



GAHC010216592013

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5275/2013

STATE OF ASSAM and 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
HOME and POLITICAL DEPARTMENT, DISPUR, GHY-6

2: THE INSPECTOR GENERAL OF PRISONS
ASSAM
KHANAPARA
GHY-22

3: THE SUPERINTENDENT OF DISTRICT JAIL
KARIMGANJ
DIST- KARIMGAN

VERSUS

ABDUL RAHMAN and ANR.
S/O ABDUL NOOR, VILL. KURTI, P.S. PATHARKANDI, DIST- KARIMGANJ

2: ASSAM HUMAN RIGHTS COMMISSION
GMDA COMPLEX
BHANGAGARH
GUWAHATI
ASSA

For the Petitioner (s) : Mr. H. Sarma, Advocate.
For the Respondent (s) : Mr. A. Alam, Advocate.

Date of hearing & Judgment : **03.10.2023**



BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the State of Assam and two others challenging the order dated 22.11.2022 passed by the Assam Human Rights Commission in AHRC Case No.307/10/11-12.

2. It appears from the records that the Respondent No. 1 herein was a life convict in the District Jail, Karimganj undergoing his life imprisonment in connection with Sessions Case No. 16/1995 under Section 302/34 Indian Penal Code w.e.f. 23.02.1998. The records further reveal that a proposal for release of the Respondent No. 1 was received by the Dealing Assistant of the Office of the Superintendent District Jail, Karimganj on 02.02.2012. A W.T. Message was sent to the Jail Superintendent on 03.02.2012 asking for the proper receipt of the payment of the fine by the convict. The final proposal for release of the Respondent No. 1 was submitted by the Inspector General of Prisons, Assam to the Government on 10.02.2012. Thereupon on 22.03.2012, the Secretary to the Government of Assam, Home and Political Department issued a Notification bearing No. HMB128/2001/Pt/327, wherein it was mentioned that the Respondent No. 1 had completed 20 years of total imprisonment(including

remission earned in Jail) as well as 14 years of actual imprisonment including under-trial detention period set off under Section 428 of the Code of Criminal Procedure, 1973 (in short 'the Code'). It was further mentioned that taking into account the conduct and performance of the Respondent No. 1 in the jail, the Governor of Assam was satisfied that the Respondent No. 1 had become fit for release. Accordingly, by exercising the powers under Section 432 read with Section 433A of the Code, the Governor of Assam was pleased to remit the life sentences of the Respondent No. 1 and to accord approval for his release with **immediate effect**.

3. It is seen that the copies of the said order of the Governor was marked to the Inspector General of Prisons, Assam, the Superintendent, M.N., Open Air Jail, Jorhat the Superintendent, District Jail/Karimganj for information and necessary action as well as copies were marked to the Private Secretary to the Minister of Jails, Assam and the Private Secretary to the Commissioner & Secretary, Home & Political Department, Dispur. It is pertinent herein to take note of that though on 23.03.2012 the Govt. order to release the Respondent No. 1 dated 22.03.2012 was received by the Dealing Assistant of the Office of the I.G. of Prisons, Assam but the record further reveals that on 24th, 25th, 26th and 27th of March, 2012 the Respondent No. 1 was not released, although the order of the Governor was specific to be released with immediate effect. It was

only on 28.03.2012, the Respondent No. 1 was released.

4. It further reveals that a complaint was filed before the Assam Human Rights Commission alleging that the Respondent No. 1 was detained for about 1 month in excess before his final release from the jail. The Assam Human Rights Commission vide an order dated 16.02.2012 took cognizance of the said complaint and directed the I.G., Prisons, Assam to look into the complaint and submit a report. Thereupon the I.G., Prisons, Assam submitted the report on 13.03.2021 stating inter alia the fact that the proposal for releasing the Respondent No. 1 had already been submitted to the Government through the letter dated 10.02.2012 and the release would be effected immediately after the receipt of the release order from the Government. The said report which was submitted by the I.G. Prisons, Assam was thereupon served upon the complainant asking for his comments. On 11.04.2012, the brother of the Respondent No. 1 contended that the Respondent No. 1 was released on 28.03.2012 after unlawfully detaining him in jail for more than 1 month. The Assam Human Rights Commission vide an order dated 11.07.2012 directed the I.G., Prisons, Assam to clarify the matter of the alleged overstay of the Respondent No. 1 in the jail. The I.G., Prisons, Assam submitted a clarification report on 31.07.2012. The said clarification report have been enclosed as Annexure- 2 to the writ petition.

5. From a perusal of the said clarification report dated 31.07.2012,

it transpires that the Inspector General of Prisons had given a date-wise description of the activities carried out which led to the release of the Respondent No. 1 from the jail. The said date-wise description of the activities being relevant for the purpose of adjudication of the instant writ petition is reproduced hereinbelow :-

“On 02-02-2012 :The proposal for final release of the said convict was received by the Dealing Assistant, (D.A.), Office of the Inspector General of Prisons, Assam from Superintendent, District Jail, Karimganj (copy) enclosed for ready reference).

On 03-02-2012 : A W.T. Message was sent to Supdt. District Jail, Karimganj asking to submit proper fine payment receipt of the said convict (copy enclosed for ready reference).

On 10-02-2012 : Proposal for final release of the said convict was submitted to Government by the Inspector General of Prisons, Assam. (copy enclosed for ready reference).

On 23-03-2012 : Government order for release of the said convict vide Govt. letter No. HMB.128/2001/Pt/327 dt. 22.3.2012 was received by the D.A, Office of the I.G. of Prisons (copy enclosed for ready reference).

On 24-03-2012 : Office holiday due to 4th Saturday.

On 25-03-2012 : Office holiday due to Sunday.

*On 26-03-2012 : File processed by the office and
Inspector General of Prisons
approved it.*

On 27-03-2012 : W.T. Message was issued to the Supdt. District Jail, Karimganj by the I.G. of Prisons, Assam informing Government's release order of the said convict (copy enclosed for ready reference).

On 28-03-2012 : The said convict AC/564 Abdur Rahman was released from the



District Jail, Karimganj (copy enclosed for ready reference)."

6. On the basis of the said clarification report, the Inspector General of Prisons, Assam requested the Assam Human Rights Commission to consider the matter on merit and to drop the case. It further reveals that the Assam Human Rights Commission passed an order dated 22.11.2022. In the said order, the Commission came to a finding that the Government of Assam took as many as 40 days in issuing the final release order on 22.03.2012 and accordingly, the Respondent No. 1 who was due to be finally released from the jail on expiry of his life term on 28.02.2012 was released on 28.03.2012 i.e. 1 month after the due date, which is a serious illegality amounting to illegal detention of the Respondent No.1 in the jail for no fault of his and can certainly be attributed to the negligence and dereliction of duty on the part of the official(s)/staff(s) concerned. The Commission thereupon also observed that the illegal detention of the Respondent No. 1 was in flagrant violation of the human rights of the Respondent No. 1 affecting his life, liberty and dignity and resulting in clear infringement of Article 21 of the Constitution. On the basis of the above, the Commission directed the payment of compensation of Rs. 3 lakhs to the Respondent No. 1 which may be realized from the concerned officers found to be involved in such act as well as for initiating disciplinary proceedings or taking appropriate actions respectively against such official(s)/staff(s), whosoever as are found to be

responsible for causing the belated release of the life convict i.e. the Respondent No. 1. It was further directed that the action taken report be submitted to the Commission within 90 days of receipt of the orders. Being aggrieved with the said order dated 22.11.2012, the State of Assam, the Inspector General of Prisons, Assam and the Superintendent of the District Jail, Karimganj have jointly filed the instant writ petition on 29.08.2013.

7. It reveals from the records that this Court vide an order dated 16.09.2013 issued notice and stayed the impugned order dated 22.11.2012. The records further reveal that this Court vide an order dated 16.02.2015 issued Rule and the interim order so passed earlier was directed to continue till the disposal of the writ petition.

8. From the records, it is also apparent that on 17.09.2014, the Respondent No. 1 had filed an affidavit-in-opposition. From a perusal of the said affidavit-in-opposition, it reveals that the Respondent No. 1 had justified the impugned order.

9. In the backdrop of the above, the question which arises for consideration is as to whether the impugned order dated 22.11.2012 is required to be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution ?

10. Before further proceeding to deal with the legality of the impugned order, this Court finds it relevant to take note of the



relevant laws on the issue. The Petitioners' counsel had relied upon two judgments of the Supreme Court i.e. the cases of **The State of Madhya Pradesh Vs. Ratan Singh and Ors.** reported in **AIR 1976 SC 1552** as well as the judgment of the Supreme Court rendered in the case of **Sangit and Anr. Vs. The State of Haryana** reported in **(2013) 2 SCC 452**.

11. Let this Court first take note of the judgment in the case of **Ratan Singh and Ors.** (supra). The facts involved therein were that one Ratan Singh who was convicted by the Sessions Judge, Dhing in the State of Madhya Pradesh under Section 302 of the Indian Penal Code and sentenced to imprisonment for life made a prayer before the Punjab Government for transferring him from Gwalior Jail to Amritsar Jail as the said Ratan Singh belong to the State of Punjab. The said representation of Ratan Singh was accepted and accordingly he was transferred to Punjab jail where he was lodged at the Central Jail, Amritsar. The order of transfer was passed on 15.10.1959. It was the case of Ratan Singh that as he had completed the period of 20 years of imprisonment including the remission granted under the Punjab Jail Manual, he was entitled to be released forthwith and he accordingly submitted an application for his release before the Punjab Government. In fact, at the time when the said Ratan Singh had submitted the application, he had already undergone imprisonment for a period of 25 years, 18 days, 19 hours taking into



account the various remissions granted to him from time to time. The Government of Punjab forwarded the representation of the said Ratan Singh to the Government of Madhya Pradesh for passing an order of release. On 18.04.1971, the State of Madhya Pradesh rejected the request of the Respondent for his release. Under such circumstances, the said Ratan Singh filed a writ petition before the High Court of Punjab and Haryana on the ground that as he had served the sentence for more than 20 years he was entitled to be released as a matter of course under the provisions of Punjab Jail Manual Rules framed under the Act. The Punjab and Haryana High Court accepted the plea of the said Ratan Singh and held that the State of Punjab was the appropriate authority to release the said Ratan Singh. It further appears that thereupon in pursuance to the order passed by the Punjab and Haryana High Court, the said Ratan Singh was released. It is under such circumstances, the State of Madhya Pradesh had filed an appeal before the Supreme Court contending that it is the Madhya Pradesh Government alone who had the power to remit the sentence and release the Petitioner and as such the Punjab and Haryana High Court ought to have passed the order of release. It is under such circumstances, the judgment was rendered in the case of Ratan Singh (supra) whereby it was held that the order passed by the Punjab and Haryana High Court was erroneous and accordingly the Appeal was not interfered with.

However, as the said Ratan Singh was already released, the order of release would stand. At Paragraph No. 9 of the said judgment, the Supreme Court laid down the following propositions which for the sake of convenience are reproduced hereinunder :-

“9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge :

(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure.

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner,

(3) that the appropriate Government which is empowered to grant remission under Section 101 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is 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

(4) where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction.”

12. From the above propositions, it appears that a sentence of imprisonment for life does not automatically expire at the end of 20 years including remission as the administrative Rules framed under the various Jail Manual or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. It was observed that a

sentence of imprisonment for life means a sentence for entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure, 1898 which is paramateria to Section 432 of the Code. The other propositions which have been which were stipulated in sub-paragraphs 2,3 and 4 of paragraph No. 9 relates to which appropriate Government can order such release and as regards the judicial review against an order of refusal to release. Be that as it may, the said propositions makes it clear that a discretion has been conferred upon the appropriate Government to remit either the whole or a part of the sentence under Section 432 of the Code.

13. In the backdrop of the above, let this Court take note of the judgment of the Supreme Court in the case of **Sangeet and Anr.** (supra). The judgment in the case of **Sangeet and Anr.** (supra) was rendered under the extant of the Code. In the said judgment, the Supreme Court dealt with the procedural checks as well as the substantive checks on arbitrary remissions amongst others. At paragraph No. 77 of the said judgment the conclusions arrived at by the Supreme Court are detailed. Paragraph 77.5, 77.6 and 77.7 as it relates to remissions, the said paragraphs are quoted hereinunder :-

77.5 The grant of remissions is a statutory power. However, to prevent its arbitrary exercise, the legislature has built in some procedural trend and substantive checks in the statue. These need to be faithfully enforced.

77.6 Remission can be granted under Section 432 of the CrPC in the case of a definitive term of sentence. The power under this said Section is available only for granting "additional remission", that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory Rules. If the term of the sentence is indefinite (as in life imprisonment), the power under Section 432 CrPC can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

77.7 Before actually exercising the power of remission under Section 432 of the Code of Criminal Procedure, 1973, the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner."

14. From the above quoted sub-paragraphs of paragraph 77, it reveals that the Supreme Court observed that a grant of remission is a statutory power and to prevent its arbitrary exercise, the legislature has to bring in some procedural trend and substantive checks in the Statues. It was observed that remissions can be granted under Section 432 of the CrPC in the case of a definitive term of sentence. The power under the said Section is available only for granting "additional remissions", that is, for a period over and above the remissions granted or awarded to a convict under the Jail Manual or other statutory Rules. It was further observed that if the term of the sentence is indefinite (as in life imprisonment), the power under Section 432 of the Code can certainly be exercised but not on the basis that the life imprisonment is an arbitrary or notional figure of 20 years of imprisonment. It was further observed that before exercising the power of remission under Section 432 of the Code, the appropriate Government must obtain the opinion (with reasons) of the



Presiding Judge of the convicting or confirming Court and remission can therefore be given only on a case-to-case basis and not in a wholesale manner.

15. In the backdrop of the above proposition as settled by the Supreme Court, this Court finds it relevant to take note of the relevant provisions which relates to suspension, remission and commutation of sentences. Section 432 of the Code of Criminal Procedure, 1973 empowers the appropriate Government with or without any condition to suspend the execution of the sentence or remit the whole or any part of the punishment to which a person had been sentenced. In Section 433 of the Code, the appropriate Government have been empowered without the consent of the person sentenced to commute amongst others a sentence of imprisonment for life or imprisonment for a term not exceeding 14 years or for fine. Section 433A of the Code imposes certain restrictions on the power of remissions or commutation in certain cases. Therefore, from the law laid down by the Supreme Court in the case of **Ratan Singh** (supra) as well as in **Sangeet and Anr.** (supra) read with the provisions of Sections 432, 433 & 433A of the Code, it appears that the power to be exercised by the appropriate Government is a discretionary power to remit the whole or any part of the sentence. At this stage, this Court further finds it relevant to take note of the Assam Jail Manual, more particularly Chapter XIX which relates to the remission. Rule 326F

defines life sentence to mean a sentence of imprisonment for life; life convict means a prisoner sentenced to imprisonment for life; and imprisonment for life means imprisonment for the entire life of the prisoner, unless remitted earlier by the appropriate Government. Rule 571 (4) relates to release of life convict. The said Sub-Rule (4) of Rule 571 being relevant, the same is reproduced hereinunder :

“Release of life convict.—The Superintendent shall submit to the Inspector General for every half year ending 30th June/31st December the following in duplicate in respect of any life convict who has completed as on 30th June/31st December, or is due to complete within the next quarter, twenty years imprisonment including any remission earned under the Rules; . (i) Descriptive Roll ; (ii) Report as to the life convict’s conduct and performance in prison ; and (iii) Remark as to his fitness for release. The Inspector General shall thereupon send his recommendations to the appropriate Government who will communicate the order remitting, or refusing, the life sentence to the Inspector-General for transmission to the Superintendent. If the life sentence is remitted, the Superintendent shall release the life convict as such date as may be specified in the orders.

16. From a perusal of the above quoted Sub-Rule (4) of Rule 571, it would be seen that the procedure to be followed for the purpose of applying for remission have been mentioned. It stipulates that the Superintendent of the concerned jail shall submit to the Inspector General of Prisons for every half year ending 30th of June/31st of December the details stipulated therein in duplicate in respect of any life convict who had completed as on 30th of June/31st of December or is due to complete within the next quarter 20 years imprisonment including any remission earned under the Rules. The details which are required to be sent in duplicate are – (i) Descriptive Roll, (ii) Report



as to the life convict's conduct and performance in prison and (iii) Remark as to his fitness for release. The Inspector General of Prisons upon receipt of the said details from the Superintendent of the concerned jail shall thereupon send his recommendation to the appropriate Government who will communicate the order remitting, or refusing the life sentence to the Inspector General of Prisons for transmission to the Superintendent. If the life sentence is remitted, the Superintendent shall release the life convict as on such dates as may be specified in the orders. Therefore, from Sub-Rule (4) of Rule 571 of the Rules for Management of Jails in Assam, it would also show that the appropriate Government have a right to remit or even refuse the proposal for remission.

17. In the backdrop of the above analysis, let this Court therefore take into consideration the facts involved alongwith the impugned order. The Superintendent on 02.02.2012 submitted the proposal in terms with Rule 571(4) to the Inspector General of Prisons, Assam. The Inspector General of Prisons, Assam upon receipt of the said proposal alongwith the fine payment receipt of the Respondent No. 1 submitted the proposal of remission to the Government on 10.02.2012. On 22.03.2012, the Government passed the order in the name of the Governor thereby granting the remission to the Respondent No. 1 and further ordering that the Respondent No. 1 be released with immediate effect.



18. This Court at this stage, finds it relevant to take note of that though the power to remit or refuse remission is within the discretion of the Government, but there is no explanation in the writ petition as well as also in the Clarification dated 31.7.2012 enclosed as Annexure-2 to the writ petition why the State Government took time from 10.02.2012 till 22.03.2012, although the State of Assam is the Petitioner No. 1 in the instant proceedings. It was expected that the State of Assam at least ought to have explained why it had taken almost 40 days for passing the said order of granting remission to the Respondent No. 1. Be that as it may, the law declared by the Supreme Court is well as the provisions referred to above clearly show that there is no enforceable right of a prisoner who is a life convict to be released on completion of 20 years. In the instant case, the right to be released from the jail accrued upon the Respondent No. 1 on the basis of the order of the Governor dated 22.03.2012, wherein it was categorically mentioned that the Respondent No. 1 be released with immediate effect. The Clarification dated 31.07.2012 of the Inspector General of Prisons categorically mentioned that on 23.03.2012, the order dated 22.03.2012 was received. In the said Clarification, it was mentioned that on account of holidays on 24th and 25th of March, 2012 being 4th Saturday and Sunday, the order of the Governor dated 22.03.2012 could not be acted upon. It was further mentioned that on



26th and 27th of March 2012, the file was processed and on 28th of March, 2012 the Respondent No. 1 was released. This Court fails to understand as to what stopped the Office of the Inspector General of Prisons to issue appropriate directions pursuant to receipt of the order of the Governor dated 22.03.2012 on 23.03.2012 that too when the order of the Governor dated 22.3.2012 categorically stated that the Respondent No. 1 should be released with immediate effect. Nothing could be shown by the learned counsel appearing on behalf of the Petitioners that the prisoner cannot be released on a 4th Saturday or Sunday. There is also nothing shown as to why it took another 2 days thereafter i.e. on 26th and 27th of March, 2012 for processing the papers inasmuch as a reading of Sub-Rule (4) of Rule 571 of the Rules and Management of Jails in Assam do not contemplate anything except transmission of the order of the Governor by the Inspector General of Prisons to the Superintendent.

19. Today when the matter was taken up, Mr. H. Sarma, the learned counsel appearing on behalf of the Petitioner State submitted that the Communication issued by the Inspector General of Prisons dated 27.3.2012 was received on 28.3.2012 by the Superintendent of District Jail, Karimganj. This clearly therefore shows that there was laxity in the office of the Inspector General of Prisons from 23.03.2012 to 27.03.2012 inasmuch as the Superintendent of the Jail received the



Communication on 28.03.2012 and the Respondent No. 1 was only released on 28.03.2012 thereafter.

20. Now coming to the order of the Governor dated 23.3.2012, it categorically mandates that the Respondent No.1 be released with immediate effect meaning thereby any further detention from the date of receipt of the said order by the Inspector General of Prisons would amount to an illegal detention of the Respondent No. 1 without any authority of law.

21. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of **D.K. Basu Vs. The State of West Bengal** reported in **(1997) 1 SCC 416**. It was observed by the Supreme Court in the said judgment that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitutions is remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and



preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. The Supreme Court further in the said judgment observed that for violation of fundamental right to life or basic human right amounts to violation of rights guaranteed under Article 21 of the Constitution and the State would be vicariously liable for the tort committed by its employees.

22. In view of the above analysis, it is clear that though the Respondent No. 1 may not have enforceable right for claiming damages on account of the delay in processing of the remission papers by the Govt. pursuant to the proposal submitted to the Government on 10.02.2012 but post the order dated 22.03.2012, the Petitioner Nos. 2 and 3 could not have kept the Respondent No. 1 in the jail after receiving the order of the Governor on 23.3.2012. Therefore, a constitutional tort was committed by the employees of the Petitioner No. 1 herein for which the Petitioner No. 1 would be vicariously liable.

23. The next question which arises is whether this Court should interfere with the impugned order passed by the learned Assam

Human Right Commission in the present facts and circumstances.

A perusal of the writ petition and the reliefs sought for shows that the Petitioners have sought for a writ in the nature of Certiorari for the purpose of setting aside and quashing the order dated 22.11.2012. At this stage, this Court finds it relevant to take note of the recent judgment of the Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das and Ors.** reported **2023 SCC Online SC 996**. In paragraph Nos. 50,51 and 52 the Supreme Court dealt with the principles for issuance of a writ in the nature of Certiorari. The said paragraphs being relevant are reproduced hereinunder:

“50. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged

in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

24. From a perusal of the above quoted paragraphs, it reveals that there are two cardinal principles for the purpose of exercising the jurisdiction under Article 226 of the Constitution for issuance of a writ of Certiorari – (1) The first cardinal principle is that the High Court while exercising the jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the authority which passed the order. The High Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. The High Court only demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. It was categorically observed by the Supreme Court that the writ of certiorari can be issued if an error of law is apparent on the face of the record and a writ of certiorari, being a high prerogative writ, should not be issued

on a mere asking. (2) The second cardinal principle for issuance of a writ of certiorari is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It was observed that it was perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end. It was observed that the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction and any other approach would render the High Court a normal Court of Appeal which it is not.

25. In the backdrop of the above legal formulations as set out by the Supreme Court for an exercise of a writ in the nature of certiorari, the question therefore arises as to whether any interference is required to the impugned order dated 22.11.2012 passed by the Assam Human Rights Commission merely on the ground that the Assam Human Rights Commission had granted a compensation of Rs. 3 lakhs by taking into account that there was a delay of 40 days from the date of



the proposal for releasing the Respondent No. 1. As already observed above, the right to be released had accrued upon the Respondent No. 1 on 22.03.2012. Any delay prior thereto by the Government though ought to have been explained in the writ petition as the State was the Petitioner, but for that purpose it cannot be said that the Respondent No. 1's right under Article 21 of the Constitution have been violated. However, after 23.3.2012, the reasons so assigned are not legally tenable and this clearly violates the rights under Article 21 of the Constitution of the Respondent No.1. The amount of Rs. 3 lakhs which was awarded in the opinion of this Court cannot be said to be unjust and unreasonable and in exercise of the certiorari jurisdiction, this Court finds no reason to interfere with the said quantum of compensation more so when a decade had passed pursuant to the order impugned in the instant proceedings.

26. Under such circumstances, in order to do substantial justice between the parties, this Court is not inclined to interfere with the impugned order dated 22.11.2022 passed by the learned Assam Human Rights Commission. The Petitioner No. 1 herein is directed to disburse the amount of Rs.3 lakhs within 30 days from the date a certified copy of the instant judgment is served upon the Commissioner and Secretary to the Government of Assam, Home and Political Department. The Petitioner No. 1 shall also make necessary enquiries as regards the persons who were responsible for which it resulted in the



infraction of the rights under Article 21 of the Constitution of the Respondent No. 1. It shall be within the liberty of the Petitioner No. 1 to take appropriate actions upon such persons found guilty on such enquiry being conducted and to recover the amount which the Petitioner No. 1 is being directed to make payment.

27. This Court further directs that if the amount which have been directed to be paid, if not paid within a period of 30 days from the date of submission of the certified copy of the instant judgment, the Respondent No. 1 shall not only be entitled to resort to such remedies for violation of the directions passed by this Court, but shall also be entitled to interest @ 6% from the date of the default.

28. The learned Assam Human Rights Commission shall also be at liberty to further proceed with the said proceedings as per law inasmuch as a perusal of the impugned order does not reveal that the learned Assam Human Rights Commission had closed the proceedings.

29. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant