicted prior to the date of instruction, challenging the classification—High Court holding the classification as unconstitutional—On appeal, held: No convict has fundamental right of remission—Valid classification by general instruction is permissible—However, the classification will have prospective* D *operation and would not apply to the convicts in question—The instructions being advisory in nature, would not have force of a statute—Code of Criminal Procedure, 1973—s. 433A—Punjab Prison Rules—Rules 2, 20 and 21—Constitution of India, 1950—Articles 14, 20 and 21.*

E

The State of Haryana by an executive order, in the year 2002 laid down criteria for pre-mature release of life convicts. The same was challenged in Writ Petition by the respondents, who were convicts sentenced to life imprisonment in 1988. They, at the time F **of their conviction, were covered by instructions issued by the State of Haryana in the year 1984 amending Punjab Prison Rules. High Court allowed the Writ Petition declaring the criteria laid down to be unconstitutional on the premise that no discrimination could be made inter-se amongst the life convicts and thus the purported classification was arbitrary and discriminatory. Hence the present** G **appeals.**

Dismissing the appeals, the Court

HELD: 1. It is true that no convict has a fundamental right of

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remission or shortening of sentences. It is also true that the State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law. A classification validly made would not offend Article 14 of the Constitution of India.

[Paras 25 and 36] [944-H; 945-A; 950-E]

2.1. However, the new policy decision adopted by the State of Haryana will have a prospective operation. At the point of time when the respondents were convicted, viz., in the year 1988, for consideration of their cases for remission, the conditions which were required to be fulfilled, were that they should have undergone at least 8 ½ years of the substantive or actual sentence and they should have also undergone 14 years of sentence including the period of remission earned. Indisputably, however, the same was subject to Section 433A Cr.P.C. [Paras 26 and 27] [945-A-C]

Maru Ram **v.** *Union of India and Ors.,* **[1981] 1 SCC 107, followed.**

State of Punjab and Ors. **v.** *Joginder Singh and Ors.,* **[1990] 2 SCC 661, relied on.**

Mohd. Munna **v.** *Union of India and Ors.,* **[2005] 7 SCC 417 and** *Epuru Sudhakar and Anr.* **v.** *Govt. of A.P. and Ors.,* **[2006] 8 SCC 161, distinguished**

Sadhu Singh and Ors. **v.** *State of Punjab,* **[1984] 2 SCC 310;** *State of Haryana and Anr.* **v.** *Ram Diya,* **[1990] 2 SCC 701 and** *Rajender and Ors.* **v.** *State of Haryana,* **[1995] 5 SCC 187, referred to.**

2.2. Whenever a policy decision is made, persons must be treated equally in terms thereof. A' fortiori the policy decision applicable in such cases would be which was prevailing at the time of his conviction. [Para 33] [948-H]

Commissioner of Municipal Corporation, Shimla **v.** *Prem Lata Sood and Ors.,* **(2007) 7 SCALE 737, referred to.**

2.3. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. [Para 32] [948-D-E]

State of Mysore and Anr. **v.** *H. Srinivasmurthy,* **[1976] 1 SCC 817, referred to.**

2.4. Any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules. If the Punjab Rules are applicable in the State of Haryana in view of the State Reorganization Act, no executive instruction would prevail over the Statutory Rules. The Rules have defined 'convicts' in terms whereof a 'life convict' was entitled to have his case considered within the parameters laid down therein, the same cannot be taken away by reason of an executive instruction by redefining the term 'life convict'. It is one thing to say that the 'life convict' has no right to obtain remission but it is another thing to say that they do not have any right to be considered at all. Right to be considered emanates from the State's own executive instructions as also the Statutory Rules. [Paras 32 and 34] [948-F-G; 949-B-C]

Maharao Sahib Shri Bhim Sinhji **v.** *Union of India and Ors.,* **[1981] 1 SCC 166;** *J.R. Raghupathy and Ors.* **v.** *State of A.P and Ors.,* **[1988] 4 SCC 364 and** *Narendra Kumar Maheshwari* **v.** *Union of India,* **[1990] Supp SCC 440, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 30 of 2005.

From the Judgment and final Order dated 24.7.2003 of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 30109-M of 2002. A

WITH

Crl. A. No. 31 of 2005. B

P.N. Misra, Vijay Hansaria and B. Malik, Rajeev Gaur 'Naseem', Rajesh Ranjan, T.V. George, Dr. Rajeev B. Masodkar, Sneha Kalita, Anil K. Jha, Naveen Kumar Singh, Bharat Singh and S. Janani for the appearing parties. C

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. A circular letter issued by the State of Haryana laying down criteria for pre-mature release of the prisoners has been declared to be unconstitutional by a Division Bench of the Punjab and Haryana High Court by reason of the impugned judgment. D

2. Respondents herein are life convicts. They were chargesheeted for commission of an offence of murder of Ran Singh, Rattan Singh and Satbir Singh. They have been found guilty thereof by a judgment of conviction and sentence dated 25.01.1988. Indisputably, their appeals before the High Court as also this Court [since reported in [1995] 5 SCC 187] had been dismissed. E

3. The State of Punjab in exercise of its power conferred upon it under the Prisons Act, 1894 made rules. They have statutory force. Sub-rules (a), (b), (c), (d) and (f) of Rule 2 read as under: F

> "(a) "prisoner" includes a person committed to prison in default of furnishing security to keep the peace or be of good behaviour;
>
> (b) "class I prisoner" means a thug, a robber by administration of poisonous drugs or a professional, hereditary or specially dangerous criminal convicted of heinous organized crime, such as dacoity; G
>
> (c) "class 2 prisoner" means a dacoit or other person convicted of heinous organized crime, not being a professional, hereditary, or specially dangerous criminal; H

A (d) "class 3 prisoner" means a prisoner other than a class 1 or class 2 prisoner;

(f) "life convict" means

(i) a class 1 or class 2 prisoner whose sentence amounts to twenty-
B five years' imprisonment, or

(ii) a class 3 prisoner whose sentence amounts to twenty years' imprisonment"

4. Rules 20 and 21 of the said Rules read thus:

C

"20. When a life-convict being a class 1 prisoner has earned such remission as entitles him to release, the Superintendent shall report accordingly to the Local Government with a view to the passing of orders under section 401 of the Code of Criminal Procedure,
D 1898.

21. Save as provided by rule 20, when a prisoner has earned such remission as entitles him to release, the Superintendent shall release him."

E 5. It, however, appears that on 12.07.1910, a note was appended to the existing Rules 20 and 21 which is in the following terms:

"The intention of these rules is (a) that the cases of class I life-convicts, or class II or class III life-convict who have more than one sentence for offences committed either before their admission
F to Jail or while in jail, and of any other life-convicts in whose cases the local Government may have deemed it desirable, should be submitted for the special orders of the local Government as to whether release should be granted, and if so, on what conditions (such conditions must, it should be noted, be prescribed by order
G under section 401, Code of Criminal Procedure), and (b) that all other convicts should, on the expiry of their sentences, less the periods of remission earned, be released unconditionally without any special orders from the Local Government."

H The Punjab Rules were amended on 9.03.1962, in terms whereof,

'life convict' has been defined to mean 'prisoner whose sentence amounts to 20 years imprisonment'. A

6. Indisputably, the State of Punjab had been issuing instructions in relation to pre-mature release of the convicts from time to time. In the year 1988, when the respondents were convicted, the Rules which were applicable were of 27.02.1984; relevant portion whereof is as under: B

> "The Haryana Government vide letter No. 7483/2JJ/77/30099 dated 28.11.1987 had directed that cases of life convicts of the following two categories be put up to the State Level Committee for review of their premature release and final decision of the State Government thereon. The categories are: C

1.	Adult male life convicts	After completion of 8-1/2 years of substantive sentence and 14 years sentence including remission. D
2.	Female and Juvenile life convicts who were below 20 years of age at the time of commission of offence.	After completion of 6 years of substantive sentence and 10 years sentence including remission."

7. On or about 28.09.1988, the said instructions were amended in the following terms: E

"(a).	Convicts whose death sentence has been commuted to life imprisonment by the President of India or by the Governor of Haryana on acceptance of mercy petition.	Their cases will be reviewed after completion of 14 years actual sentence including undertrial/ detention period. In case of very good conduct in jail for 12 years, their cases will be considered after 12 years of actual imprisonment including undertrial/ detention period. F G
(b)	Juvenile life convicts below the age of 18 years at the time of commission of	Their cases may be considered after 6 years actual sentence including undertrial/ detention H

A	offence and female life convicts.	period, provided the total of period of such detention including remissions is not less than 10 years.
B	(c) Adult life convicts (above 18 years) not convicted for heinous crimes as defined in (d) below.	Their cases may be considered after completion of 8½ years of substantive detention including undertrial/ detention period, provided that the total period of such detention including remissions is not less than 14 years.
C		
	(d) Adult life convicts involved in heinous crimes such as dowry deaths, bride burning,	After undergoing 14 years actual detention including undertrial/ detention period.
D	husband killing and cases disclosing great depravity of character and greed and those involving extreme brutality, murder with rape,	
E	murder while undergoing life sentence, organized and professional crimes of heinous nature like dacoity with murder and life	
F	convicts, who are dangerous and hardened criminals as evidenced for example from cumulative sentences, persistent bad	
G	conduct in the prison and those who could not for some definite reasons be prematurely released without danger to public	
H	safety.	

(e) Persons sentenced to life imprisonment inclusive of those convicted of crimes under (d) above and in whose cases death sentence has been commuted to life imprisonment but who are suffering from terminal illness like cancer or tuberculosis likely to result in death in the near future.	These prisoners may be considered for release irrespective of the detention undergone on report of Medical Board designated by the Government. Medical re-examination of the convict should be done 3 months after such release for the confirmation of the disease. Conditions of release should contain the provision regarding medical re-examination and re-admission to the prison if patient is not found to be suffering from such a disease or is on the road to recovery."

8. From the 1984 and 1988 instructions, it would appear that there did not exist any category of a life convict involved in a heinous crime apart from the ones stated therein.

Yet again on 19.11.1991, the policy was modified to the following effect:

"2(b) Adult life convicts who have been imprisoned for life but whose cases are not covered under (a) above and who have committed crime which are not considered heinous as mentioned in clause (a) above.	Their cases may be considered after completion of 10 years of actual sentence including their trial period, provided that the total period of such sentence including remission is not less than 14 years.

*** *** ***

5. Such cases will be put to the Governor through the Minister for Jails and the Chief Minister, with full background of the prisoner and

A recommendations of the State Level Committee, alongwith the copy of judgment etc. for orders under Article 161 of the Constitution of India."

9. Similar provisions were again made by reason of a policy statement made on 4.02.1993.

B 10. Concededly, the Government of India, Ministry of Home issued instructions for revising the rules made under Section 59(5) of the Prisons Act, 1894 wherein the following recommendations were made:

"1....."Transportation for life" or "Imprisonment for life" should be taken to mean imprisonment for 20 years in practice. However, C in treating "transportation or imprisonment for life" as a term of 20 years' imprisonment, necessary distinction between different classes of prisoners can be adequately allowed for, when reckoning remissions before release of prisoners".

D *** *** ***

3. In view of the decision referred to in para 1 above, according to which the period of 25 years' imprisonment in case of class I and II prisoners, has been reduced to 20 years. The Government of India consider that it would be desirable to amend the relevant E Remission Rules also for the purpose. As, however, those powers are vested in the State Government under section 59(5) of the Prisons Act, 1894, I am to suggest that the State Government may consider taking necessary steps to amend the relevant provisions of the Remission Rules at an early date This Ministry may be F informed of the action taken in the matter."

11. Paragraphs 516-B and 635 of the Punjab Jail Manual read as under:

"516-B. (a) With the exception of females and of males who were G under 20 years of age at the time of commission of offence, the cases of every convicted prisoner sentenced to :

(i) Imprisonment for life,

(ii) Imprisonment/s for life and term/s of imprisonment,

H

(iii) Cumulative periods of rigorous imprisonment aggregating to more than 14 years, A

(iv) A single sentence of more than 20 years:

(a) who has undergone a period of detention in jail amounting together with remission earned to 14 years, shall be submitted through the Inspector-General of Prisons, Punjab for the orders of the State Government, B

(b) the case of a female prisoner and of a male prisoner under 20 years of age at the time of commission of offence , who is undergoing— C

(i) Imprisonment/s for life,

(ii) Imprisonment/s for life and a term/s of imprisonment,

(iii) Cumulative periods of rigorous imprisonment aggregating to more than 10 years or, D

(iv) A single sentence of more than 20 years shall be submitted through the Inspector-General of Prisons, Punjab, for the orders of the State Government when the prisoner has undergone a period of detention in jail amounting together with remission earned to 10 years, E

(v) Notwithstanding anything contained above, a Superintendent, Jail may, in his discretion, refer at any time, for the orders of the State Government through the Inspector-General of Prisons, Punjab, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion be suitably commuted into a term of imprisonment. F

635. Scale of award of remission—Ordinary remission shall be awarded on the following scale- G

(a) two days per month for thoroughly good conduct and scrupulous attention to all prison regulations.

(b) two days per month for industry and the due performance of H

A the daily task imposed.

12. Paragraph 647 is in *pari materia* with Rule 20 of the Statutory Rules.

13. The State of Haryana, however, formulated a policy in regard B to pre-mature release of life convicts in terms whereof the cases for remission were required to be considered after completion of 10 years of actual imprisonment and 14 years including remission. The said policy, however, was reformulated on or about 12.04.2002; the relevant portion whereof is as under:

C "Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisonment for life having committed a heinous crime	Their cases may be considered after completion of 20 years of actual sentence and 25 years total sentence with remissions.
D such as :-	
(i) Murder after rape repeated chained rape/ unnatural offences.	
(ii) Murder with intention for the ransom.	
E	
(iii) Murder of more than two persons.	
(iv) Persons convicted for second time for murder.	
F (v) Sedition with murder.	
(a) Convicts who have been imprisoned for life having committed a heinous crime such as:	Their cases may be considered after completion of 14 years of actual sentence including their trial period, provided that the total period of such sentence including remissions is not less than 20 years."
G	
(i) Murder with wrongful confinement for extortion/ robbery.	
(ii) Murder while undergoing life	
H sentence	

(iii) Murder with dacoity

(iv) Murder with offence under TADA Act, 1987

(v) Murder with untouchability (offences) Act, 1955

(vi) Murder in connection with dowry.

(vii) Murder of a child under the age 14 years.

14. The writ petition preferred by the respondents questioning the constitutionality of the said policy decision has been allowed by the High Court on the premise that no discrimination could be made inter se amongst the life convicts; all of them being similarly situated and, thus, the purported classification on the ground of number of murders was arbitrary and discriminatory.

15. The State of Haryana is, thus, before us.

16. Mr. P.N. Misra, learned senior counsel appearing on behalf of the appellant, submitted that the State having an unfettered right to formulate a policy decision in regard to remission of sentence, the High Court committed a manifest error in arriving at the aforementioned conclusion; particularly, having regard to the provisions contained in Sections 54 and 55 of the Indian Penal Code and Section 433A of the Code of Criminal Procedure, 1973.

17. The learned counsel would contend that the executive government of the State in exercise of its constitutional power under Article 161 of the Constitution of India can formulate such a policy decision and the same has been approved by this Court and in that view of the matter it can also reformulate the policy from time to time.

18. Article 14, learned counsel would contend, does not forbid reasonable classification. Such a policy decision having been formulated for the benefit of the convicts themselves, as in terms of Section 433A of the Code of Criminal Procedure, a convict does not have any constitutional or statutory right of remission of sentence, cannot be held to be unconstitutional.

19. Mr. Vijay Hansaria, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that the right to be considered for obtaining remission itself is a fundamental right. According to the learned counsel, the said policy decision, if taken into consideration in the backdrop of the criminal case in which the respondents had been convicted, would lead to an inference of hardship inasmuch as although they have been found to be guilty for murder of more than one person, the same arose out of a land dispute, and although not accepted by the Trial Court, a plea of self-defence was also raised.

20. Mr. B. Malik, learned senior counsel appearing on behalf of some of the respondents, supplemented the submissions of Mr. Hansaria stating that no policy decision could be formulated in derogation of the Statutory Rules and in any event, the said policy decision would have prospective operation and, thus, would not apply in the fact of this case, as the respondents have been convicted in the year 1988.

21. The State indisputably is entitled to take a prison policy as contra-distinguished from a sentencing policy. The Prisons Act, 1894 was enacted to amend the law relating to Prisons. Sub-section (5) of Section 59 thereof empowers the State Government to make rules for the award of marks and shortening of sentences. The State of Punjab, pursuant to the said power, framed rules.

22. The Rules put the convicts into three categories. It also defines the term 'life convicts'. Whereas a classification had been made from amongst the convicts having regard to the gravity of the offences committed by them, indisputably no classification has been made on the basis of the number of deaths which might have taken place at the hands of the persons. The State apart from making the Statutory Rules, as noticed hereinbefore, had been issuing executive instructions.

23. Section 432 of the Code of Criminal Procedure provides for power to suspend or remit sentences. Section 433 provides for power to commute sentence. Section 433A, which was inserted in the Code of Criminal Procedure by Act No. 45 of 1978 and which came into force with effect from 18.12.1978, provides that 'notwithstanding anything contained in Section 432, no convict shall be released from prison unless he has served at least 14 years of imprisonment where a sentence of imprisonment for life has been imposed'.

24. We may also notice Sections 54 and 55 of the Indian Penal Code which read as under: A

> "54 - Commutation of sentence of death : In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code. B
> 55 - Commutation of sentence of imprisonment for life : In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years." C

25. It is true that no convict has a fundamental right of remission or shortening of sentences. It is also true that the State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law. D

26. The question, however, which would *inter alia* arise for consideration is as to whether new policy decision adopted by the State of Haryana will have a prospective operation.

27. At the point of time when the respondents were convicted, viz., in the year 1988, for consideration of their cases for remission, the following conditions were required to be fulfilled: E

(i) They should have undergone at least $8^{1/2}$ years of the substantive or actual sentence

(ii) They should have also undergone 14 years of sentence including the period of remission earned. F

Indisputably, however, the same was subject to Section 433A of the Code of Criminal Procedure.

28. Validity or otherwise of Section 433A of the Code of Criminal Procedure came up for consideration before a Constitution Bench of this Court in *Maru Ram* v. *Union of India and Ors.*, [1981] 1 SCC 107 wherein this Court *inter alia* held: G

> "54. The major submissions which deserve high consideration may now be taken up. They are three and important in their outcome H

A in the prisoners' freedom from behind bars. The first turns on the "prospectivity" (loosely so called) or otherwise of Section 433-A. We have already held that Article 20(1) is not violated but the present point is whether, on a correct construction, those who have been convicted prior to the coming into force of Section 433-
B A are bound by the mandatory limit. If such convicts are out of its coils their cases must be considered under the remission schemes and "short-sentencing" laws. The second plea, revolves round "pardon jurisprudence", if we may coarsely call it that way, enshrined impregnably in Articles 72 and 161 and the effect of Section 433-A thereon. The power to remit is a constitutional
C power and any legislation must fail which seeks to curtail its scope and emasculate its mechanics. Thirdly, the exercise of this plenary power cannot be left to the fancy, frolic or frown of Government, State or Central, but must embrace reason, relevance and reformation, as all public power in a republic must. On this basis,
D we will have to scrutinise and screen the survival value of the various remission schemes and short-sentencing projects, not to test their supremacy over Section 433-A, but to train the wide and beneficent power to remit life sentences without the hardship of fourteen fettered years."

E 29. In regard to the first point, it was held that a person convicted before coming into force of Section 433A of the Code of Criminal Procedure goes out of the pale thereof and will enjoy the benefits as had accrued to him.

F In regard to the second point, it was held that Articles 72 and 161 of the Constitution of India must yield to Section 433A of the Code of Criminal Procedure.

The Constitution Bench was of the opinion that remission schemes offer healthy motivation for better behaviour, inner improvement and
G development of social fibre. It was observed that remission and short sentencing scheme provides for good guidelines for exercise of pardon power, a jurisdiction meant to be used as often and as systematically as possible and not to be abused, much as the temptation so to do may press upon the men of power.

H It was also opined:

"(10) Although the remission rules or short-sentencing provisions proprio vigore may not apply as against Section 433-A, they will override Section 433-A if the Government, Central or State, guides itself by the selfsame rules or schemes in the exercise of its constitutional power. We regard it as fair that until fresh rules are made in keeping with experience gathered, current social conditions and accepted penological thinking a desirable step, in our view the present remission and release schemes may usefully be taken as guidelines under Articles 72/161 and orders for release passed. We cannot fault the Government, if in some intractably savage delinquents, Section 433-A is itself treated as a guideline for exercise of Articles 72/161. These observations of ours are recommendatory to avoid a hiatus, but it is for Government, Central or State, to decide whether and why the current Remission Rules should not survive until replaced by a more wholesome scheme."

30. However, in *Sadhu Singh and Ors.* v. *State of Punjab,* [1984] 2 SCC 310, although this Court noticed the aforementioned binding precedent in *Maru Ram* (supra) without dwelling upon the question in depth, while interpreting the provisions of paragraph 516-B of the Jail Manual, opined that the same does not have the force of a statutory rule and, thus, it would be open to the State Government to alter or amend or even withdraw such executive instruction stating:

"6.....In other words any existing executive instructions could be substituted by issuing fresh executive instructions for processing the cases of lifers for premature release but once issued these must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of discrimination under Article 14."

The contention that those convicts who had been sentenced to death but whose sentence on mercy petitions has been commuted to life imprisonment will be governed by the 1976 instructions was negatived.

This Court, however, upheld the right of two convicts whose cases were entitled to be considered for pre-mature release immediately in view of 1976 instructions. Unfortunately, the attention of this court was not drawn to the relevant paragraphs of the decision in *Maru Ram* (supra).

31. We may notice that the question has been considered by this Court in *State of Punjab and Ors.* v. *Joginder Singh and Ors.,* [(1990)

A 2 SCC 661] wherein it was held:

> "9....Even in such cases Section 433-A of the Code or the executive instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least 14 years. In the case of other 'lifers' B the insistence under the 1971 amendment is that he should have a period of at least 8 1/2 years of incarceration before release. The 1976 amendment was possibly introduced to make the remission scheme consistent with Section 433-A of the Code. *Since Section 433-A is prospective, so also would be the 1971 and 1976* C *amendments.*
>
> *** *** ***
>
> 11. We, therefore, find it difficult to uphold the view taken by the High Court in this behalf. We may make it clear that paragraph 516-B insofar as it stands amended or modified by the 1971 and D 1976 executive orders is prospective in character"
>
> [Emphasis supplied]

[See also *State of Haryana and Anr.* v. *Ram Diya,* [1990] 2 SCC 701 and *Rajender and Ors.* v. *State of Haryana,* [1995] 5 SCC 187].

E 32. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional F right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. [*State of Mysore and Anr.* v. *H. Srinivasmurthy,* [1976] 1 SCC 817] G

It is now well-settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules. [See *Maharao Sahib Shri Bhim Singhji* v. *Union of India and* H *Ors.*, [1981] 1 SCC 166, *J.R. Raghupathy and Ors.* v. *State of A.P.*

and Ors., [1988] 4 SCC 364 and *Narendra Kumar Maheshwari* v. *Union of India,* [1990] (Supp) SCC 440] A

33. Whenever, thus, a policy decision is made, persons must be treated equally in terms thereof. A' fortiori the policy decision applicable in such cases would be which was prevailing at the time of his conviction. [See Commissioner of *Municipal Corporation, Shimla* v. *Prem Lata Sood and Ors.*, (2007) 7 SCALE 737] B

34. Furthermore, if the Punjab Rules are applicable in the State of Haryana in view of the State Reorganisation Act, no executive instruction would prevail over the Statutory Rules. The Rules having defined 'convicts' in terms whereof a 'life convict' was entitled to have his case considered C within the parameters laid down therein, the same cannot be taken away by reason of an executive instruction by redefining the term 'life convict'. It is one thing to say that the 'life convict' has no right to obtain remission but it is another thing to say that they do not have any right to be considered at all. Right to be considered emanates from the State's own D executive instructions as also the Statutory Rules.

Strong reliance, however, has been placed by *Mr. Misra on Mohd. Munna* v. *Union of India and Ors.*, [2005] 7 SCC 417. In that case, a writ petition was filed under Article 32 of the Constitution of India by the appellant therein stating that as he had undergone 21 years of imprisonment E he should be set at liberty forthwith having regard to the provisions of Clause 751(c) of the West Bengal Jail Code and Section 6 of the West Bengal Correctional Services Act, 1992. Claim for damages was also advanced. It was in that factual backdrop, this Court held:

> "14. The Prisons Rules are made under the Prisons Act and the F Prisons Act by itself does not confer any authority or power to commute or remit sentence. It only provides for the regulation of the prisons and for the terms of the prisoners confined therein. Therefore, the West Bengal Correctional Services Act or the West Bengal Jail Code do not confer any special right on the petitioner herein." G

In the said decision, unfortunately, again *Maru Ram* (supra) was not considered. In any event, the respondents had *inter alia* prayed for payment of damages.

35. Reliance was also placed by *Mr. Misra on Epuru Sudhakar* H

A *and Anr.* v. *Govt. of A.P. and Ors.*, [2006] 8 SCC 161. Therein, a Division Bench opined:

> "65. Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President
B or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the
C 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,
D reprieves, remissions and commutations."

There may not be any dispute with regard to the said proposition of law. But herein we are concerned with the right of the respondents to be considered for remission and not what should be the criteria when the
E matter is taken up for grant thereof.

36. We are, therefore, of the opinion that the High Court might not be correct in holding that the State has no power to make any classification at all. A classification validly made would not offend Article 14 of the Constitution of India. We, thus, although do not agree with all the
F reasonings of the High Court, sustain the judgment for the reasons stated hereinbefore.

It appears that during pendency of the Special Leave, Respondent Nos. 6 and 11 have already been directed to be released. No order, therefor, is required to be passed in their case. So far as the cases of
G other respondents are concerned, the same may be considered by the appropriate authority in the light of the observations made hereinabove.

37. The appeals are dismissed with the aforementioned observations. In view of the findings aforementioned, it is not necessary to pass any order in the contempt matter. The contempt application is dismissed. No costs.

H K.K.T. Appeals dismissed.