

CASE NO.:
Writ Petition (civil) 68 of 1999

PETITIONER:
West Bengal Freedom Fighters' Organization

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 20/08/2004

BENCH:
S. N. Variava & G. P. Mathur

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

By this Writ Petition, under Article 32 of the Constitution of India, the Petitioners seek the following relief:

"To issue Writ/Order/Direction to the State Government to send reports about the freedom fighters to the Union Government to expedite payment of Freedom Fighters Pension from the commencement of the Scheme from 1.8.80 to the petitioner organization being the freedom fighters."

This Petition has been filed by the Association whose members claim to be freedom fighters.

The Government of India had announced a Scheme known as the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter called the 'Scheme') under which freedom fighters were to receive pension as mentioned in the Scheme. Any person who had suffered a minimum imprisonment of six months in the mainland jails before independence or in case of SC/ST freedom fighter who had suffered minimum imprisonment for three months is eligible to receive the pension. The manner of proving claims is as follows:

"The applicants should furnish the documents indicated below whichever is applicable in order to prove his claimed sufferings for grant of pension under the Scheme.

(A) IMPRISONMENT/DETENTION :-

Certificate from the concerned jail authority, District Magistrate or the State Government, indicating period of sentence awarded, date of admission, date of release and reasons for release, a Non-availability of Records Certificate (NARC) from the concerned authorities alongwith co-prisoners' Certificates (CPC) as under :-

i) Two Co-prisoners' Certificates from the freedom fighter pensioners who had a proven jail suffering of one year.

or

ii) One Co-prisoners' Certificate from a sitting MP or MLC or from an ex-MP or an ex-MLA specifying his jail period and that of the applicant (Annexure-I in the application form).

(B) Documentary evidence by way of

Court's/Government's orders proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention. In the absence of such certificates from official records, a Non-availability of Records Certificate from the concerned authorities alongwith a certificate from a prominent freedom fighter who had undergone imprisonment for a period of at least two years or more."

Thus, it is to be seen that the applicant has to furnish a certificate from the jail authority, District Magistrate or the State Authorities indicating the period of sentence awarded, date of admission, date of release and reasons for release and in the absence of such a certificate a Non-availability of Records Certificate (NARC) along with a Co-prisoners' Certificate (CPC), namely, two certificates from freedom fighters who had a proven jail suffering for one year or one certificate from a sitting MP or MLA or an ex-MP or ex-MLA. In case of persons having gone underground documentary evidence by way of proclamation of the applicant as an offender, announcing an award for his arrest or an order of detention. In the absence of official record a certificate from a prominent freedom fighter, who had undergone imprisonment for a period of at least two years, was to be given.

All the members of the Petitioner Association had applied for pension. It is their case that their applications were not being processed and that the State Government was not doing anything. This Court, by its Order dated 12th October, 2001, directed the State of West Bengal to appoint a State Advisory Committee, if not already appointed, and further directed the Committee to verify the cases of the members of the Petitioner Association and communicate its opinion to this Court.

The State of West Bengal filed an affidavit on 4th February, 2002 wherein it was set out that the State Advisory Committee had considered the cases of all and had rejected all the applications.

This Court by its Order dated 15th February, 2002 directed the State Government to file a better affidavit giving full particulars regarding verification. The State Government therefore filed another affidavit dated 22nd March, 2002 along with which they annexed a copy of the minutes of the meeting of the State Advisory Committee, wherein it was, inter alia, recorded that the Verification Report from DIG, IB/SP, DIB of the relevant districts had been obtained. It was also observed that from the records available their claims were not corroborated and that the applicants had not submitted official records as required under the Scheme and had also not submitted NARCs as required under the Scheme. It was stated that for these reasons the applications had been rejected.

By an Order dated 20th November, 2003, this Court asked the Committee to supply details in respect of each applicant which lead to the rejection of his claim. Pursuant to this direction, an affidavit dated 6th January, 2004 has been filed. Along with this affidavit a chart giving the names of the applicants, their claim, the report which was seen and the views of the Committee have been set out. From this chart it is to be seen that except for a very small number of applicants all the other applicants claim to have gone underground. It is also clear that none of the applicants has produced documents as required by the Scheme. All of them only relied on certificates from co-freedom fighters without having produced NARCs as required under the Scheme.

The above mentioned Orders of this Court and the Affidavits which have been filed, in effect, work out the Writ Petition. As the State Government and the State Advisory Committee have now opined that none of the applicants was eligible no question arises of sending any report to the Central Government for payment of pension.

Faced with this situation, it was submitted that in a matter like this the Court should not look at technicalities but must look at the substances of the Petition. It was submitted that the substances of

the Petition was that pension as per the Scheme be paid to the freedom fighters. It was submitted that this Court has been passing the above mentioned Orders with this intention. It was submitted that, from the Affidavits which have been filed, it was clear that the Governments themselves were stating that no jail records were available in any of these cases and that the Committee had been only looking at some record maintained by the Intelligence Bureau. It was submitted that that was not a record contemplated by this Scheme and these were all cases where the official records were not available and therefore the certificates of Co-freedom Fighters should have been accepted.

Reliance was placed upon the case of Chaitnya Charan Das vs. State of West Bengal reported in AIR 1995 Calcutta 336, wherein this Scheme was under consideration. In this case it was directed by the Calcutta High Court that an Advisory Committee be set up by the State Government for looking into the applications. It was further directed that once the Government was satisfied about the genuineness and bonafide of a claim then payment had to be made. It was further directed that such payment must be paid with interest at the rate of 9% p.a. from the date of filing of the application. It was also noted that the State Government and the Central Government were aware that in many cases records were not available. It was held that in cases where the record was not available claim of the applicant supported by a personal knowledge certificate of a co-prisoner cannot be and should not be lightly disbelieved.

Reliance was also placed upon the case of Gurdial Singh vs. Union of India reported in (2001) 8 SCC 8. In this case the applications had been accepted and pension had been granted with effect from 29th April, 1998 instead of date of application i.e. 13th March, 1973. The applicant filed a Writ Petition seeking pension from the date of his application. The Government then issued a show-cause notice as to why his pension be not cancelled. In spite of his reply the Government proceeded to cancel its earlier Order granting pension. This was challenged by the applicant. Before this Court the Government tried to justify cancellation by showing minor discrepancies and contradictions in the application. In this context, this Court held as follows:

"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had 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. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

8. We have noticed with disgust that the respondent authorities have adopted a hypertechnical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the Scheme

intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order also appears to have been passed with a biased and closed mind, completely ignoring the verdict of this Court in Mukund Lal Bhandari case (1993 Supp (3) SCC 2). We further feel that after granting the pension to the appellant, the respondents were not justified in rejecting his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his."

Strong reliance was placed upon the above mentioned observations of this Court and it was submitted that a sympathetic approach must be adopted in such cases. It was submitted that the object being to honour and mitigate sufferings of those who had given their all for the country, a liberal and not a technical approach should be taken. It was submitted that once the Scheme had been announced with the intention of honouring the freedom fighters the object and purpose of the Scheme must be kept in mind and the case of the claimants under the Scheme must be determined on the basis of the probabilities and not on the basis of a test of beyond reasonable doubt.

On the other hand, Mr. P. P. Malhotra, learned ASG appearing for the Union of India, and Mr. Janāranjan Das, learned counsel appearing for the State of West Bengal submitted that this was not a case where records were not available. It was submitted that, in this case, the State Government had appointed a statutory Advisory Committee which had looked into all the applications. It was submitted that the applicants have not complied with the provisions of the Scheme inasmuch as they have not submitted the relevant documents. It was submitted that all the applicants have given certificates from co-prisoner without producing NARCs. It was pointed out that in most of the cases the applicants claim to have gone undergone and yet certificate has been given by a prisoner who was himself supposed to have been in jail. It was pointed out that the Government has noticed large scale fraud in claiming pension and has, therefore, laid down strict guidelines which have been followed by the Advisory Committee.

Reliance was placed upon the case of Mukund Lal Bhandari vs. Union of India reported in (1993) Supp. (3) SCC 2, wherein it has been held that the scheme mentions documents which are required to be produced before the Government. It has been held that it is not for Courts to scrutinize the documents. It is held that it is for the Government to scrutinize the documents and pronounce upon their genuineness.

Reliance was also placed upon the case of Union of India vs. Mohan Singh reported in (1996) 10 SCC 351. In this case also the applications had been made only supported by a certificate from a MLA and a co-prisoner. The Government found the certificate to be insufficient to sustain the claim. The High Court, however, held that the certificates were sufficient and directed payment of pension. Setting aside the Judgment of the High Court, this Court noted the observations in Mukund Lal Bhandari's case (supra) and held that it was not for the High Court to embark upon the appreciation of the evidence. It was held that once the Government concludes that the documents are not sufficient the High Court cannot interfere.

Our attention is also drawn to an unreported Order of this Court dated 24th September, 2003 in Civil Appeal No. 1850 of 1999. In this case, an application had been made under this very Scheme. There was no jail record and only an affidavit of a person who had visited him in jail and a certificate from the Head Master of a school

had been submitted. This Court taking note of the observations in Mukund Lal Bhandari's case (supra) held that proof as required under the Scheme had to be submitted. It was held that if proof as required under the Scheme was not submitted benefit could not be granted.

Reliance was also placed upon the case of State of Maharashtra vs. Raghunath Gajanan reported in 2004 (6) SCALE 478, wherein it has again been reiterated that it is for the Government to be satisfied regarding genuineness of the claim and that the Court cannot sit in judgment over the decision of the State Government like an Appellate Authority. It has been held that the Court cannot, while exercising writ jurisdiction, enter into a re-appreciation of evidence and/or reverse findings arrived at by the State Government, unless they be perverse or be such as no reasonable man acting reasonably could arrive at. In this case, the Court noted the observations in Gurdial Singh's case (supra) and held that the observations in Gurdial Singh's case (supra) do not negate the standards laid down in Mukund Lal Bhandari's case (supra) and that those standards continue to apply.

Having heard the parties, even presuming that the Petition was in effect for payment of pension, we find that it is not possible for this Court to interfere as the Committee has come to a conclusion on the basis of available material. The decision of the Committee cannot be said to be perverse or one which no reasonable person could arrive at. We therefore see no reason to interfere.

We, however, record the statement of Mr. Janaranjan Das, learned counsel appearing for the State of West Bengal, that as per the recent policy decision of the Central Government all applications of persons who claim to have been interned, in jails in territories which are now in Bangladesh, will be forwarded to the Central Government for their consideration.

Accordingly, the Writ Petition stands dismissed. There will be no order as to costs.