

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
R.V. SWAMY @ R. VELLAICHAMY

DATE OF JUDGMENT: 31/03/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Substitution allowed.

Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the High Court of Madras, made on 3.1.1996 in writ petition No.11957/94. The High Court, on appreciation of evidence, has observed in paragraph 9 of the judgment as under:

" I have carefully considered the submissions of learned counsel for the petitioner and the respondents. Admittedly, the petitioner was sanctioned freedom fighters pension by the state Government. Five prominent Freedom Fighters have given certificates who were eligible to give such certificates under the very scheme and nothing is stated to discredit these certificates. In view of the certificates produced by the petitioner though the records for the relevant period of 1942-43 were not available since they were destroyed, the certificated given by the prominent freedom fighters are to be accepted. Added to this, the claim of the petitioner also finds place in the book published by the Government of Tamil Nadu and it further supports the claim of the petitioner that he suffered imprisonment for a period of two months in Alipuram Jail. The report of the collector of Madurai that no record as to arrest warrant is available or that the arrest warrant was issued against the petitioner cannot be taken as

conclusive because there is nothing to show that as to what is the basis for such a statement. If it were to be a certificate issued by the authorities or the Court which had issued arrest different matter. At any rate, even the same collector recommended for the sanction of Central Pension to the petitioner. Even on earlier occasion, the state Government had recommended for grant of central Freedom Fighters pension to the petitioner as can be seen from the letter dated 22.1.1982 addressed to the first respondent. Thus, having regard to overall thus, having regard to overall circumstances of the case and the materials placed on record, I am of the opinion that the petitioner is entitled to grant of pension under the SSS pension scheme of the central Government. Having regard to the fact that the petitioner has been struggling to get pension from 14.12.1981 and the petitioner made an application to the first respondent for the third time and in view of the fact that this court remanded the case of the first respondent did not consider the claim of the petitioner, having regard to the guidelines and directions given in Thangavela vs. The Government of India (1994(1) MLJ 622), I do not think that it is appropriate to direct the first respondent again to consider the case of the petitioner. In view of the materials placed on record, the petitioner is entitled to get the pension sought for."

The High Court directed grant of pension to R.V. Swamy @ R. vellaichamy who has expired. The legal representatives have been brought on record for grant of pension under the central Freedom Fighters pension scheme postulates as under:

"4. Who is eligible:

For the purpose of grant of Samman Pension under the scheme, a freedom fighter is:

(a) A pensioner who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible of pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment of eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1.8.1980.

IN Explanation:4. Broken period of imprisonment will be totaled up for

computing the qualifying period.

(b) A person who remained underground for more than six months provided he was :

1. A proclaimed offender; or
2. One on whom an award for arrest/head was announced; or
3. One for whose detention order was issued but not served."

The question, therefore, is: whether the view taken by the High Court is correct in law ? This Court in *Mukund Lal Bhandari & Ors. vs. Union of India & Ors.* {1993 Supp.(3) at 5] held thus:

" As regards the sufficiency of the proof, the scheme itself mentions the documents which are required to be produced before the Government. It is not Possible for this Court to scrutinize the documents which according to the petitioner, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. we would, therefore, direct accordingly."

In *Union of India vs. Mohan Singh & Ors.* [(1966) 10 SCC 351] the High court directed the Government to consider the case of the respondent therein for grant of Freedom Fighter Pension. The respondents therein relied upon a certificate of co-prisoner and an MLA and sought pension on that basis. The Government considered the certificate and found the same as not acceptable. When the second writ petition was admitted on the ground that the certificate of MLA was sufficient proof, This court following the judgment in *Mukund Lal Bhandari's* case has held in paragraph 5, as extracted earlier.

In this case, the evidence does indicate that there is no proof of any warrant issued against the respondent as a proclaimed offender nor is there any evidence of actual proof indicating actual sentence .

Under these circumstance the reliance on the certificate issued by the persons mentioned in the judgment of the High Court is matter of appreciation of evidence.

The question is: whether the High court is right in appreciating the evidence and to conclude that the respondent is freedom fighter to claim Freedom Fighter pension. The Government, in fact, has considered that evidence and stated as under:

"In compliance of the above direction of the Hon'ble High Court your case has again been re-examined. It is, However, regretted that it has not been possible to granted that it ha not been possible to grant you pension for the following reasons :

- (i) The Government of Tamil Nadu has reported that no warrant of arrest was issued against you and no other acceptable documentary evidence was available in proof of your claimed underground suffering for more than six months.
- (ii) No jail record for the claimed imprisonment period from 2nd week

of September 1941, to 1st week of November, 1941 has been furnished.

(iii) Since no warrant of arrest etc. was issued against you as reported by the state Government. The certificates from S/Shri P.S. Lakshmipathy Raju, A.B. Nagier and Dr. T. Khannan D. Ramakrishnan, I, Mayandi Bharati and A.K. Sonnamurthu are not acceptable, because for sanction of pension person should have remained underground against some executive of the Government before issue of arrest etc.

(iv) The non-availability of record certificate with reference to issue of warrant of arrest etc. against you as submitted by you, has been issued in 1988 wherein you did not mention the specific detail of case No. etc. in your application for issue of warrant etc. Since earlier in 1985 state Government have already intimated that no arrest warrant etc. was issued against you. In view of these circumstances NARC cannot be accepted."

In view of the above consideration, it being a pure appreciation of evidence, the High court was not justified in directing grant of Freedom Fighter pension to the respondent.

Of late, large number of cases have been coming up quit frequently for grant of Freedom Fighter pension on the basis of the certificates issued by some persons with status of freedom fighters and are by and large not found to be acceptable to the Government of India. Since several matters are coming up to this court, it is for the Government of India to re-consider the matter and to lay down appropriate clear guidelines for the so-called freedom fighter who issue certificated to persons who come forward for Freedom Fighter pension. Learned counsel for the respondent Fighter pension. Learned counsel for the respondent has stated that since the state Government has recommended the case of the deceased-respondent-window may be given liberty to approach the state Government in that behalf. Liberty is given to her to approach in that behalf. Liberty is given to her to approach the state Government. It is for the state Government to consider the application according to their guidelines and dispose it of on merits

The appeal is accordingly allowed. No costs.