

AMENDMENT TO THE GUIDELINES FOR FUNCTIONING OF STATE PRISON REVIEW COMMITTEE

On a detailed consideration of the judgment rendered by the Division Bench of the High Court of Kerala in Criminal M.C Nos. 400 of 2001 and 1059 of 2005 dated 16-10-2006 especially the concluding observations of the Division Bench in paragraph 30 of the judgment, the Commission find that paragraph 4 (i) of the Guidelines for functioning of the State Prison Review Committee issued as per G.o. (P) 238/07 Home dated 23-10-2007 needs amendment. At present the Prison Review Committee will have power to recommend the premature release of the life convicts who have completed 14 year of actual imprisonment including set off if any rendered by a competent authority and excluding remission of any kind. After considering the various aspects mentioned in the said paragraph of the judgment, the Division Bench in the judgment referred to above has while dealing with the parameters of clemency power under Article 61 of the Constitution stated thus: "The principles laid down in Swaran Singh's case (supra) and Laxman Naskar's Case (supra) make it very clear that the Government shall frame Rules for its own guidance in the exercise of pardon power keeping a large residuary power to meet special situation or sudden development. It is also trite law that the Rules of guidelines shall be consistent with the legal position. The State cannot frame guidelines by passing the prohibition contained in Section 433A of Cr.P.C except in exceptional cases. Of course, there may be exceptional cases in which a convict may have to be released immediately after his conviction as held in Maru Ram's Case (supra)."

In the light of the above clear observations of the High Court with which the Commission wholly agrees, the criteria included in paragraph 4 (i) has to be modified thus: "The Committee will recommend the premature release of life convicts who have completed 14 years of actual imprisonment including set off, if any, ordered by a competent court and excluding remission of any kind considering the nature of the offence committed by the inmate, nature of crime, possible effects on the community, the conduct of the inmate and suitability of the inmate for his/her reformation, rehabilitation and reintegration to the society except in exceptional case in which a convict may have to be released immediately after his conviction as held in Maru Ram's case 1981 (1) SCC 107." As such, the Commission strongly recommends acceptance of the above amendment of the guideline contained in para 4 (i) of the guidelines.