

Const. Arup Das Mohanta vs Union Of India & Ors on 19 October, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8174/2020

CONST. ARUP DAS MOHANTA

..... Petitioner

Through: Mr. Ajit Kakkar, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Nagendra Benipal & Mr.

Himanshu Pathak, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 19.10.2020

[VIA VIDEO CONFERENCING]

CM No.26474/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

W.P.(C) 8174/2020

3. This petition, seeking bail / suspension of sentence as well as impugning the sentence order dated 25th/26th September, 2020, though on behalf of the petitioner, has been presented by Mr. Anup Das Mohanta, claiming to be the brother of the petitioner.

4. The counsel for the respondents Border Security Force (BSF) along with Deputy Commandant Vinod Kumar, Law Officer of the respondents BS, appear on advance notice.

5. The grievance of the petitioner is that the Summary Security Force Court (SSFC) constituted by the respondents BSF has, vide order dated 25th/26th September, 2020, imposed a punishment of 89 days rigorous imprisonment along with forfeiture of seniority on the petitioner and on the same day, the petitioner was arrested and remains arrested.

6. It is the contention of the petitioner that he has not been given copies of any documents and the entire procedure leading to the imposition of punishment aforesaid is illegal and the petitioner has

not even been given copies of the findings of the SSFC.

7. The counsel for the respondents BSF, appearing on advance notice, has drawn our attention to Section 114 of the Border Security Force Act, 1968 (BSF Act) to contend that the petitioner was tried by an officer of the rank of Commandant i.e. above the rank of Superintendent of Police (equivalent to Deputy Commandant) mentioned in Section 114(2) of the BSF Act and thus the finding and sentence of the SSFC are not required to be confirmed and are permitted to be carried out forthwith, under Section 114(1) of the BSF Act.

8. However on enquiry, whether the petitioner has been furnished the copy of the order of the SSFC, it is stated that under Section 115 of the BSF Act, though the finding and sentence of the SSFC does not require confirmation but is required to be forwarded to the Deputy Inspector General (DIG) of BSF who is entitled to set aside the proceedings or reduce the sentence to any other sentence. It is informed that the proceedings of the SSFC have been so forwarded to the DIG, BSF and are pending before the DIG, BSF.

9. During the hearing, the counsels have also drawn our attention to Section 130 of the BSF Act empowering the Central Government or Director General, BSF or any officer empowered to convene a General Security Force Court, to suspend the sentence, whether or not the offender had already been committed to prison or to Force custody. However, the Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF states that the said stage also would arise only post compliance of Section 115 of the BSF Act aforesaid whereunder the DIG is to exercise the power. Even otherwise, we feel that the occasion for the petitioner to apply to the Central Government or Director General, BSF or to any other officer, for suspension of sentence would arise only after the petitioner has been furnished the copies of the proceedings of the SSFC.

10. With respect to copies of the proceedings of the SSFC, attention is drawn to Rule 129 of the Border Security Force Rules, 1969 (BSF Rules) to contend that the occasion for furnishing copies would also arise post the stage of Section 115 of the BSF Act i.e. of the DIG, BSF exercising his powers. Else, it is stated that the petitioner has pleaded guilty and it is in pursuance thereto that the sentence was meted out. However from the tenor of the petition, we find the petitioner, at least in this petition, to be impugning the factum of having pleaded guilty.

11. Notice may also be taken of Section 117 of the BSF Act which provides for appeal against the order of the SSFC but the question of availing of which remedy of appeal also does not arise till the petitioner is supplied with the copies of the proceedings and which admittedly have not been supplied.

12. During the hearing, attention has also been drawn to Rule 167 of the BSF Rules empowering a person tried by a Court to prefer a petition before confirmation to authorities specified in Section 117(2) of the BSF Act or to the Inspector General and to Rule 168 of the BSF Rules providing for limitation for preferring such petition.

13. Prima facie we find the provisions aforesaid to the extent providing for a sentence, particularly of imprisonment, to be carried out / executed even before the offender has been furnished copies of the proceedings and / or even before the DIG, BSF has exercised power under Section 115 of the BSF Act, to be infringing the right to liberty of a personnel of the force. We are in W.P.(C) No.7926/2020 titled Maj. Manish Kumar Vs. Union of India & Ors., though pertaining to the Indian Army, dealing with a similar situation and which petition is listed next on 3rd November, 2020.

14. Though the counsel for the respondents BSF states that none of the provisions of the BSF Act or the BSF Rules are under challenge but the same is the position in W.P.(C) No.7926/2020 also and since the questions of liberty are concerned, it is deemed apposite to examine the matter further.

15. Issue notice.

16. Notice is accepted by the counsel for the respondents BSF.

17. In the meanwhile, on the conditions that (a) the petitioner shall not leave the Camp of Company Operated Base (COB), Phulpur of 53 Battalion, BSF and shall be under open arrest within the said COB, Phulpur of 53 Battalion, BSF and shall not be allowed to leave the camp; and, (b) the petitioner maintains good conduct and does not pick up arguments or fights or quarrel with any other personnel in the camp and does not abuse any other personnel, we direct the petitioner to be immediately released from imprisonment and / or closed arrest and be also permitted access, as may be permitted under the Rules, to his relatives especially his brother aforesaid.

18. In the meanwhile the DIG, BSF concerned is at liberty to exercise the power under Section 115 of the BSF Act and once such power has been exercised, the petitioner be furnished copies of the proceedings which he may be entitled to under the Rules, against acknowledgment.

19. List on 3rd November, 2020.

RAJIV SAHAI ENDLAW, J ASHA MENON, J OCTOBER 19, 2020 'gsr'