AG Perarivalan's Road to Freedom

Why in news?

Three decades after his arrest in the Rajiv Gandhi assassination case, A G Perarivalan has been set free by the Supreme Court.

What was the history of Perarivalan's case?

- Perarivalan was accused of buying the two 9-volt batteries used in the bomb to assassinate the former Prime Minister Rajiv Gandhi in 1991.
- He was sentenced to death by a TADA court in 1998.
- The Supreme Court upheld the sentence the next year but commuted it to life imprisonment in 2014.
- In 2015, Perarivalan submitted a mercy petition to the Tamil Nadu governor seeking release under Article 161 of the Constitution and moved to Supreme Court after receiving no response.
- Tamil Nadu Cabinet headed by the then chief minister recommended the release of all seven convicts in 2018.
- In 2021, the governor sent the files to the President despite it being a state cabinet recommendation.
- The top court had granted him bail in March 2022 and it has ordered the release of Perarivalan, 31 years after he was arrested.

Perarivalan's autobiography, ***An Appeal from the Death Row****, claimed how he was implicated in the conspiracy by taking a confession under duress that he bought a battery to make the bomb.*

What about the Article 161?

- Article 161 talks about the power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases.
- Under this Article, the Governor is empowered to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.
- Perarivalan had submitted a mercy petition to the Tamil Nadu Governor in 2015 seeking release under Article 161 of the Constitution but failed to receive a response.
- Even after the recommendation of the CM and Council of ministers, the Governor continued to sit on the recommendation.
- Madras High Court and the Supreme Court even talked about the Governor's inordinate delay.
- In February 2021, the Governor's office forwarded the state government's recommendation to President.
- The Centre, too, argued, that cases involving murder under the IPC came under the

President's exclusive jurisdiction in matters of remission of life sentences.

What has the Supreme Court ruled?

- The Court has held that the Governor is bound by the State Cabinet's advice when acting under Article 161 of the Constitution.
- It has also held that the non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review.
- The court dismissed the Centre's argument that the President exclusively, and not the Governor, had the power to grant pardon in a case under Section 302 (murder) of the IPC.
- It has said that the long delay and the Governor's reluctance to take a call on the pardon plea has compelled the court to employ its constitutional powers under **Article 142** to do justice to Perarivalan.

What is Article 142 of the Constitution?

- Article 142 provides a unique power to the Supreme Court, to do "complete justice" between the parties, where at times law or statute may not provide a remedy.
- In those situations, the Court can extend itself to put a quietus to a dispute in a manner that would fit the facts of the case.
- There were many instances where the Supreme Court has invoked its plenary powers under Article 142.
- **A.R. Antulay v. R.S. Nayak-** The Supreme Court held that any discretion which is given by the court should not be arbitrary or in any way be inconsistent with provisions of any statute laid down.
- **Union Carbide Corporation v. Union of India**- In Bhopal Gas Tragedy Case, the court ordered to award compensation to the victims and placed itself in a position above the Parliamentary laws.
- **Ayodhya dispute**- The Central Government was directed by the Supreme Court to grant a five-acre land in an alternative site within the purview of the area being acquired by the Central Government.

References

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