

CASE NO.:
Appeal (civil) 1915 of 2007

PETITIONER:
Union of India

RESPONDENT:
K. Indrasena Reddy and Anr.

DATE OF JUDGMENT: 02/04/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. The Union of India is before us questioning a judgment and order dated 18.2.2005 passed by a Division Bench of the High Court of Andhra Pradesh in Writ Appeal No. 73 of 2005 whereby and whereunder an inter-Court appeal preferred by Respondent No. 1 herein from a judgment and order dated 23.9.2004 passed by a learned Single Judge of the said Court was set aside.

3. Indisputably, a scheme known as Swatantrata Sainik Samman Pension Scheme. 1980 was floated by the Central Government. Conditions for grant of said samman were specified therein, the relevant provisions whereof being clause 2, 3, are as under:

"2.3 Underground:- A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A. a proclaimed offender; or

B. one on whom an award for arrest was announced; or

C. one for whose detention, order was issued but not served."

4. The applications of respondent No. 1 filed in this behalf in terms of the said scheme having been rejected by the appropriate Government, a writ petition was filed before High Court. By an order dated 13.11.1998 passed in writ Petition No. 33261/1998 it directed the appellants herein to take appropriate decision on the application of the said first respondent and consider his case for grant of pension under the said scheme.

5. Pursuant thereto or in furtherance thereof the application of the first respondent was considered and rejected by the appellants in terms of an order dated 21.10.1999 stating:

"You have claimed underground suffering in connection with the freedom struggle for merger of erstwhile Hyderabad State into Indian Union and have produced a copy of detention order issued by the Director Gen. of Police of Nizam Govt. Vide letter No. 2/Cong./56 fasli dated 5.12.1356 fasli together a list of 98 accused persons in support thereof. The said documents have been scrutinized and found that they are lacking to fulfill certain conditions which are as follows:

(i) the documents submitted by you shows that all the 98 persons enlisted were to be detained by the police as per the powers conferred to police Department; and it was not executed according to your claim;

(ii) warrant of arrest in your case does not appear to have been issued by the concerned Jurisdictional Magistrate. as there is no warrant of arrest in detention cases;

(iii) the documents does not prove the required minimum period of six months: sufferings as in all the enactments of detention. the periodicity of detention once is to be given in definite terms, which is Lacking here; and

(iv) the present knowledge certificate furnished by you is not from eligible certifier."

6. A writ petition thereagainst was filed by the first respondent before the High Court which, as noticed hereinbefore, was dismissed by a learned Single Judge of that Court opining:

"If a person claims that he remained underground pursuant to detention order, such person has to produce documentary evidence. Like copy of court order proclaiming of such person as an offender. and announcing an award on his head. A certificate from veteran freedom fighters, who had themselves undergone imprisonment for five years or more, if the final records are not forthcoming due to their non-availability is also sufficient evidence. It is not the case of the petitioner that he has produced evidence by way of Court order proclaiming him as an absconder or announcing an award on his head. It appears he has produced a certificate from another freedom fighter and the same was rejected by the first respondent observing that such freedom fighter, who has given personal knowledge certificate is not eligible certifier. The First respondent has considered all aspects of the matter in the light of various guidelines contained in the Scheme and I do not find any arbitrariness or illegallity in rejecting the claim of the petitioner for sanction of the pension under Swatantrata Sainik Pension Scheme."

7. A Division Bench of the High Court, however, in an intra-Court appeal passed the impugned judgment. It proceeded on the basis that for remaining underground, a certificate from veteran freedom fighter, which is in the nature of a secondary evidence, was not necessary as the records produced before the Authority reveal that an order of detention had been issued against 98 persons under Rules 119 of the Defence of Hyderabad Rules and the first respondent was one of them.

8. Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of the appellant submits that the Division Bench of the High Court in the facts and circumstances of the case should not have interfered with the order impugned in the writ petition as also the order passed by the learned Single Judge.

9. Learned counsel appearing on behalf of the respondent, on the other hand, would contend that keeping in view the intent and purport of the scheme framed by the appellant itself, there cannot be any doubt, whatsoever, that in the event primary evidence, namely, the Court records are not available: a certificate granted by a veteran freedom fighter would serve the purpose.

10. A person is entitled to the benefit of the Samman Pension Scheme provided he fulfills the criteria laid down therein. One of the criteria laid in the said scheme, as noticed hereinbefore, was that the concerned person on account of his participation in freedom struggle. Had to remain underground for more than six months. However, the same would be subject to the conditions laid down therein, namely, (i) he has to be a proclaimed offender: or (ii) he is one on whom an award for arrest was announced; or (iii) he is one for whose detention, an order of arrest was issued but not served.

11. If only an order of detention was issued, the same by itself may lead

to a conclusion that the first respondent had to remain underground for more than six months, unless he proves one or the other requisite condition precedents therefor mentioned in the scheme.

12. The appropriate authority as also the learned Single Judge had clearly come to the conclusion that the first respondent was neither declared a proclaimed offender nor an award for his arrest was announced or an order of detention had been issued but could not be served. The Division Bench of the High Court, therefore, in our opinion committed a manifest error in passing the impugned judgment in so far as it proceeded on the basis that respondent No.1 herein was entitled to grant of pension under the Samman Pension Scheme. only because an order of detention had been issued against him.

13. We are, therefore, satisfied that respondent No. 1 has not been able to establish that he fulfilled the eligibility criteria/conditions laid down under the said scheme.

14. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly, The appeal is allowed. No costs.