

CASE NO.:
Appeal (civil) 5162-5167 of 2005

PETITIONER:
Bhaurao Dagdu Paralkar

RESPONDENT:
State of Maharashtra and Ors.

DATE OF JUDGMENT: 22/08/2005

BENCH:
ARIJIT PASAYAT & B.N. SRIKRISHNA

JUDGMENT:
J U D G M E N T
(Arising out of SLP) Nos. 11344-11349/2004)

ARIJIT PASAYAT, J.

Leave granted.

When one talks of freedom fighters' the normal image that comes to one's mind is a person who had suffered physically and mentally for unshackling chains of foreign rule in our country. The normal reaction when one sees such person is one of reverence, regard and respect. The brave courageous deeds of these persons is a distinctive part of India's fight for freedom. Many persons lost their lives, many were injured and large number of such persons had languished in jails for various periods. The common thread which must have passed through the minds of these people is their sole objective to see that their motherland has a government of its own, free from foreign rule. But these images get shattered when one hears that with a view to gain financially, vague documents have been produced, false claims of participation in the freedom movement have been made. It is a sad reflection on the moral values of the citizens of our country that a large number of cases have surfaced where it has been established that people who were not even born when the freedom fight was on or the country got independence or were toddlers when the country got independence have applied for and managed to get "Sammanpatra", pensionary and other allied benefits. The appeals at hand deal with such allegations. This is "Asanman" (disrespect) to the whole country and such dishonourable ventures have to be dealt with sternness to send out a message that they are not freedom fighters, but are traitors sullyng the name of freedom fight.

In these appeals challenge is to the judgment delivered by a Division Bench of the Bombay High Court at Aurangabad Bench by which several writ petitions were disposed of.

Writ petitions came to be filed before the High Court challenging the grant of benefits to such phantoms masquerading to be freedom fighters. The basic allegation in the writ petitions was that in the Beed District of Maharashtra, there were large number of persons who had been

granted pensionary benefits under the Freedom Fighters' Pension Scheme (in short the 'Scheme'). Such writ petitions were purported to have been filed by persons in public interest. In one case the petition was filed by a freedom fighter who claimed that he was surprised to see the number of persons falsely claiming to be freedom fighters. The prayer essentially was to hold detailed enquiry and to cancel the pensionary benefits and for a direction to recover the amounts which had already been paid along with the prayer for initiation of criminal proceedings against the bogus claimants. It was pointed out that in as many as 354 bogus claims have been allowed in the concerned district. Such persons were availing pensionary and other benefits which are to be availed only by genuine freedom fighters. It was highlighted in the petitions that some of the so called freedom fighters were all of tender age and/or were not born when freedom struggle was fought. In respect of others it was alleged that they managed to get freedom fighters' pension by submitting forged, false and fabricated documents. A Division Bench of the High Court taking cognizance of the petitions and the serious allegations made therein constituted a three-member Enquiry Committee headed by a retired Judge of the Maharashtra Administrative Tribunal and two other members who were practising advocates from the Beed District. They were required to enquire into the claims of so called freedom fighters. The Committee was constituted by order dated 3.12.2002. Allegations were made that out of 3000 applications filed, 354 were ineligible and the High Power Committee of the State had wrongly recommended payment of pension holding them to be freedom fighters. It is stated that there are two Committees i.e. District Level Committee (District Gaurav Committee) and State Level High Power Committee which are required to examine the claims. The High Court after perusing the 3000 applications retained the files of these suspected 354 cases. Order passed prior to the appointment of the Enquiry Committee revealed that the Court prima facie was of the view that in 26 cases the persons were less than 10 years of age when the freedom struggle was fought. The Enquiry Committee submitted its report. After the enquiry report was submitted, the High Court passed orders at various stages. It appears that some of the persons whose names were included in the list of 354 suspected beneficiaries filed the writ petitions. While the High Court directed the Collector, Beed District not to release pension to these freedom fighters whose cases were covered by the Enquiry Committee until further orders. The said order of the High Court was also made applicable to the freedom fighters whose civil writ applications were already rejected. Aggrieved by the order, Special Leave Petition was filed before this Court which was disposed of by the following order:

"Heard the learned counsel for the petitioners.

We decline to grant permission to file the Special Leave petitions but give liberty to the petitioners to file independent writ petitions, challenging the order of the Enquiry Committee, if so desired.

At this stage, the learned counsel for the petitioners states that certain observations made in the impugned order will come in their way and/or affect the case of

the petitioners on merits. We make it clear that the observations made in the impugned order shall not affect the merits of the case of the petitioners in the writ petitions that may be filed."

After hearing the cases, the High Court by the impugned judgment held that the foundation on which the allegations were made was really factually incorrect. The High Court took five sample cases and came to hold that the report of the Enquiry Committee was not to be accepted and accordingly dismissed the writ petitions. It was of the view that the documents produced were sufficient to substantiate the claims. It found that the parameters fixed by this Court for dealing with the applications for freedom fighters' pension were fulfilled and therefore no interference was called for. It also held that the petitions filed as 'Public Interest Litigation' were not really so. It was observed that the enquiries conducted before grant of pension cannot be upset by contrary findings recorded by the Enquiry Committee and, therefore, the petitions challenging grant of freedom fighters' pension were dismissed while the petitions questioning correctness of the Enquiry Committee appointed by the High Court were allowed.

In support of the appeals, Mr. A.V. Savant, learned senior counsel submitted that the approach of the High Court is clearly erroneous. The fact that it took up 5 sample cases itself shows that the High Court was not adopting the proper course. Even if it is accepted for the sake of argument that the persons covered by the five sample cases were genuine freedom fighters that does not necessarily lead to an inference that all others were also genuine freedom fighters. After elaborate analysis of the materials the Committee came to hold that the claims were bogus and tainted with fraud. The High Court should not have lightly interfered with the findings on suppositions and presumptions.

Per contra, learned counsel for the beneficiaries whose eligibility was questioned submitted that all relevant documents had been submitted, were scrutinized and thereafter pension was granted and, therefore, the Committee appointed by the High Court was not justified in lightly brushing aside the intrinsic value of the documents produced to hold otherwise.

The object of the scheme was highlighted by this Court in *Mukundlal Bhandari v. Union of India and Ors.* (AIR 1993 SC 2127)

"The object was to honour and where it was necessary also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable

sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated..."

Again in *Gurdial Singh v. Union of India* (2001 AIR SCW 3843) this Court observed:

"It should not be forgotten that the persons intended to be covered by the scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme...."

We are in respectful agreement with the view expressed in *Mukundlal's* and *Gurdial Singh's* cases (*supra*). As noted at the threshold, the genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians. It baffles one, beyond comprehension, when claim is made by a person who was not even born during the freedom struggle to be a freedom fighter. Learned counsel for the appellant has submitted a list which makes an interesting reading. Some of the beneficiaries were born in 1951 and some in 1955. Accepting claims of such persons to be freedom fighters would be making a mockery of the scheme which is intended for genuine freedom fighter. The approach of the High Court is clearly untenable. Sampling cannot be the method for determining the truth or otherwise of the allegations or claims made. Each case was required to be individually examined. On that score alone, the High Court's judgment is vulnerable. Allegations made were to the effect that fraud has been practiced.

By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See *Dr. Vimla v. Delhi Administration* (1963 Supp. 2 SCR 585) and *Indian Bank v. Satyam Febrs (India) Pvt. Ltd.*

(1996 (5) SCC 550).

A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1).

"Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).

"Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1 what constitutes

"fraud" was described thus: (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja v. Secretary of State for Home Deptt.* (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers*, (1992 (1) SCC 534).

In that case it was observed as follows:

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain

unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of the fact with knowledge that it was false. In a leading English case *Derry v. Peek* [(1886-90) ALL ER Rep 1: (1889) 14 AC 337 (HL)] what constitutes fraud was described thus: (All Er p. 22 B-C)

'Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false'."

This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal* (2002 (1) SCC 100) *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* (2003 (8) SCC 311), *Ram Chandra Singh's case* (supra) and *Ashok Leyland Ltd. v. State of T.N. and Another* (2004 (3) SCC 1).

Suppression of a material document would also amount to a fraud on the court. (see *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996 (3) SCC 310) and *S.P. Chengalvaraya Naidu's case* (supra).

"Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav's case* (supra).

In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722)

These aspects were recently highlighted in the *State of Andhra Pradesh and Anr. v. T. Suryachandr Rao* (2005 (5) SCALE 621)

To give finality to the controversy, we appoint Mr. Justice A.B. Palkar, a retired Judge of the Bombay High Court to examine the 354 cases. The relevant files shall be handed over to the Commission immediately. The Commission is requested to complete the verification within four months and submit its report to the State Government for necessary action. The claimants whose cases are to be examined shall be given opportunity to have their say before the Commission. The records of the Zilla Gaurav Samittee, High Power Committee and the Committee appointed by the High Court shall be examined by the Commission before issuing notice to the individual applicants to decide the acceptability or otherwise of the claims for freedom fighters' pension. On getting report of the Commission, the State Government shall take necessary action. We make it clear that we have not expressed any

opinion on the acceptability or otherwise of the claims as the Commission appointed by this Court shall examine those aspects.

The Commission appointed by this Court shall be paid the same emoluments as are admissible to a sitting Judge of the High Court for the duration of its work, which we expect will be finished within a period of 4 months. The emoluments admissible to the Commission shall be paid by the State Government, apart from other expenses that may be incurred for functioning of the Commission.

The appeals are allowed with no order as to costs.

JUDIS