Supreme Court of India

G. Krishta Goud & J. Bhoomaiah vs State Of Andhra Pradesh & Ors on 3 October, 1975

PETITIONER:
G. KRISHTA GOUD & J. BHOOMAIAH

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT03/10/1975

BENCH:

ACT:
Constitution of India, 1950, Art. 72-Scope of President's power-Power of review of Presidents' action by Courts.

HEADNOTE:
The petitioners were found guilty of murder by the court and sentenced to death, Their petition to the President of India for commuting the death sentence was rejected, Thereupon, they filed a writ petition in the High Court to quash the order of the President on the ground that he had not taken into account two factors, namely, (1) the offences were 'political'; and (2) the prevailing trends against death sentence. The High Court dismissed the petition,

Dismissing the petition for special leave to this Court.
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HELD: (1) Assuming that the offences are political offences, under the Indian Penal Code, murder is murder and judges cannot re-write, the law whatever their views on death sentence, as citizens, may be, and interfere where they have no jurisdiction, [75 B-C; 77 H],

(2) All power however majestic the dignitary wielding it may be, shall be exercised in good faith with intelligent and informed care and honestly for the public weal. But, when the Constitution has empowered the nation's highest Executive as the repository of the clemency power, the Court cannot intervene and judicial review is excluded by implication. Since, the contention, in this case, that equality is denied in the matter of sentence because some get the benefit of clemency while others do not, has no foundation. nor is there any trace of despotism involved, it is not necessary to examine in whom the remedy lies if arbitrary exercise of public power is definitely established a particular case. [76 E-H].

The rejection, however, of one clemency petition does not exhaust the power of the President or the Governor. Therefore, the petitioners may urge the circumstances pressed before this Court for clemency again before the President.] [77 D-E].

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Petition for Special Leave to Appeal (Crl) No. 840 of 1975.

From the judgment and order dated 1st August, 1975 of the Andhra Pradesh High Court at Hyderabad in Criminal Writ Petition No. 4168 of 1975.

R. K. Garg S. C. Agarwala V. J. Francis and Ram Panjwani, for the petitioners.

P. Ram Reddy and P. P. Rao for the respondent. ORDER OF THE COURT The young petitioners held to be murderers by the Court and sentenced to death, having regard to the blood-curdling ruthlessness of the guilt, crossed over from the jurisdiction of courts to the clemency zone of the President under Art 72. This last chance to live appeal for mercy by men who mercilessly killed, allegedly driven by the humanist urge for catalysing social justice through terrorist technology, found no compassionate response. The refusal of the President to commute the death sentence rushed the petitioners back to the High Court to save their life through the Court's writ. Rejection by that Court has compelled them to seek judicial sanctuary in the Supreme Court as the final scene of the Fifth Act of the tragic drama is drawing near.

Shri Garg has grounded his arguments on two socio-legal basics. A politically motivated offence committed by the two frustrated men who were disenchanted by the die-hard injustice of massive suffering and suppression, to shock and shake the custodians of the status quo ante, stands on a separate footing from the common run of crimes and the root humanity of their ruthless inhumanity, though pertinent, was blindly brushed aside by the President. Thereby he excluded a crucially conscientious consideration from an essentially compassionate jurisdiction which rendered the rejection of commutation illegal and unconscionable. Assuming a measure of validity in this socio-poilitical submission, can the Court-even the Supreme Court-rush in where the Constitution has made the President the repository of a benignant life- or-death power, non-justiciable without breaching the dykes of Art. 72 (or Art. 151, if it be the Governor) and non- accountable except to the good conscience of the top Executive Justice is not always channeled through a Judge and what is out of bounds for and not enforceable through regular courts does not, ipso jure become arbitrary or unjust. In our Constitutional order any system of jurisprudence the Judicature is a great instrumentality but not 'a brooding omnipotence in the sky'. Shri Garg, undaunted by this inhibitive doctrine, insisted that the dynamics of power in a democratic polity must be governed by the rule of law, 'basic feature' of the Constitution. True, where law ends, tyranny begins. Counsel's contention is that the President's 'mercy' power is subject to this paramount obligation to reckon all relevant, and reject all irrelevant factors in reaching his verdict of death or life. Here, urged Shri Garg, two vital

digits have been overlooked-that political offenders from Bhagat Singh to the Spanish five (whose execution recently quaked world public opinion) were not common criminals and, secondly, that there has been obliviousness to the growing great trend against death penalty as a legal barbarity now gleaned in pronouncements of this Court and the penal reform currently before Parliament.

The force of the twin submissions, together with a third noticed in Ediga Anamma [1974]3SCR329 viz., the secred, yet secular commandment "thou shall not kill" need not be under-rated to undo their argumentative potency in this forum. What is powerful as pre legislative campaign or post-legislative reform, what is high ethics and noble humanism on Sunday pulpit and Political platform and what is sure to dawn tomorrow but is struggling to be born today all these are on the law moulding matrix but not law now and here. We are not prophets of the Advent but pragmatic technicians using the tools and the know-how handed down to Courts by the legislature. Judges may have a creative role and do activist engineering but obedient to the text of the Constitution. Such a perspective informs our appraisal of both the contentions- enumerated by him as nine, but condensed by us into two.

Patriots and others seeking of accomplish political goals or to attack the political order may commit acts which under municipal laws may be crimes - but are designated in other jurisdictions like extradition laws and sometimes for purposes of reprieve as a class called political offences. But the Penal Code which, by oath of office, we enforce, makes no such classification and in the cold stare of our criminal system, murder is murder. Moreover, the capital punishment was imposed by a court in this case as early as 1972 and upheld right through. As Judges, we cannot re-write the law whatever our views of urgent reforms, as citizens, may be. And the sentence of death having been awarded by the Court, the judicial frontiers have been crossed and, however regrettable and irrevocable, taking of human life by the States' coercive apparatus, may be, our sympathies have no jural relevance. So the new and expanding trend towards abolition of capital penalty, while true, cannot help the hangman's rope in this case.

The surviving point about the assail on the exercise of the 'clemency' power of President demands closer examination.

A constitutional order built on the founding faith of the rule of law may posit wide powers in high functionaries and validly exclude judge-power from eating these forbidden fruits. Art. 72 (and art. 161) designedly and benignantly vest in the highest executive the humane and vast jurisdiction to remit, reprieve, respite, commute and pardon criminals on whom judicial sentences may have been imposed. Historically, it is a sovereign power; politically, it is a residuary power; humanistically, it is in aid of intangible justice where imponderable factors operate for the well- being of the community, beyond the blinkered court process. In Nanavati(1) is Court half explored the area of 'mercy' power but switched on to a different question without pronouncing on the Court's review of Presidential exercise of commutation or respite power. Sinha.C.J. speaking for the Court, observed:

> Pardon is one of the many prerogatives which have been recognised since time immemorial as being vested in the sovereign" wherever the sovereignty might lie. Whether the sovereign happened to be an absolute monarch or a popular republic or

a constitutional king or queen, sovereignty has always been associated with the source power-the power to appoint or dismiss public servants, the power to declare war and conclude peace, the power to legislate and the power to adjudicate upon all kinds of the disputes."

(p. 516) x x x x

1) [1961] 1 S. C, R. 497.

The Rule of law, in contradiction to the rule of man, includes within its wide connotation the absence of arbitrary power, submission to the ordinary law of the land, and the equal protection of the laws. As a result of the historical process aforesaid" the absolute and arbitrary power of the monarch came to be canalised into three distinct wings of the Government".

(p. 517) "We have thus briefly set out the history of the genesis and development of the Royal Prerogative of Mercy because Mr. Seervai has strongly emphasised that the Royal Prerogative of Mercy is wide and absolute, and can be exercised at any time. Very elaborate arguments were addressed by him before us on this aspect of the matter and several English and American decisions were cited.... In fact we apprehend that entering into an elaborate discussion about the scope and effect of the said larger power, in the light of relevant judicial decisions, is likely to create confusion and to distract attention from the essential features of the very narrow point that falls to be considered in the present case."

(p.519) It is apparent from these observations that the question of justiciability has not been affirmed or negatived in the aforesaid decision.

No power in a republic is irresponsible or irresponsive, the people in the last resort being the repositories and beneficiaries of public power. But two limitations exist in our constitutional system. The Court cannot intervene everywhere as an omniscient, omnipotent or omnipresent being. And when the Constitution, as here, has empowered the nation's highest Executive, excluding, by implication, Judicial review, it is officious encroachment, at once procedurally ultra vires and upsetting comity of high instrumentalities, for this Court to be a super power unlimited. The second limitation conditions all public power. whether a court oversees or no. That trust consists in the purity of public authorities. All power, however, majestic the dignitary wielding it, shall be exercised in good faith, with intelligent and informed care and honestly for the public weal.

Counsel's contention that equality is denied in the matter of sentence where some get the benefit of clemency while others do not, has no foundation nor is there any trace of despotism involved in this matter in the case before us. The court has deliberately awarded death sentence. The President is expected to, and we are sure will, consider all facts and circumstances bearing on the just discharge of his high duty. When the President is the custodian of the power, the Court makes an almost extreme presumption in favour of bona fide exercise. We have not been shown any demonstrable

reason or glaring ground to consider the refusal of commutation in the present case as motivated by malignity or degraded by abuse of power. We therefore cannot find our way to interfere with what the President has done.

We must however sound a note of caution. Absolute arbitrary, law-unto-oneself malafide execution of public power, if gruesomely established, the Supreme Court may not be silent or impotent. Assuming as proved the case of a President gripped by communal frenzy and directing commutation of all the penalties where the convict belongs to a certain community and refusing outright where the convict belongs to a different community, there may be, as Shri Garg urged, a dilemma for the Court. Assuming the Governor in exercise of his power under Art. 161 refusing to consider cases of commutation where the prisoner is above 40 years of age as a rule of thumb or arbitrarily out of personal vendatta rejecting the claim of clemency of a condemned prisoner, is the Court helpless ? This large interrogation is highly hypothetical and whether the remedy is in Court or by impeachment in Parliament or by rising resentment in public opinion,, it is not for us to examine now. Enough unto the day is the evil thereof.

Before parting with this special leave petition-which we reject-we visualize the contingency of the petitioners invoking the merciful jurisdiction of the President or Governor. as the case may be, setting out various factors with which the Court may not be concerned while imposing judicial sentence but may still have persuasive value before the concerned Executive. The rejection of one clemency petition does not exhaust the power of the President or the Governor. The circumstances pressed before us about the political nature of the offence, the undoubted decline in capital punishment in most countries of the world, the prospective change in the law bearing on that penalty in the new Penal Code Bill, the later declaration of law in tune with modern penology with the correctional and rehabilitative bias emphasized by this Court in Ediga Anamma (supra), the circumstances that the Damocle's sword of death sentence had been hanging over the head of the convicts for around 4 years and like factors may, perhaps,, be urged before the President. Over the centuries, society has moved away from the crueller forms of inflicting legal death and almost a revolutionary change in penology has taken place in England since, in 1801 AD a boy of 13 years old was hanged for stealing a spoon. Not raw ferocity but warm humanity is the real heart of law. A recent publication states with graphic grimness, " The man sits in a cage of steel and concrete under a single bright light that burns around the clock. He has been tried by a jury of his peers, judged and sentenced to die. He has killed and now society, through the anonymous machinery of the state, will kill him. He has been brought here to keep that appointment with death."

(The Life We Take- A case against the Death Penalty-by Trevor Thomas-Friends Committee on Legislation, California) Our reflections on hanging,, our philosophy for mercy and our observations about death sentence being abolished in country after country and the irrevocable harm of a wrong execution-these great facts cannot deflect us from our constitutional duty not to interfere where we have no jurisdiction. We accordingly dismiss the special leave petition.

V.P.S. Petition dismissed.