

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Namdeo

C.A.Nos.7899-7901 of 2013

(K.S.Radhakrishnan and A.K.Sikri JJ.)

09.09.2013

JUDGMENT

A.K.SIKRI,J.

1. Leave granted.

2. The three respondents herein were the original petitioners who had filed three separate Writ Petitions in their individual capacities. In these Writ Petitions, the petitioners claimed that they took part in the freedom movement and were, therefore, entitled to the benefits which the Government has announced with the proclamation of the “Freedom Fighters Pension Scheme”. Having regard to the fact that all the claims were on similar set of facts, the Bench High Court of Judicature at Bombay consolidated those three petitions and after hearing, has allowed all by single judgment dated 10.2.2012 with the following directions:

“(i) The impugned orders passed by the State Government, thereby rejecting claims of the petitioners for freedom fighter’s pension, are quashed and set aside. It is held that the petitioners are entitled to freedom fighter’s pension, under the Scheme framed by the State of Maharashtra, from the date of their first application.

(ii) The respondent-State and its concerned authorities are directed to pay freedom fighter’s pension to the petitioners, from the date of their first application. They shall start payment of said pension to the petitioners, within a period of three months from today. The arrears of pension, from the

dates of their first application till realization of pension, shall be paid to the petitioners within a period of six months from today.”

3. As the appellant/State of Maharashtra is aggrieved by this judgment, instant special leave petitions are filed. Along with State of Maharashtra, others who have joined are the officers in the State Government who were arrayed as respondents in the Writ Petitions. Notice in these petitions was issued pursuant to which respondents entered appearance through their counsel. We heard counsel for both the parties at length.

4. In order to appreciate the controversy as well as propriety/validity of the orders passed by the High Court, it would be necessary to take note of the foundational basis of the claim for pension by the respondents.

5. The State of Maharashtra came out with Pension Scheme for “Underground Freedom Fighters” and Participants of the “Hyderabad Liberation Movement” in the year 1982 and 1992 respectively. Thereafter, another specific scheme dated 4.7.1995 was framed known as “Freedom Fighters Pension Scheme” which was issued vide Government Resolution of even date. As per this, the benefits were extended to freedom fighters of different categories stipulated therein, one of which was “Underground Freedom Fighters”. Since the respondents had made the claim under this category, we reproduce hereinbelow the said portion of the Government Order dated 4th July 1995:

“Underground Freedom Fighters:-

Freedom Fighters of “Bharat Chodo” agitation during 1942- 44 or Hyderabad Liberation Movement during 1947-48 who worked by remaining underground, will submit following certificate:-

(1) A certificate given type of difficulties and troubles of all sorts undergone during the agitation.

(a) Living away from the house.

(b) Explained from the educational institute or leaving education.

(c) Received beatings from police causing disabilities.

(2) A certificate to the effect that he was punished for minimum of two years or declared and remained absconding for minimum of two years from two Freedom Fighters of that area along with true copies of their certificate to the effect that of imprisonment or advertisement of declaration of absconding or Government orders. Also an oath of the certificate person will be attached.

(3) Certified copy of Government record of that time showing remained underground, if available.

(4) Original copy of newspaper of that time published giving information about having gone underground of the applicant and name etc. if available.

(5) Recommendation and opinion of Zilla Gourav Samiti giving specific information.”

These Government Orders were made applicable to all the pending cases.

Facts regarding Namdeo, Respondent No.1.

6. The respondent No.1 Shri Namdeo Sopan Dhavare had filed the Writ Petition alleging that he had participated in the year 1947-48 Hyderabad Liberation Movement as underground freedom fighter, working under the leadership of freedom fighters Shri Hambirrao Krashnaji Chavan and Devidas Kishanrao Joshi. As per him, he had actively participated as an underground freedom fighter in the said movement and therefore he was entitled to the benefits of “Freedom Fighter’s Scheme “ framed by the State of Maharashtra (the appellants herein). He, thus, moved application dated 25.8.1995 to the Collector, Osmanabad. Along with his application he had annexed affidavits of three freedom fighters, namely (i) Rajaram Limbaji Chadare, (ii) Hambirrao Krashnaji Chavan and (iii) Devidas Kishanrao Joshi.

7. In these affidavits, the said three persons had stated that Shri Namdeo Sopan Dhavare had personally participated in the freedom movement under the leadership of Narsingh Rao Balbhimrao Deshmukh, Uddhavrao Patil and Manikrao Bhosale. He had attended the camp of underground freedom fighters at Kagla, Panbhit Tq. Barshi and was also involved in decoity of arms and armaments. He was involved in the intelligence work and on account of his involvement in the freedom movement, he was required to be away from his family.

8. The “Zilla Gourav Committee” (hereinafter referred to as the “Committee”) constituted to scrutinize the scheme, considered the application of the respondent No.1. Two Members recommended his name for pension but the official Member, namely the Additional Collector appended his dissenting note. The recommendation was sent to the Government. The Government found that there was non-compliance with the scheme dated 4.7.1995 inasmuch as all the requisites stipulated therein for grant of pension were not fulfilled. Accordingly, vide order dated 13th July 2009, application of Namdeo Sopan Dhavare was rejected.

Facts of Bhagabai Shankar Malkunje, Respondent No.2

9. Respondent No.2 is the widow of Shankar Malkunje. She also moved a similar application for grant of pension stating that her husband was a freedom fighter who had participated in the freedom movement. Along with this application, she had filed affidavits of Baswappa Pirappa Chingunde and Hambirrao Krashnaji Chavan. In these affidavits, it was stated that Shri Shankar Malkunje had participated as underground freedom fighter in Hyderabad Liberation Movement. He had supplied arms and armaments at Gholasgao-Wagdari camp and worked on the borders under the leadership of Phulchand Gandhi and Swami Ramanand Tirth. It was also stated that late Shri Shankar was also involved in the attack of Karodgiri (Kamgiri) Naka of Nizam as well as in the collection of arms, food etc. In this behalf, it was testified that since he was attending the underground camp at Chinchola, he was required to leave his family and reside at Waghdari camp. Here applicant was also recommended by the Committee with the dissent of Additional Collector and the Government rejected the recommendation vide order dated 20.8.2009. Facts of Navnath Dattatraya Hajgude, Respondent No.3.

10. He filed application for grant of pension amount dated 13th July 2006 with Collector, Osmanabad. He had also enclosed three affidavits, namely his own affidavit and affidavits of Hambirrao Krashnaji Chavan and Devidasrao Kishanrao Joshi who had deposed on the same line as as was done in respect of the aforesaid two persons. His application was also dealt with in identical manner, namely recommended by two members but Additional Collector dissenting therewith. The Government rejected the application vide order dated 30th October 2010.

11. From the facts noted above, it is clear that except affidavits of certain persons, no other material or proof was given supporting the claim of having participated in the freedom movement. However, the Scheme dated 4.7.95 required fulfillment of various conditions contained therein to enable a person to claim the benefits. It was accepted even by the committee that those conditions were not met by the

respondents. It is for this reason, in so far as the Additional Collector is concerned, he refused to give positive recommendation. Notwithstanding the same, the other two members of the Committee recommended the cases of the respondents only on the ground that the persons who had given affidavits and supported the claim of the respondents were themselves recipient of pension under the said Scheme and therefore their version needed to be believed.

12. The orders vide which the applications of the respondents are rejected are identically worded, pointing out that these respondents had not submitted the following documents required under Government Order dated 4th July 1995:

“1 Proof of trouble of all sorts made to suffer for participation in Freedom Fight.

(a) Made to live away from household.

(b) Expelled from educational institute or leaving education half way.

(c) Suffered disability due to beating by police.

2. A certificate to the effect that he was punished for minimum of two years or declared and remained absconding for minimum of two years from two Freedom Fighters of that area along with their true copies of their certificate to the effect of imprisonment or advertisement of declaration of absconding or Government orders. Also an oath of the certifying person will be attached. The certificates given by the two Freedom Fighters cannot be accepted as they have already given certificates to more than 50 persons. As such the applicant does not fulfill the requirements.

3. The Applicant has not submitted the certified copy of the Government record of that time stating “remained underground”, if available.

4. News published at that time showing “remained underground with name” has not submitted.”

13. The High Court while allowing the petitions of the respondents had done so on the premise that since the Committee had recommended the cases of the respondents, the orders of rejection by the Government were not valid. It would be pertinent to note here that the appellant had referred to the judgment of this Court rendered in the case of State of Maharashtra & Ors. Vs. Raghunath Gajanan

Waingankar (2004) 6 SCC 584. However, as per the High Court, the said judgment was not applicable in the instant cases.

14. As the main argument of the counsel for the appellant before us was that the judgment in the case of Raghunath (supra) squarely applies, we would like to discuss the said judgment in the first instance. In that case also, the State of Maharashtra was the appellant. The matter pertained to “Goa Freedom Fighters Pension” under this very scheme. The respondent has claimed himself to be a freedom fighter entitled to such recognition and release of pension and other privileges as per the same Government Resolution dated 4.7.1995. He pleaded that he participated in Goa Liberation Movement and therein he sustained bullet injuries on the left shoulder. He had placed reliance on certificate from Goa Vimochan Samiti and certain cuttings of newspaper reports. However, there was no primary evidence to substantiate his claim. The State Government rejected his request for grant of pension etc. and in the Writ Petition filed by him, the High Court set aside the order of the Government and issued the writ of Mandamus. It was noted that Zilla Gourav Samiti had processed his case, like the cases of other freedom fighters, and held an enquiry recommending the case for pension observing that the respondent had produced solid evidence, incident wise, to the effect that he had participated in the freedom fighters movement. However, these minutes were signed by the Chairman only. The State had produced another Resolution of the same committee dated 2.9.2002, which was signed by the Chairman as well as all the members. Those minutes recorded that the respondent had not been able to give any proof to substantiate his claim. This Court chose to rely upon Minutes dated 2.9.2002 which were signed by all the persons as they appeared to be more authentic as per which the Zilla Gourav Committee has recommended rejection of the proposal.

15. On the aforesaid facts, no doubt, the facts in the case of Raghunath (supra) were altogether different. In that case, the Court proceeded on the premise that there was no recommendation of the Samiti at all, whereas in the present case, Samiti has recommended the cases of the respondents; albeit with a majority of 2:1 i.e. two members of the committee supported the claim and the third member i.e. Additional Collector did not agree and in his opinion claim should have been rejected. Having said so, we would like to point out that the Court had also taken note of the earlier two cases dealing with the standard of proof which is required to deal with the claims of freedom fighters. This discussion is contained in paragraph 7 of the judgment which is reproduced below:

“7. It is true that in Gurdial Singh case 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 case cannot be lost sight of and given a complete go-by wherein this Court has very clearly directed that: (SCC pp.5-6, para 6)

“6. 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 reappraisal 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 fulfillment of which alone the respondent’s entitlement to the release of freedom fighter’s pension depended.”

16. At this stage, we would like to refer to the judgment of this Court in the case of Gurdial Singh vs. Union of India & Ors. (2001) 8 SCC 8. The laudable objective behind such scheme has been succinctly brought out in the said judgment in the following words:

“The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the

partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari's case (supra) observed:

“The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. 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. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc. are also the other benefits which have been made available to them for quite sometimes now.”

17. In paragraph 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of Freedom Fighters' Pension. Paragraph 7 reads as under:

“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.”

18. In a recent judgment in the case of Kamalbai Sinkar vs. State of Maharashtra & Ors. 2012 (6) SCALE 15, the Court granted the pension following the aforesaid dicta in Gurdial Singh case (supra).

19. The aforementioned discussion leads us to sum up the legal position as under:-

- (a) The claims of the freedom fighters are to be dealt with, with sympathy.
- (b) The authorities are not to go by the test of “beyond reasonable doubt” and standard of proof based on this principle has to be discarded.
- (c) On the contrary, the principle of probability is to be applied and eschewing the technicalities, the approach should be to uphold the entitlement.
- (d) When scheme itself mentions the documents which are required to be produced by the applicant, normally those documents need to be produced to prove the claim.
- (e) The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. The order

of the State Government is to be examined applying the parameters of judicial review which are available in examining the validity of such orders.

(f) Even if order is found to be perverse or flawed, the High Court can, at the most, remit back to the State Government to reconsider the case. However, this Court has also observed that there may be cases where because of long lapse of time or other circumstances beyond the control of the applicant, it is almost impossible or cumbersome to procure and produce all the stipulated documents. In such cases, the claim cannot be summarily rejected for want of documents, even though as per the Pension Scheme, such documents are to be provided. We are of the opinion that to meet such eventualities, following principle needs to be added:

(g) On the basis of evidence/documents/material submitted by the applicant, the Government should examine whether it is a genuine case and the documents produced establish that the applicant had participated in the freedom movement. It should be done applying the principle of probability. If the material/documents produced are otherwise convincing, the Government in appropriate cases may not insist on strict compliance with all the requirements stated in the Scheme.

20. These principles show a clear path as to how the claims under the Freedom Fighters Scheme are to be examined.

21. In the present case, as already noted above, except the affidavits of the two freedom fighters, no other material is placed to substantiate the claims. Approach of the High Court accepting the version of the respondents merely on affidavits, ignoring the requirements of the Scheme altogether, is fraught with dangers and would be prove to misuse and abuse. We can appreciate that direct evidence of having participated in the freedom movement, which events occurred almost 70 years ago, may not be available and therefore it should not be deemed that this Court is insisting on such direct evidence in order to enable an applicant to succeed in his claim. At the same time, the Government Resolution dated 4.7.1995 enlists the documents, on the production of whereof, the respondents could substantiate their participation and involvement in the freedom movement. In a given case, if there is some cogent material on the basis of which satisfaction can be arrived at about the participation in the agitation, the Government may relax the other requirements. However, it would be for the State Government to exercise such a discretion, in a given case, if it is otherwise fully satisfied that the material produced demonstrate that the applicant is a freedom fighter.

22. In the present case, the Government rejected the claim by passing speaking order to the effect that certain documents required under Government Order dated 4.7.1995 had not been furnished. Once, the claim is rejected on these grounds and such an order is in consonance with the requirement of Scheme dated 4.7.1995, no fault can be found with such an order particularly when no case for dispensation of these requirements was made out by the respondents. The claims were based only on the affidavits with no other material. We are of the opinion that if claims are allowed merely on such affidavits, that would amount to giving a complete go by to the requirements of the Scheme. This cannot be allowed. We are, therefore, of the opinion that High Court could not have invalidated the orders of the Government.

23. Before we part with the judgment, we would like to record and deal with the submission of the learned counsel for the respondents to the effect that it was not possible for the respondents to get the original record which was a cumbersome process. The learned counsel relied upon *Kamalbai Sinkar. vs. State of Maharashtra & Ors.* (supra). However, a reading of the said judgment very clearly demonstrate that in that case the applicant had produced a certificate which was issued by the Office of Nayak Tehsildar, M.K.Puranil dated 5.8.1961 in favour of the freedom fighter Shankar Pandurang Choudhary (deceased respondent of the appellant) about the imprisonments suffered by him. Another document which was produced was medical certificate dated 15.8.1991 issued by Dr. S.G.Choudhari in favour of the applicant in his favour about his participation in Satyagraha Morcha on 13.8.1942, the injuries suffered by him in the Lathi Charge and the treatment given to him between 13.8.1942 to 15.8.1942. It is on these documents, the claim was held to be justified by this Court. In the present case, it is stated at the cost of the repetition that apart from the affidavits of other freedom fighters, no other document is produced.

24. We, thus, allow these appeals and set aside the orders of the High Court and dismiss the Writ Petitions filed by the respondents. No costs.