

C. ELUMALAI

v.

STATE OF TAMIL NADU

October 26, 1984

[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

The Tamil Nadu Borstal Schools Act 1925 Section 10—A—Adolescent offender—Convicted of capital offence—Sentenced to life imprisonment—Detention in Borstal School after attaining 23 years of age—Whether valid.

The State Government of Tamil Nadu cannot keep any adolescent offender who is convicted of a capital offence but sentenced to imprisonment of life in respect of whom an order is made under section 10—A of the Tamil Nadu Borstal Schools Act in a Borstal School or in any other kind of detention after he has attained 23 years of age. The State Government is therefore directed to release forthwith all such inmates of the Borstal Schools in Tamil Nadu who have attained 23 years of age. [1058E-F]

State of Andhra Pradesh v. Vallabhapuram Ravi [1984] 2 SCALE 386, followed.

In re. Ganapati, 1983 Criminal Law Journal 509, over-ruled.

ORIGINAL JURISDICTION : Writ Petition (Criminal) No.981 of 1984.

(Under article 32 of the Constitution)

Navin Malhotra and Harjinder Singh for the Petitioners.

K. Parasaran, Attorney General and *A. V. Rangam* for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. We have heard Shri Navin Malhotra, *amicus curiae* and the learned Attorney-General for the State of Tamil Nadu. In *State of Andhra Pradesh v. Vallabhapuram Ravi*⁽¹⁾

(1) [1984] 2 SCALE 386.

- A** (Criminal Appeal No. 254 of 1984) in which judgment was delivered on September 14, 1984 this Court has held that adolescent offenders kept in a Borstal School by virtue of orders made by the State Government under section 10-A of the Andhra Borstal Schools Act, 1925 cannot be detained in the Borstal School or in any other place
- B** after they have attained 23 years of age and that they should be released. The provisions of the Tamil Nadu Borstal Schools Act, 1925 are identical with the provisions of the Andhra Borstal Schools Act, 1925. In the judgment referred to above the decision of the Madras High Court in *In re. Ganapati* ⁽¹⁾ which had taken the view that after section 433A of the Code of Criminal Procedure, 1973
- C** came into force a person who was convicted of an offence punishable under section 302 of Indian Penal Code but sentenced to imprisonment for life and who was by virtue of an order passed under section 10-A of the Tamil Nadu Borstal Schools Act, 1925 detained in a Borstal School could not be released before he completed 14 years of detention has also been overruled. In the circumstances it has to be held that the State Government of Tamil Nadu
- D** cannot keep any adolescent offender who is convicted of a capital offence but sentenced to imprisonment of life in respect of whom an order is made under section 10-A of the Tamil Nadu Borstal Schools Act in a Borstal School or in any other kind of detention
- E** after he has attained 23 years of age. We, therefore, direct the Government of the State of Tamil Nadu to release all such inmates of the Borstal Schools in Tamil Nadu who have attained 23 years of age forthwith.
- F**

If the petitioner C. Elumalai satisfies the above condition he is also entitled to be released and if he is not in detention he shall not be taken back into custody. The writ petition is accordingly allowed.

N.V.K.

Petition allowed.