

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Raghunath Gajanan Waingankar

C.A.No.995 of 2004

(R. C. Lahoti CJI. and G. P. Mathur J.)

06.08.2004

JUDGEMENT

R. C. Lahoti, CJI.

1. State of Maharashtra, its authorities and Freedom Fighters High Power Committee, the appellants before us are aggrieved by the order passed by a Division Bench of the High Court of Judicature at Mumbai allowing a writ petition filed by the sole respondent herein and directing the appellants to sanction the freedom fighters' pension to the respondent and pay him all the arrears.

2. Respondent claims himself to be a freedom fighter entitled to such recognition and release of pension and other privileges as per Government Resolution No. POS-1093/C No. 127/FFS/Desk Mantralaya, Mumbai dated the 4th July, 1995 which in its turn refers to 6 other Government Resolutions spread over a period between 10th August, 1970 and 5th September, 1992, the particulars whereof are not necessary for our purpose. According to the respondent, he had participated in Goa Liberation Movement and therein he had sustained bullet injuries on the left shoulder. It seems that primary evidence substantiating the respondent's claim is not available and, therefore, he relied on a certificate from the Goa Vimochan Samiti and certain cuttings of newspaper reports. The respondent's claim was rejected by the State Government. The respondent filed a writ petition in the High Court of Judicature at Mumbai which by its order dated 11th July, 2002 passed in Writ Petition No. 1636/2002 issued certain directions calling for reconsideration of the respondent's case. Once again, the respondent's case has been rejected on 23rd July, 2003 by the State Government forming an opinion that the criteria laid down vide Government Resolution dated 4th July, 1995 was not satisfied in the case of the respondent and, therefore, Goa Freedom Fighters Pension could not be allowed to him.

3. Feeling aggrieved by the decision of the State Government, the respondent filed a writ petition in the High Court. Vide its impugned order, the High Court, placing reliance on the cases of *Mukund Lal Bhandari v. Union of India and others*¹ and *Gurdial Singh v. Union of India and others*², has held that by adopting a liberal approach the entitlement of the

respondent to the sanction of the freedom fighters' pension should have been upheld. Writ of mandamus has, accordingly, been issued.

4. The Section Officer whose report has been accepted by the Government of Maharashtra has in his detailed note dated 21st July, 2003 stated, inter alia, as under:

"As the proof of the participation in the Goa Liberation Movement, the applicant is required to submit the certificate of Goa Vimochan Samiti. The Goa Vimochan Samiti has forwarded its list to the Government in which the name of the applicant is not seen. He has submitted the certificates from Shri Narayan Soman and Shri Govindrao Malshe and also has claimed in his affidavit that a bullet had hit him on his shoulder. The Collector has requested to take the decision in the matter sympathetically vide his letter dated 28th June, 2003 and also has mentioned that the Zilla Gaurav Samiti has recommended the case for the sanction of the pension. However, the applicant has not submitted the required documents. Therefore the pension cannot be sanctioned to him."

5. It appears that the respondent was not able to collect the requisite evidence/material to satisfy the State Government of his entitlement and, therefore, he approached Mumbai Upanagar Zilla Gaurav Samiti (hereinafter 'Zilla Samiti' for short) for the purpose of recommending his case to the State Government. What is the exact status and authority of the Committee i.e. Zilla Samiti is not very clear; however, it appears that this Zilla Samiti has some role to play in the matter of processing of the cases of freedom fighters. This Zilla Samiti on being approached by the respondent did hold an inquiry and in its meeting dated 27th August, 2002 passed a resolution (Annexure-P4) after taking into consideration such material as was produced by the respondent and then recorded its findings as under :-

"On the basis of the guidelines of Hon'ble

Supreme Court of India and as per the order of the High Court, Mumbai all the documents submitted and produced by the said applicant are considered and after discussion the following decision is being taken :

1. The submission of the applicant in respect of the solid evidence is acceptable.
2. The evidences produced by the said applicant as per incident wise are solid and it will be misunderstood to hold them the circumstantial evidences.
3. Age of the applicant is 76 years. Financial condition of the applicant is critical and handicapped physical condition is the real fact.

In these circumstances to avoid injustice to the applicant and to give him the Freedom Fighter Sanman Pension, his application for the same is recommended."

The minutes of the meeting appear to have been signed on 30th August, 2002. However, the appellants have brought on record another resolution of the same Committee (Annexure-P9) dated 2nd September, 2002 which reads as under:-

"Shri R.G. Waingankar has applied for freedom fighter pension. The documents submitted by him with the application have been verified. It is seen from the documents submitted by him that he had participated in Goa Liberation Movement. However, as he has not submitted any proof to substantiate his claim the Dist. Felicitation Committee (Zila Gaurav Samiti) has rejected the case.

Signatures:

Chairman (ZGS) and Members

Countersigned:

Secretary, ZGS (RDC)

I agree with the opinion of ZGS. As there is no substantial proof in the case required by the Government Resolution dated 4th July, 1995, the case has been rejected.

Signature

Collector

Mumbai Upanagar Zilla."

6. A reading together of the documents Annexure-P4 and Annexure-P9 clearly suggests that the minutes of the meeting dated 27th August, 2002 is signed only by the Chairman while the minutes dated 2nd September, 2002 is signed not only by the Chairman but all the members of the Committee, counter-signed by the Secretary of the Committee and then signed by the Collector by way of his agreement and approval of the resolution of Zilla Samiti. Needless to say, in the light of the minutes as recorded and signed upto 2nd September, 2002, and placed on record the minutes as they stood upto 30th August, 2002 could not have acted upon.

7. It is true that in Gurdial Singh's case (supra) this Court has emphasized the need for dealing with the claim of freedom fighters with sympathy dispensing with the need for standard of proof based on the test of 'beyond reasonable doubt' and the approach should be to uphold the entitlement by applying the principle of probability so as to honour, and to mitigate the sufferings of the freedom fighters. However, the observations of this Court in Mukund Lal Bhandari's case (supra) cannot be lost sight of and given a complete go by wherein this Court has very clearly directed that:

"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 petitioners, 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."

The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. Ordinarily, the High Court exercising writ jurisdiction cannot enter into re-appreciation of evidence and reverse the findings arrived at by the State Government unless they be perverse or be such as no reasonable man acting reasonably could have arrived at. If the High Court found that the decision arrived at by the State Government was flawed in any way then the High Court should have, after laying down the necessary principles or guidelines or issuing directions, directed the State Government to reconsider the case of the respondent. In no case, the High Court could have in exercise of its writ jurisdiction relaxed the need for full satisfaction of the necessary requirements on the fulfilment of which alone the respondent's entitlement to the release of freedom fighters' pension depended.

8. The approach of the High Court cannot be countenanced.
9. The appeal is allowed. The judgment of the High Court is set aside and the decision of the State Government is restored. The respondent is still at liberty to make representation afresh to the State Government for reconsideration of his case and/ or for relaxing the requirements of the Scheme. But on that we express no opinion of our own.
10. The appeal stands disposed of in the aforesaid terms but without any order as to the costs.
Appeal allowed.