IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 30TH DAY OF JANUARY 2023 / 10TH MAGHA, 1944

WP(CRL.) NO. 188 OF 2022

PETITIONER:

SWATHI SIBI,
AGED 29 YEARS, W/O.SIBI, KAITHARATH HOUSE,
CHENGALUR DESOM, PUTHUKKADU PANCHAYATH,
MUKUNDAPURAM TALUK, THRIUSSUR DISTRICT-680001.

BY ADVS.
P.M.RAFIQ
M.REVIKRISHNAN
AJEESH K.SASI
MITHA SUDHINDRAN
RAHUL SUNIL
SRUTHY N. BHAT
SRUTHY K.K

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTEDBY THE SECRETARY TO HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 THE DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICES,
JAIL HEADQUARTERS, POOJAPPURA, THIRUVANANTHAPURAM-695012.

3 SUPERINTENDENT,
CENTRAL PRISON AND CORRECTIONAL HOME, SHORANUR ROAD, VIYYUR, THRISSUR, KERALA-680010.

*ADDL. R4 THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, THIRUVANANTHAPURAM.

*(IMPLEADED AS ADDL. R4 VIDE ORDER DATED 07/04/2022 IN WP(CRL).

BY ADVS.
SRI.ASOK M. CHERIAN, ADDL. ADVOCATE GENERAL
SMT.SABEENA P. ISMAIL, PUBLIC PROSECUTOR
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

OTHER PRESENT:

SRI ALEX M. THOMBRA-SR. GP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 30.01.2023, ALONG WITH WP(Crl.).236/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 30TH DAY OF JANUARY 2023 / 10TH MAGHA, 1944

WP(CRL.) NO. 236 OF 2022

PETITIONER:

ARUNIMA V.M.,
AGED 35 YEARS, W/O. ROSHAN,
CHANASERY (H), KANNAMBATHUR, THORAVU,
MUKUNDAPURAM, PIN – 680312.

BY ADVS.
K.R.VINOD
M.S.LETHA
K.S.SREEREKHA
NABIL KHADER
GEORGE ROY

RESPONDENTS:

1 THE DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICES,
DEPARTMENT OF PRISONS, POOJAPPURA,
THIRUVANANTHAPURAM - 695012.

2 THE DISTRICT POLICE CHIEF,
THRISSUR, RAMAVARMAPURAM ROAD, THRISSUR - 680631.

3 DISTRICT PROBATION OFFICER,
THRISSUR, DISTRICT PROBATION OFFICE, KALYAN NAGAR,
AYYANTHOLE, THRISSUR, PIN- 680003.

4 THE PRISON ADVISORY COMMITTEE,
CENTRAL PRISON,VIYYUR, REPRESENTED BY ITS CHAIRMAN,
CENTRAL PRISON VIYYUR, THRISSUR- SHORNUR ROAD, VIYYUR,
THRISSUR, KERALA - 680010.

5 THE STATION HOUSE OFFICER
PUTHUKKAD POLICE STATION, THRISSUR, PIN - 680509.

*ADDL. R6 THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, THIRUVANANTHAPURAM.

*(IMPLEADED AS ADDL. R6 VIDE ORDER DATED 07/04/2022 IN WP(CRL).

BY ADVs.
SRI. ALEX M.THOMBRA
SRI.ASOK M. CHERIAN, ADDL. ADVOCATE GENERAL
SMT.SABEENA P. ISMAIL, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 30.01.2023, ALONG WITH WP(Crl.).188/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

ALEXANDER THOMAS & C.S. SUDHA, JJ.

W.P. (Crl.) No.188 of 2022 & W.P. (Crl.) No.236 of 2022

Dated this the 30th day of January, 2023

JUDGMENT

Alexander Thomas, J.

"3. ……. Punitive therapeutics must be more enlightened than the blind strategy of prison severity where all that happens is sex-starvation, brutalisation, criminal companionship, versatile vices through bio-enviromnental pollution, dehumanised cell drill under "zoological conditions" and emergence, at the time of release, of an embittered enemy of society and its values with an indelible stigma as convict stamped on him — a potentially good person "successfully" processed into a hardened delinquent, thanks to the penal illiteracy of the Prison System. The Court must restore the man"

-V R Krishna Iyer in *Phul Singh v. State of Haryana*
[(1979) 4 SCC 413: AIR 1980 SC 249]

1. The prayers in the aforecaptioned Writ Petition (Criminal), W.P.(Crl).No. 188/2022 are as follows:

> *"i. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction to the 2nd Respondent to grant parole of fifteen days to the husband of the petitioner (Sibi – Convict No.4044), who is undergoing incarceration at Central Prison and Correctional Home Viyyur, in accordance withe law;*
>
> ii. *To grant any such other and further relief as this Hon'ble Court may deem fit in the facts and circumstances of the case, so as to meet the ends of justice."*

2. The prayers in the aforecaptioned Writ Petition (Criminal), W.P.(Crl).No. 236/2022 are as follows:

> *"i) To call for records pertaining to exhibit P4 order and quash the same by issuing a writ of Certiorari.*
>
> *ii) To issue a writ of mandamus directing the 1st respondent to reconsider the Exhibit P3 application for parole to the husband of*

the petitioner, after providing an opportunity of hearing to the petitioner.

iii) To issue any other writ or direction appropriate in the circumstances of this case."

3. Heard Sri.Ajeesh K.Sasi, learned counsel appearing for the petitioner in W.P.(C).No. 188/2022, Sri.K.R.Vinod, learned counsel appearing for the petitioner in W.P.(C).No. 236/2022 and Sri.Asok M.Cherian, learned Addl. Advocate General instructed and assisted by Smt.Sabeena P. Ismail, learned Prosecutor appearing for the respondents in these two cases.

4. After hearing both sides, a Division Bench of this Court has already passed a detailed common order on 7.4.2022 in these two cases, whereby the relief of leave/parole was granted to the sole petitioners in these two cases and certain other observations were also made by this Court for considering the impact of certain provisions in the Prisons' Rules concerned. We are now told by both sides that the benefit of the interim order of granting parole/ leave to the two convicts concerned has already been given by the respondents and the same has already been worked out.

5. In para No.9 on pages 10 and 11 of the abovesaid order

dated 7.4.2022 this Court had specifically ordered that the convicts concerned, who are the relatives of the petitioners, shall be released on parole on execution of the requisite bond and after furnishing two solvent sureties and with certain other conditions and the release on parole was ordered to be for a period of one month. As the convicts have already been released on parole, in compliance with the abovesaid order dated 7.4.2022, and as the said one month period is already over, it is ordered, in the interest of justice, that the directions issued by this Court, for grant of parole/leave as above, will stand approved in this judgment as well. In case the convicts concerned have any further grievances, regarding grant of leave/parole, in future, it is for them to seek such benefit in accordance with the rules and the norms. Therefore, no further orders and directions are required, as regards the main prayers made in these W.P.(Crl)s., in the matter of grant of parole/leave to the two convicts concerned. However, we have to deal with certain other issues regarding the impact of certain provisions of the Rules concerned, mainly the Kerala Prisons & Correctional Services

(Management) Rules, 2014, framed under the provisions of the Kerala Prisons & Correctional Services (Management) Act, 2010.

6. The 1st respondent Director General of Prisons & Correctional Services, has filed affidavit dated 17.5.2022 in W.P.(Crl).No.188/2022 and the learned Prosecutor has also filed a memo for adopting the pleadings in that affidavit in the companion matter, viz., W.P.(Crl).No.236/2022. Further, in compliance with the order dated 17.4.2022, passed by the Division Bench of this Court in these cases, the additional respondent, Chief Secretary to Government of Kerala, has also filed affidavit dated 22.6.2022 in W.P.(Crl).No. 188/2022 and also producing therewith documents as per Ext.R-4(a) and R-4(b).

7. Before dealing with the subsisting issues, it may be pertinent to have an overview of some of the relevant provisions of the aforesaid Act and the Rules.

8. Sec. 73 of the Kerala Prisons & Correctional Services (Management) Act, 2010 (hereinafter referred for short as “the Act” deals with release on parole of convicted prisoners and it is

stipulated therein that "the State Government may, subject to conditions as may be prescribed, release on parole, for such period as it deems necessary, a convicted prisoner in the case of any serious illness or death of any member of the prisoner's family or of any of the nearest relatives or for any sufficient cause. The Rule corresponding to Sec.73 appears to be Rule 400 of the aforesaid Kerala Prisons & Correctional Services (Management) Rules, 2014 (hereinafter referred for short as "the Rules"), which deals with the conditions to be fulfilled for emergency leave. It appears that the term "*parole*" is not used anywhere in the Rules and the expression used in Rule 400 is "*emergency leave*", whereas Sec. 73 of the Act speaks about parole.

9. Sec. 78 of the Act deals with leave. Sec. 78(1) enables grant of leave to well behaved, eligible, convicted prisoners with the objective of their better rehabilitation and re-socialisation as an incentive for good behavior and responsiveness to correctional treatment, in such a manner and subject to such conditions as may be prescribed.

10. The Rule corresponding to Sec.78 is Rule 397 of the above Rules, which stipulates the conditions to be fulfilled for grant of ordinary leave. Rule 397 (f) conceives that the first leave is to be granted by the Director General of Prisons and the subsequent leaves by the Superintendent of the Prison concerned. Further that, if the leave conditions are violated, the subsequent leave is to be granted by the Director General alone. Clause (h) of Rule 397 stipulates that the application for leave should contain the following materials:-

(i) report of the local police concerned on the safety of the convict as well as safety of others on his release, his antecedence, etc.
(ii) report of the Jail Superintendent on his behaviour in jail
(iii) report of the District Probation Officer on family circumstances, social acceptability of the person, etc.

11. The District Level Review Committees are conceived in Rule 399, in order to review cases of prisoners, whose application for leave was rejected thrice because the reports regarding the convict concerned were adverse. The said District Level Review Committee can recommend the release of the prisoner on leave after reviewing his case. It appears to be the intention of the Rule, though it is not

explicitly made clear in the Rules, that it is incumbent that the District Level Review Committee may not dismiss cases under review merely by relying on the adverse reports and as such, the review committees are obligated to have independent application of mind by considering various inputs. The District Level Review Committee comprises of the District Collector as its Chairperson and the Police Commissioner/Superintendent of Police and the Regional Deputy Inspector General of Prisons as members. The Chief Welfare Officer and the Probation Officer concerned are also members of the above committee. The Jail Superintendent concerned is the Convener of the above District Level Review Committee. It is common ground that there is no explicit provision in the Rules, prescribing the periodicity of meetings of the above District Level Review Committee. From the pleadings on record, it appears that the constraints of Covid-19, during the last three years or so, have resulted in delay in convening the timely and periodical meetings of the District Level Review Committee. Further, a prisoner, whose leave application has been rejected, may prefer an appeal, as stipulated under Rule 404 of the

Rules. If the rejection is by the Superintendent, the appeal lies before the Deputy Inspector General. If the rejection is by the Deputy Inspector General of Prisons, the appeal then is to be preferred before the Inspector General and if the rejection is by the Inspector General, then appeal lies before the Director General. If the rejection is by the Director General, then, appeal lies before the Government.

12. Sec.77 of the Act contemplates formation of Advisory Committees at the jail level to recommend premature release of long term convicted prisoners. Rule 462 of the Rules prescribes that there should be such Advisory Committees in all Central Jails, Open Jails, Women's Jails. For the purpose of clarity and distinction, the Advisory Committee conceived in terms of Sec.77 of the Act and Rule 462 of the Rules could be referred to as the Jail Level Advisory Committee (this we say so as now the Rules have been amended and provides for an Advisory Committee at the State level, to be headed by a retired Judge of the High Court, as its Chairperson). The Jail Level Advisory Committee is headed by the Director General of Prisons, as its Chairperson. The further constitution of the Jail Level

Advisory Committee, in terms of Rule 463, comprises of the District Collector of the district concerned, District Sessions Judge of the District concerned, Commissioner of Police/District Police Chief of the district concerned, District Probation Officer concerned, three Non Official members appointed by the Government, Jail Superintendent of the concerned Prison, etc., as its members. Though the Advisory Committee is constituted to recommend premature release of long term convicted prisoners, the Committee is bestowed with the additional function to consider the leave applications of prisoners, whose applications were rejected for more than one occasion, due to adverse report of the Station House Officer concerned, pointing out the risk of maintaining law and order on the release of the prisoner concerned. The Advisory Committee has got power to recommend release of the prisoner in appropriate cases. The additional responsibilities, as stated above, are contained in Rule 469 of the Rules.

13. Further, Rule 463 (2) of the Rules prescribes that the abovesaid Jail Level Advisory Committee shall meet at least once in

six months. Further, Rule 466 (4) stipulates that, the case of a prisoner, which was not recommended by the Jail Level Advisory Committee for premature release, shall be considered again only after the period of one year. From the pleadings, it appears that the 1st respondent Director General of Prisons, has stated that, though the Rules mandate to convene the Jail Level Advisory Committee once in six months, often, there will not be eligible prisoners, who become freshly qualified for their cases to be placed before the Advisory Committee and that hence, the Committee is not convened once in six months. Further, from the pleadings, it appears that the restrictions in COVID have also hampered the timely meetings of the Committee. Further, the term of the Non-official members of the Advisory Committee had elapsed during COVID and steps could not be taken by the respondent State Government for re-constitution of the Jail Level Advisory Committee, by nominating/appointing other non-official members in lieu of the members, whose term had expired and that this has also led to the delay in convening timely meetings of the Committee.

14. Rule 463 (2) stipulates that the term of the non-official members in the Advisory Committee will ordinarily be fixed as five years. Though the term of the non-official members of the Advisory Committee, constituted as per G.O.(P) No.210/2016/Home dated 03.08.2016, had expired on 02.08.2021, there occurred a delay of more than six months to re-constitute the Committee, due to the outbreak of Covid-19 throughout the State, as per the averments in the affidavits filed by the respondents. Further, from the pleadings, it appears that, vide S.R.O. No.171/2021 dated 16.02.2021 [G.O.(P) No.17/2021/Home dated 12.02.2021], amendments have been made to Rule 469, by incorporating Rules 469 (a) & 469(b), by which a State Level Advisory Committee has now been constituted for the purpose of considering and recommending premature release of prisoners, against the recommendation and decisions of the Jail Level Advisory Committee, constituted under Sec.77 (1) of the Act, 2010. The above said amendments to the Rules were made for the constitution of the State Level Advisory Committee, based on the recommendations of the Jail Reforms Committee, headed by Justice

Sri.C.N.Ramachandran Nair, former Judge of this Court. The State Level Advisory Committee consists of a retired High Court Judge as Chairman, Additional Chief Secretary (Home & Vigilance) as Member Secretary, Secretary (Social Justice Department), Law Secretary as members, as well as a person having experience and expertise in correctional administration as a non-official member. Further, as per G.O.(Rt) No.623/2021/Home dated 25.02.2021, Justice Sri.K.K.Denesan, former Judge of this Court, has been appointed as Chairman of the above State Level Advisory Committee and an Advocate has been appointed as the non-official member of the said State Level Committee. Further, we are told by the learned Additional Advocate General that the meetings of the above said State Level Advisory Committee are being held regularly and 10 meetings have already been held as on the end of October, 2022. Further that, the functions of the State Level Advisory Committee is confined to the premature release of convicted prisoners and that it has nothing to do with sanctioning of ordinary leave.

15. Now, we would deal with each of the subsisting issues to

be considered in this writ petition (Criminal).

I. Whether there is any confusion, lack of clarity in the powers conferred on the District Level Review Committee and the Jail Level Advisory Committee.

16. In para 10 of the common order dated 07.04.2022, passed by the Division Bench of this Court in these cases, it has been *prima facie* observed that there may be some confusion, as to the powers conferred on the Jail Level Advisory Committee and the District Level Review Committee, which are not hierarchically superior or lower as per the Rules. We have already referred to the provisions contained in Sec.78(1) which conceives that leave may be granted to well behaved, eligible, convicted prisoners, with the objective of their better rehabilitation and re-socialisation, as an incentive for good behaviour, etc. Sec.78 (2) envisages that all kinds of parole, remission and leave granted to the prisoners shall in no case exceed one third of the sentence. The conditions of granting of leave to prisoners are covered in clauses (a) to (m) of Rule 397 of the above Rules. It is the specific case of the respondent-State authorities

that leave is, thus, a correctional tool and one cannot claim leave as a matter of right and that, it is an individualized aspect, which is provided to the right person at the right time with the aim of his reformation and re-socialisation. It is stipulated in Rule 397 (a) that well behaved prisoners, sentenced to imprisonment of one year and above and who have actually served out 1/3rd of the sentence or two years, whichever less, are eligible for Ordinary Leave. Rule 397(f) of the Prison Rules empowers the Director General of Prisons and Correctional Services to consider the grant of leave to a prisoner, in the instance of the violation of the conditions of leave, as per Rule 397(h). Every application of the first Ordinary leave have to be submitted to the Director General of Prisons and Correctional Services, along with police report, the repercussions of the law and order situation if the prisoner is released on leave, particularly to his own safety as well as that of others, the possibility, if any, of the prisoner absconding, instances of previous misconduct on his part, during his earlier leave and such other relevant points. The Superintendent of Police shall give his specific recommendation,

with due reference to the conduct of the prisoner in jail, his previous history and details regarding the previous leave that he has already enjoyed. Along with this, the District Probation Officer shall submit a detailed report regarding his family and social backgrounds and his social acceptance during the leave period. Thus, in order to invoke the power, the authority has to obtain reports from the police and probation officers. The constitution of the District Level Review Committee under the chairpersonship of the District Collector concerned, is contained in Rule 399, about which mention has already been made hereinabove. From the Rules, it is seen that the power of the District Level Review Committee is confined to re-consideration of leave applications, as provided under Rule 399. The District Level Review Committee has the power to recommend applications for leave by any convict, who has completed three years of actual imprisonment and has three adverse police reports. On the other hand, the Advisory Committee is constituted under Rule 462, mainly for giving recommendations on premature release of the prisoners, detained in Central Prisons, Open Prisons, Women's

Prisons and High Security Prison. The constitution and structure of the Jail Level District Committee, under the chairpersonship of the Director General of Prisons, is provided under Rule 463, about which a reference has already been made hereinabove. Further, Rule 469 confers additional powers on the Jail Level Advisory Committee to examine leave applications of prisoners with more than one adverse report of the Police (Station House Officer) on the ground of law and order issues and who are, otherwise, eligible for leave in all respects and to submit recommendations to the Government. So, it is seen that the Jail Level Advisory Committee can consider cases of prisoners sentenced to imprisonment for one year and above and who have actually served out 1/3rd of the sentence or two years, whichever is less, and with one or more adverse police reports. From the above narration, there appears to be a clear division between the powers and functions of the State Level Advisory Committee, on the one hand, and the District Level Review Committee, on the other hand. There could be some overlapping in certain areas and merely because some of the powers may be concurrent, it may not create

serious problems and it is for the District Level Review Committee and the Jail Level Advisory Committee to consider as to whether the matter comes within the zone of their respective jurisdiction, as defined within the contours of the abovesaid Act and Rules concerned.

17. Going by the nature of the prayers in these writ petitions, we feel that there is no necessity for us to delve into any further aspects of this matter, as consideration of the application of the Rules is to be made with reference to a concrete factual situation. The factual claims in these cases have already been considered and parole/leave has already been granted by this Court and the said interim order has been ordered to be treated as regularised. So, we are of the view that, there is no necessity for us to get in to any further details in the matter on the above aspects.

II. Whether the District Level Review Committee and the Jail Level Advisory Committee are bound by the adverse police reports.

18. This Court has already observed, in the abovesaid

common order dated 07.04.2022 in these two cases, that the Review Committee and Advisory Committee are not bound by the adverse police reports, while exercising powers under Rules 399 & 469 of the Prison Rules respectively and that there should be a speaking order, etc. From the provisions of the Rules, it appears that the Prison Rules do not explicitly prescribe the procedure to be adopted by the Jail Level Advisory Committee and the District Level Review Committee, while considering and disposing of applications for leave. The pleadings in this case, filed by the additional respondent-Chief Secretary to the Government, has assured that a comprehensive amendment to the Prison Rules is now under the active consideration of the State Government and that, taking note of the various observations made by this Court, the aspect of incorporating necessary stipulations in the Rules, regarding the procedure to be followed, will be examined in detail and that the Rules would be amended. We would also reiterate that it may be only better, in the fitness of things, that there is clarity in the procedure to be adopted by the abovesaid committees. Lest, there

will be frequent allegations of mechanical and non-application of mind while disposing of cases, which will also lead to initiation of writ proceedings before this Court by aggrieved prisoners. In this background, we would refer to para 13 of the common order dated 07.04.2022, passed in these cases, wherein the Division Bench has observed that, when there are two Committees, constituted to consider the applications of parole in the event of adverse police reports, then it is incumbent on the authority rejecting such applications to immediately place it before either of the Committees, which also have to be considered in a time bound manner. But that, though the Committee concerned need not be convened immediately on such rejection, the Committee concerned should meet at least once in three months, if there are pending cases of rejection, so that such pending cases of rejection, made by the original authority, could be taken up and considered by the competent Committee concerned, etc. Further, as already held by this Court in the abovesaid common order, we would also hold that the provision of the Rules did not, in any manner, stipulate that the Jail Level Advisory Committee or the

District Level Review Committee should reject the request for parole/leave, merely on account of adverse police reports. Whereas, the structure and constitution of the Committees, as per the Rules, would give a clear legislative intention of the Rule making authority, that it is precisely the problem of rejection on account of adverse police report, etc., that is sought to be resolved by constituting such Committees and by conferring them with such powers. Therefore, it goes without saying that there is no question of either of these two Committees rejecting the applications for parole/leave merely on account of adverse police reports.

19. The Jail Level Advisory Committee and the District Level Review Committee are not, in any manner, bound by such adverse police reports or any other adverse reports and it is for them to make independent and due application of mind and all factual inputs, including adverse inputs, could be duly reckoned and independent assessment of the scenario should be made, so that the claims for parole/leave are justly and fairly considered and decided by these two Committees.

20. These Committees should also ensure that the correctness or otherwise of the adverse police report, etc., may also be ascertained by calling for reports of higher police authorities, to have an independent assessment and input of facts.

III. The anomaly in placement of the Principal District Judge of the District concerned, two places below the Chairperson of the Jail Level Advisory Committee, in terms of Rule 463 of the Rules:

21. As already mentioned hereinabove, the Jail Level Advisory Committee is conceived in terms of Rule 462, mainly for giving recommendations on premature release of prisoners detained in various categories of prisons. Rule 463 provides for the constitution of the Jail Level Advisory Committee and it comprises of the following members :-

(a) Director General of Prisons and Correctional Services – Chairman
(b) District Collector – Member
(c) District and Sessions Judge – Member
(d) Commissioner of Police/District Police Chief – Member
(e) District Probation Officer – Member
(f) 3 Non-Official members appointed by the Government –

Members

(g) Superintendent of Prisons – Member Secretary

22. It can thus be seen that the Director General of Prisons has been made as a Chairperson of the said Committee and the Principal District Judge of the District concerned has been made a member at a position, which is two places below the Director General of Prisons and even the District Collector is placed above the Principal District Judge.

23. This Court, in the abovesaid common order dated 07.04.2022, has held that the abovesaid placement of the position of the Principal District Judge, as a member of the above Jail Level District Committee, in terms of Rule 463, is rather anomalous to say the least and the same require rectification and remedial action. The justification that is put forward by the State is that the present new Rules is only a continuation of the earlier repealed Rules, wherein also the same hierarchy has been followed. The respondent authorities do admit that the pay scale of a Principal District Judge is much higher than that of the post of Director General of Prisons.

However, the justification put forward by them, in giving a lower placement position to the Principal District Judge, in terms of Rule 463, is that, going by the provisions in Ext.R-4(a) G.O.(Rt).No.8888/2012/GAD dated 19.10.2012, in the matter of precedence and protocol of various functionaries, the Director General of Prison is placed at Sl. No. 25, whereas the Principal District Judge and the District Collector, etc., are placed in Sl. No.27 and that therefore, the higher placements given to the Director General of Prisons, in terms of Rule 463, is justified.

24. We cannot countenance this argument at all.

25. As rightly held by this Court in the above order dated 07.04.2022, in para No.14 thereof, even for the purposes of pay-scales, as per the decision of the Apex Court in ***All India Judges' Association*** *v.* ***Union of India*** [2002 (4) SCC 247], it is ordered that the District Judge at the entry level should be properly equated with the super time scale of an IAS Officer. This Court also further held to have noticed the observation in the abovesaid Apex Court judgment, that such equation is only to avoid distortion in the

pay-scale of the judicial officers *vis-a-vis* the executive, despite earlier judgments having clearly said that there should be no equation or parity between the judicial service and the executive service. Further, the respondents also concede in their pleadings that the pay-scale of a District Judge is higher than that of the Director General of Prisons. That apart, the Apex Court pointed out the necessity for parity between judiciary and political executive and not between judiciary and administrative executive, as can be seen from the decision of the Apex Court in ***All India Judges' Association (II) v. Union of India***, [*(1993) 4 SCC 288,* para 9], which reads as follows:-

> *"**9.**.....As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on a par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service conditions of the judiciary must be comparable to those of the administrative executive and any amelioration in the service conditions of the former must necessarily lead to the comparable improvement in the service conditions of the latter."*
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> *(emphasis supplied)*

26. These aspects are also referred to in a recent decision of the Division Bench of this Court in para 13 of the case in ***State of Kerala & Anr. v. P. Muraleedharan*** [*2021 (3) KLT 159*].

27. The order of precedence, as per the protocol norms of the State Government, are not, in any manner, relevant for the present purpose, inasmuch as, the executive order, at Anx.R4(a), has been made by the Government, unilaterally. Matters of this nature, as in the composition of a committee, where the Government feels that the participation of a high level judicial functionary is required, must have been only after due consultation with the High Court, which is the sovereign head of the State Judiciary.

28. New perspectives have emerged, in these matters, especially after the ***All India Judges' Association (II) case*** supra, referred to herein above. The respondent does not have any case that the above placement of the Principal District Judge, in terms of Rule 463, is after due consultation and after getting the concurrence of the High Court on the administrative side.

29. The respondent-State authorities themselves insist for the inclusion and participation of the Principal District Judge as a key functionary in the above decision making process.

30. That being so, the placement of the Principal District Judge in the said committee, cannot be in a manner so as to affect the due parity of judicial functionaries, which are on the basis of legal principles well established by a series of rulings of the Apex Court. Such unilateral action by the Executive Officers of the State will be in derogation of the well established constitutional principles of separation of powers as well as the independence and autonomy of the judiciary.

31. That apart, even in Anx.R4 (a), the Principal District Judge is given a precedence over the District Collector. So, one fails to understand as to how the Principal District Judge could be placed even below the District Collector, in terms of Rule 463.

32. Sri.Asok M. Cherian, learned Additional Advocate General, appearing for the respondents, would submit, on the basis of instructions, that comprehensive amendments are now made and the observations made by this Court would certainly be effectively considered, so that amendments are duly made in the Rules to correct any anomalies. The said submissions of the respondent

authorities are recorded.

33. However, we feel that, until such amendments are made, remedial actions should be immediately done. One key aspect of the matter, pointed out by the learned Additional Advocate General, is that the Director General of Prisons is a state wide functionary having state wide jurisdiction, whereas the Principal District Judge of the District concerned, will be operating only within the limits of the District concerned.

34. We fully endorse and approve the observations made by this Court in the common order dated 07.04.2022 in these two cases, more particularly, para Nos. 14 & 15 thereof.

35. Accordingly, pending the amendment to the Rules, it is ordered that the Director General of Prisons and the Principal District Judge of the District concerned should be Co-Chairpersons of the said Jail Level Advisory Committee, constituted in terms of Rule 463. The Director General of Prisons could be designated as the Co-Chairperson (Executive). So also, the Principal District Judge could be designated as the Co-Chairperson (Judicial) of the said

Committee and the Co-Chairpersons of the committee will jointly preside over the meetings and proceedings of the Committee. Since the Director General of Prisons is a State-wide functionary, having state wide jurisdiction, and he is in charge of Administrative Affairs, the said functionary could take care of the responsibilities of the administrative processing of the various applications and request and for the timely convening of the meeting.

36. Further, from the pleadings on record, it appears that quite a few matters, which are decided by the Director General of Prisons, which is in his individual capacity, will also come up before the Jail Level Advisory Committee and he also takes part in the decision making process, which, however, is stated to be on a collective basis.

37. We find an anomaly in this regard, inasmuch as the elementary principles of natural justice may require that in such cases, he may not be a judge of his own cause and this flows from the elementary principles of avoidance of bias. The decision making process should not only be fair and unbiased but should also appear

to be so. Certainly, the Director General of Prisons can give his factual inputs regarding such a case, before the Committee. But in the case where a decision is taken by him and which is the subject matter of consideration by the said Jail Level Advisory Committee, then the Director General of Prisons should recuse himself from further actual decision making process and in such a case, the Principal District Judge should be the sole Chairperson of the said committee, who should preside over the meeting, after duly taking note of the various inputs, including the inputs that may be given by the Director General of Prisons, who was a decision maker of the impugned decision.

38. Pending amendments to the Rules, the 6th respondent-competent authority of the State Government will ensure that executive orders, by way of Government Orders, may be issued, making it clear that the Director General of Prisons and the Principal District Judge, would be the Co-Chairpersons of the abovesaid committee. The former being the Co-Chairperson (Executive) and the latter being the Co-Chairperson (Judicial). Further, where the

matter that is being examined by the Committee is one that is to be taken by the Director General of Prisons, then the Government Order should specify about the recusal of the former, so that the decision making process is taken by the rest of the members of the Committee, which will be presided over solely by the Principal District Judge, as mentioned herein above. We hope and trust that the Government will put in place amendments to the above said Rules, without any further delay. Pending the formal issuance of the amendment notification of the Rules, executive orders, as above, should be issued without any further delay, to avoid any further confusion.

39. No other orders and directions are called for on the abovesaid aspect.

(2) <u>The necessity for regular periodicity of meetings of the Committees and the primacy of the duly constituted State Level Advisory Committee, headed by a former High Court Judge:</u>

40. We have already placed on record the submissions in the pleadings of the respondents, more particularly, that in the affidavit

sworn to by the 6th respondent-Chief Secretary that the Rules have been recently amended to incorporate Rule 469(a) & Rule 469(b), to duly constitute a State Level Advisory Committee, presided over by a former Judge of the High Court, in which the Additional Chief Secretary (Home), Social Justice Secretary and the Law Secretary are members.

41. The specific responsibility now assigned to the duly constituted State Level Committee is for recommending premature release of prisoners against the recommendations and decisions of the Jail Advisory Committee, constituted under Sec.77(1) of the Act. These amendments have been carried out on the recommendations of the Jail Reforms Committee, headed by Justice Sri.C.N.Ramachandran Nair, former Judge of this Court. Now, the Government has already issued orders appointing Justice Sri.K.K.Denesan, former Judge of this Court, as the Chairperson of the above said State Level Advisory Committee. From the pleadings on record, we note that the Rules do not explicitly provide for any fixed periodicity for the meetings of the District Level Review

Committee, whereas the Jail Level Advisory Committee has to meet at least once in six months. We also note that, many a times, the timelines have not been observed for various reasons. One such ground put forward before us is that there may not be sufficient cases for consideration, in view of certain restrictive norms, that after a plea is rejected, its re-consideration will have to be at least for a further period of one year and the details of the same have already been mentioned herein above. But, still, from the pleadings, we note that there has been delays and the delays during the Covid period may be otherwise justifiable.

42. The learned Additional Advocate General has assured that these lacunae in the Rules would also receive due attention of the Government, so that appropriate amendments could be carried out in the Rules, providing for explicit provisions in that regard.

43. After hearing both sides, we are of the view that all efforts should be taken to ensure that regular meetings of the District Level Review Committee and the Jail Level Advisory Committee are made, so that, if requests are pending, then, these Committees can meet at

least once in three months, if that is feasible.

44. Pending amendment to the Rules, the 6th respondent-State Government may issue executive orders, so that guidelines in that regard are issued to those authorities.

45. So also, provisions may be made in the Rules, to ensure that supervisory primacy is given to the newly constituted State Level Advisory Committee.

46. We note that the said newly constituted State Level Committee consists of senior officers of the Government at the State level.

47. Therefore, it is only proper that the Chairperson of the said Committee can be given more responsibilities, so that senior officers, like the Home Secretary, Social Justice Secretary, Law Secretary, etc., need not regularly meet as a Committee, to deal with matters which may require immediate supervisory intervention.

48. Accordingly, it is ordered that steps may be taken to ensure that the Chairperson of the State Level Advisory Committee is entrusted with the duty and responsibility to have a general oversight

and supervision of the functioning of both the District Level Review Committee and the Jail Level Advisory Committee, so that bottle necks are resolved and grievances are resolved without any further delay and those Committees also meet whenever necessary, especially, if requests and applications are pending consideration.

49. To ensure as to whether or not such requests and applications are pending, the services of the Chairperson of the State Level Advisory Committee, could be appropriately utilized, so that avoidable delay could be curtailed to the maximum extent possible and grievances are also resolved, in a timely manner, etc.

50. Pending amendment of the Rules, the 6th respondent-State Government may issue necessary executive orders, so that these directions are put in place and implemented without any further delay.

51. We hope and trust that the formal amendment of the Rules could be carried out, after due consideration, without much delay.

52. During the course of the hearing of this case, we also

observed that the State may, seriously consider whether some more additional responsibilities for resolving various issues faced by the prison inmates could be addressed to a functionary like the Chairperson of the State Level Advisory Committee, who is a former High Court Judge, so that the services of such a high functionary could be appropriately utilized.

53. This aspect of the matter should also immediately reach the serious attention of the State Government and necessary advice to the learned Advocate General/learned Additional Advocate General may also be sought.

54. The considered views of the Chairperson of the State Level Advisory Committee may also be sought in this regard. The opportunity can certainly be used by the State authorities for seriously enforcing action for necessary resolution of various problems and grievances faced by prison inmates.

55. We hope and trust that these observations made by us would be taken with all seriousness, so that, the matters can be taken to a logical conclusion, which would only for effectuate public good.

56. Before parting with these cases, we would remind ourselves as well as the respondent State authorities the words of *Constitutional Compassion* rendered by the Hon'ble Justice V.R.Krishna Iyer, in the celebrated case, ***Sunil Batra v. Delhi Admn.*** *[(1978) 4 SCC 494 : AIR 1978 SC 1675],* which reads as follows:

> *"**52.**.....For what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21. Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Article 19) become chimerical constitutional claptrap. Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the life-style within the concerns. The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether....."*

57. No other orders and directions are called for.

58. The Secretary to the office of the Advocate General will forward copies of this judgment to the 1st respondent (Director General of Prisons), 6th respondent (Chief Secretary to Government),

Additional Chief Secretary to Government (Home), as well as the Chairperson of the State Level Advisory Committee, for necessary information and further follow-up.

With these observations and directions, the above writ petition (criminal) will stand disposed of.

Sd/-

ALEXANDER THOMAS,
JUDGE

Sd/-

C.S. SUDHA,
JUDGE

Skk

APPENDIX OF WP(CRL.) 236/2022

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE JUDGMENT IN SC NO. 507/2013 OF ADDITIONAL SESSIONS COURT-IV, THRISSUR DATED 22.02.2018.
EXHIBIT P2	A TRUE COPY OF THE APPLICATION UNDER RTI ACT SUBMITTED BY THE PETITIONER.
EXHIBIT P3	A TRUE COPY OF THE APPLICATION FOR PAROLE DATED 12.11.2021 SUBMITTED BY THE PETITIONER.
EXHIBIT P4	A TRUE COPY OF THE REPLY ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P5	THE REPLY TO THE RTI APPLICATION BY THE 5TH RESPONDENT.
EXHIBIT P6	A TRUE COPY OF THE ORDER NO. WP2-616/2019/PRHQ, DATED 05.02.2019 FROM THE OFFICE OF THE 1ST RESPONDENT.

RESPONDENTS' ANNEXURES: NIL

APPENDIX OF WP(CRL.) 188/2022

PETITIONER'S EXHIBITS:

EXHIBIT P1	PHOTOCOPY OF THE REPLY ISSUED BY THE 2ND RESPONDENT, ON 30.11.2021.
EXHIBIT P2	TRUE COPY OF THE JUDGMENT DATED 13.01.2022 IN WP(CRL.)NO.9 OF 2022 OF THIS HON'BLE COURT.
EXHIBIT P3	COPY OF THE APPEAL DATED 28.01.2022 SENT TO THE SECRETARY OF THE DEPARTMENT OF HOME GOVERNMENT.
EXHIBIT P4	COPY OF THE RECEIPT OF ACKNOWLEDGEMENT OF THE APPEAL, DATED 31.01.2022.

RESPONDENTS' ANNEXURES:

ANNEXURE R2-1	STATE PROTOCOL OF ORDER OF PRECEDENCE ISSUED BY GOVERNMENT OF KERALA VIDE GO(RT)NO.8888/2012/GAD DTD. 19.10.2012 AND GO(MS)NO.500/2013/GAD DTD. 17.01.2013
ANNEXURE R2-2	TRUE COPY OF THE FILES OF THE JAIL ADVISORY COMMITTEE AND REVIEW COMMITTEE
EXHIBIT R4(A)	TRUE COPY OF G.O.(RT.) NO.8888/2012/GAD DATED 19-10-2012
EXHIBIT R4(B)	TRUE COPY OF GO(P) NO.17/2021/HOME DATED 12-02-2021