

ఆంధ్రప్రదేశ్ పౌరహక్కుల సంఘం (ఎపిసిఎల్సి)

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Date : 15-04-1997.....

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To

The Hon'ble Chairman,
National Human Rights Commission
New Delhi

Respected Sir,

Sub: Intervention in mercy petition
under Article 72 pending before the
President of India.

This is a plea to the NHRC to intervene in the matter of the death sentence passed against two dalit youth, Satuluri Chalapati Rao and Gantela Vijayavardhana Rao by the Sessions Court, Guntur, A.P. (S.C.No.662/1993). The death sentence was confirmed in due course by a Division Bench of the High Court, and the appeal by the convicts was dismissed by the Supreme Court on 28 August, 1996.

Petitions seeking commutation of the death sentence to one of life imprisonment under Articles 161 and 72 of the Constitution of India were filed with the Governor of A.P. and the President of India respectively. The Governor of A.P. declined to act on the petition. As a similar petition was pending with the President, the President of India considered and rejected the mercy petition in March, 1997.

The convicts were to be hanged on 29 March, 1997 but a fresh last minute petition for commutation presented to the President of India by Maheswata Devi, well known Bengali writer and Jnanpith award winner, impelled the Supreme Court to direct a stay on the execution until 5 April, 1997 to enable the President to dispose of the matter. On April 4, the Union Cabinet considered the petition but did not make any recommendation to the President. Instead, it extended the stay on execution until a decision is taken.

Many prominent citizens have written to the President seeking a positive response to the commutation petition. Prof. Rajini Kothari,

eminent political scientist, Prof. Manoranjan Mohanty, also an eminent political scientist and renowned expert on Chinese politics, Sri V.M.Tarkunde, former Judge of the Bombay High Court and a pioneer of the human rights movement in India, have personally met the Union Home Minister, Prime Minister and President and explained the rationale for seeking commutation. So have Sri George Fernandes and Sri G.Venkataswamy, both former Union Ministers and Sri Rabi Ray, former Speaker of the Lok Sabha. Sri V.R.Krishna Iyer, former Judge of the Supreme Court of India and Sri K.G.Kannabiran, president of the PUCL are among the many who have written to the President in defence of the plea for commutation. So have many academics, lawyers and journalists including Sri Nikhil Chakravarthy, Editor of Mainstream. Many human rights, dalit, worker, peasant and youth organisations all over the country are actively campaigning for commutation of death sentence.

We request the NHRC to also intervene and defend the plea for commutation before the President of India. Our request is based upon two considerations. One is that to the human rights viewpoint, which guides the outlook the NHRC, death sentence is itself abhorrent and objectionable, irrespective of the specific details of the case in question. The second is that this case in question deserves a more lenient view than has been adopted by the courts.

1. The NHRC's task is to inculcate a human rights culture in the administration. It is required to not merely investigate and pronounce upon individual complaints, but also to strive for reform and reshaping of the law, legal administration and executive practices in general with a view to increasing their commitment to human rights. While the courts are bound by the framework of existing law and its progressive interpretation, the NHRC has the task of not only ensuring that the statutorily guaranteed human are enforced, but also trying to reshape law and the State practices in general in tune with the values and principles of internationally acknowledged human rights. We are aware that the Protection of Human Rights Act, 1993 includes internationally accepted principles in the definition of human rights only to the extent they are enforceable by Indian Courts. However, we are not at this point concerned with positive human rights law but with the framework within which the NHRC may comprehend and interpret the provision of sovereign mercy in Article 72 of the Constitution of India. This framework is constituted by the principles advocated by the most enlightened human rights opinion of the world. These principles are the frontiers of human rights law. If they are not yet positive law in all countries, they are nevertheless the emerging principles of

NHRC to the extent that its concern is not just to ensure compliance with legally guaranteed human rights, but to reshape the country's law and practices in accordance with the evolving principles of human rights.

The mercy jurisdiction of the Head of State under Article 72 is an appropriate arena for giving effect to such principles, for that jurisdiction is not limited by existing Indian law which has not yet abolished the death penalty. Abolition of death penalty, or the principle that nobody shall be deprived of life in the name of administration of Justice, is one of the important principles in the international human rights discourse. The principle is not yet law in India, but it can be a guide for interpreting the meaning and scope of the power of mercy granted to the President in Article 72. About 55 countries of the world, including some Third World nations, have abolished death penalty. Another 40 countries have in practice ceased to award the death penalty. The UN has repeatedly made efforts to obtain a consensus in the General Assembly for the universal abolition of death penalty. What this indicates is that the abolition of death penalty is not an unrealistic dream, but a matter on the agenda of international human rights law. Article 72 of the Constitution of India, which is not limited by existing penal law is an apt context for furthering the human rights content of penal culture in line with international norms, even if the norms have not yet succeeded in taking the form of a UN Covenant.

Thus we feel that the NHRC can effectively intervene in the matter in the furtherance of its own statutory responsibility of strengthening the human rights content of the country's administration.

2. The facts of the case are that the two convicts are poor dalit labourers, skilled but not regularly employed. They had no previous criminal record whatsoever. Tormented by poverty, they decided to commit a bus robbery. Taking the clue from a news item about a similar robbery, they decided to buy some petrol, board a bus, sprinkle petrol in the bus and rob the passengers at the point of a match stick. At no point did they have any intention of killing anyone.

Accordingly, they boarded an overnight express bus proceeding to Chilakaluripet from Hyderabad on the intervening night of 7-8 March, 1993 and tried to put their plan into effect. But due to their total lack of experience their plan went awry as the bus crew and passengers got up and started shouting. The would-be robbers were as scared as the passengers and they too tried to jump out of the bus without robbing anyone. But they had already sprinkled petrol in the bus, the bus caught fire in the melee killing 23 passengers. Some of them died

the slightest spark from any source could have ignited it. The convicts insist that they did not light the fire. One of them was even partially burnt. It makes no sense to assume that they lit the match stick for their aim was only to rob the passengers and not to kill them and they had as yet robbed no one.

In the case made out by the prosecution, the incident is described as a case of diabolical murder rather than an accidental happening. The motive for the killing is nowhere made out in the chargesheet. There are other discrepancies too which can be read in the Sessions Court's judgement annexed as A-1 to this letter. All the initial accounts of the incident, including the dying declarations, mentioned four and not two perpetrators of the offence. The prosecution has not explained this discrepancy. We are enclosing as an annexure A-3 a copy of the plea for mercy submitted to the Governor of A.P. by the convicts which narrates the event as it actually happened. We are also enclosing as annexure A-2, a copy of the plea for mercy submitted by us on their behalf to the Governor of A.P., in which we have explained the event and its background. We must also add here, that the accused did not have legal assistance until the time of framing of charges which violates the principle of fair trial as laid down by the Supreme Court of India in Khatri Vs State of Bihar, 1980.

In the light of the above, we wish the NHRC to consider whether the criminality of the act is such as to make it an offence that can be put in the 'rarest of rare' in terms of its heinousness. The only reason for doing so would appear to be the fact that 23 persons were killed in the incident. Can the number of persons killed as a consequence of the act add to the heinousness of the act as evidenced by the intention, motive etc.? If the occupancy of the ill-fated bus had been thinner and if, say, five or six persons had died, would the law have regarded it as so heinous that sentence of death alone is the deserved punishment, and option of any smaller punishment as irrevocably closed?

Moreover, how unpardonable the crime is deemed to be is a matter that cannot be divorced from the conditions and circumstances that led to the crime. The circumstances of poverty and suffering that led the two dalit youth to try to rob the bus are described and discussed in annexures A-2 and A-3. They must be taken into account in deciding whether we treat the offence as so unpardonable that a sentence of death alone can redress the wrong, quite apart from the fact that the accused had no intention of killing anyone but only of robbing them.

Thus, within the framework of Indian law relating to death penalty, we feel that this is an apt case for the NHRC to raise

before the Supreme Court of India the question of the various dimensions and facts that go to decide whether an offence qualifies for the description 'rarest of rare' used by the Supreme Court in re Bachan Singh 1980. As the Protection of Human Rights Act provides general locus standi to the NHRC to raise legal issues pertaining to human rights before the Supreme Court, we request you to take this up in an appropriate petition before the Supreme Court in addition to intervening with the President of India.

Yours truly,

(K. Balagopal)
General Secretary, APCLC

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