

Shoba Vs Union of India (UOI)

Court: High Court Of Kerala

Date of Decision: Feb. 18, 2005

Citation: (2005) 2 ILR (Ker) 493 : (2005) 3 KLT 431

Hon'ble Judges: S. Siri Jagan, J

Bench: Single Bench

Advocate: J. Om Prakash, for the Appellant; E.S.M. Kabir, A.C.G.S.C. and M.A. Khadir Kunju, Government Pleader, for the Respondent

Judgement

S. Siri Jagan, J.

The petitioner is an unmarried daughter of deceased K. Narayanan, a Freedom Fighter. She claims that as a freedom

fighter her late father was entitled to get Freedom Fighters" Pension under the State and Central Schemes for Freedom Fighters" Pension. The

petitioner submits that her father late Narayanan was accused in case PE No. 8/1122 before the Special Magistrate Court, Alappuzha for

participating in the Punnapra- Vayalar struggle. An arrest warrant was issued against him and he was declared as a proclaimed offender and he

went underground for one year from October, 1946 to November, 1947. He was given State Freedom Fighters" Pension in 1986 considering his

participation in the struggle and consequent underground suffering. He died in 1994. Thereafter his wife was receiving the pension. On her death in

the year 1996 the petitioner is getting the State Pension as per Ext.P-2. The Central Government has recognised the Punnapra-Vayalar struggle as

a, freedom struggle for the purpose of granting Freedom Fighters" Pension in 1998. Accordingly the petitioner filed Ext.P-1 application before the

Central Government for sanction of Freedom Fighters" Pension under the Swathantratha Sainik Samman Pension Scheme, 1986 framed by the

Central Government. She states that she has produced the relevant documents also in support of the claim as evidenced by Exts.P-4 to P-8.

However, the Central Government did not take any action on Ext.P-1. Therefore, she approached this Court and this Court by Ext.P-9 judgment

directed the Central Government to consider and dispose of Ext.P-1. By Ext.P-11 order, the Central Government has rejected the claim of the

petitioner for the reasons stated in Ext.P-11 order. The petitioner is challenging Ext.P-11 order in this Original Petition.

2. From Ext.P-11 it is seen that the State Government has forwarded a Report No. 92992 /FFP.A2/2001/GAD, dated 29.4.2002 which contains

the recommendation of the State Government. Although the State Government has chosen to file a counter-affidavit in this Original Petition, they

have not cared to produce the said letter along with the counter-affidavit which letter appears to be the basis for rejection of the claim of the

petitioner as seen in Ext.P-11. The learned Central Government Standing Counsel has produced the file relating to the case for my perusal, which

contains the said letter. The said letter shows that the State Government has not recommended the case of the petitioner for Freedom Fighters"

Pension under the Central Government as she has not produced sufficient documentary evidence to prove her claim that her late father was a

freedom fighter. However, the said letter completely does not mention the fact that in fact the State Government had sanctioned State Freedom

Fighters" Pension to her late father which is now being received by the petitioner apparently on the basis of the very same materials. As such, the

said report dated 29.4.2002 is contradictory in nature. It is interesting to note that in the counter-affidavit filed by the State Government, they gave

a somewhat different reason for not recommending pension to the petitioner. What they say in the counter-affidavit is that the Scheme of Pension

envisaged by the Central Government and that devised by the State Government are different in character and receipt of State Pension is not a sine

qua non for receipt of Central Pension. However, a reading of the counter-affidavit of the State Government and Ext.P-11 would show that the

primary reason for rejecting the application of the petitioner is that no documentary evidence is produced by the petitioner to show that her father

had suffered one year underground suffering. At the same time in the counter-affidavit of the State Government it is stated thus:

Underground suffering claimed by the petitioner was seen to have been considered by the District Advisory Committee, Alappuzha under the

Chairmanship of the District Collector, Alappuzha and granted the Kerala Freedom Fighter Pension taking note of the underground suffering.

However, this will not automatically make the petitioners" father eligible for Swathantratha Sainik Samman Pension.

The purport of this statement appears to be that underground suffering is not a criterion for granting Freedom Fighters" Pension under the Central

Scheme. This is belied by the counter-affidavit of the Central Government, as well as Ext.P-11. That being so, there can be no merit in the

contention that the norms for the State and Central Schemes are different. As such in Ext.P-11 letter dated 29.4.2002 the Central Government has

not considered the relevant aspects which are to be considered for the purpose of granting the Freedom Fighters" Pension to the petitioner,

presumably misguided by the letter dated 29.4.2002 of the State Government.

3. Ext.P-11 gives four reasons for rejecting the application as follows:

(i) Though you had claimed in the application dated 29.4.1998 (forwarded by the State Government on 29.4.2002) that your late father Shri K.

Narayanan had suffered one year underground suffering, no documentary evidences constituting primary evidence such as copy of proclamation of

abscondence, issue of award for arrest, or, detention order required under para (B) of the S.S.S. Pension Scheme, 1980, in support of the claim

has been submitted by you.

(ii) In support of the claim, you have furnished certificates from S/Shri P.K. Sukumaran, Narayanan Ramankutty and Konthi Vasu. However, the

certificate of Shri Sukumaran is not acceptable, as he has not indicated any of the three reasons (para (a) of the certificate) regarding late K.

Narayanan's having gone underground. Also, as per the State Government, Shri Konthi Vasu is not an eligible certifier as his imprisonment period

is less than two years. Hence, his certificate is also not acceptable.

(iii) As per the Swathantratha Sainik Samman Pension Scheme, 1980, the Non Availability of the Records Certificate (NARC) is required to be

issued by the State Government which is lacking in your case. The rejection of your request for records by the Chief Judicial Magistrate Court,

Alappuzha simply states that there is nothing to show that the records were related to that Court and if at all there was such a case, it is not known

what way the petitioner was connected with it. In the absence of the NARC, the secondary evidence of KPC is not acceptable.

(iv) Moreover, the State Government vide their letter No. 92992/FFP.A2/2001/GAD, dated 29.4.2002 has not recommended your claim for

pension under the Swathantratha Sainik Samman Pension Scheme, 1980.

Since the petitioner has produced Ext.P-12 issued by the Chief Judicial Magistrate to the effect that no records of cases prior to 1955 are

available in his office, the reasons given as (i) and (iii) no longer survive. Regarding reason given as (ii) it may be noted that out of the three

certificates mentioned only two is stated to be unacceptable. Of the same, P.K. Sukumaran's certificate is rejected for want of details in the

certificate. There is no mention in the order whatsoever about the certificate namely the one issued by Sri. Narayanan Ramankutty. However in the

counter-affidavit of respondents 1 and 2 they have stated that the same is not acceptable, because at the relevant time the said Narayanan

Ramankutty was in jail. In this connection it may be noted that clause (b) of the Scheme extracted in paragraph 4 of the counter-affidavit only

speaks about a personal knowledge certificate from a prominent freedom fighter who had undergone imprisonment for a period of at least two

years or more is required. Admittedly, Sri. Narayanan Ramankutty had undergone imprisonment for more than two years. Simply because he was

at the relevant time in jail does not make his personal knowledge unworthy of credence. Personal knowledge need not be as a co-underground

sufferer. As a person in the know of the activities of the movement his knowledge regarding the others in the struggle cannot be simply brushed

aside on the ground that at the relevant time he was in jail. He was in jail because he was arrested and the other continued to be underground. In

this connection it may be noted that in clause (a) of the Scheme, in respect of persons claiming jail sentence, two co-prisoners" certificate is insisted

upon, whereas such a specific requirement is absent in Clause (b). Although the respondents 1 and 2 in their counter-affidavit try to justify their

decision on the basis of a decision of the Patna High Court in Hari Nandan Singh v. Union of India, C.W.J.C. No. 10450. I prefer not to follow

the said decision. The said decision has not been produced before me also. Therefore, I am of the opinion that the rejection or refusal to consider

the certificate issued by Sri Narayanan Ramankutty is not sustainable. Further it may be noted that the counter-affidavit of the State Government

mentions about a certificate issued by Sri. P.K. Chandranandan, a well known freedom fighter of Kerala certifying the correctness of the claim of

the petitioner regarding the underground suffering of late Narayanan. A learned Single Judge of this Court has in the decision of Sadananda Swamy

v. Union of India 2004 (2) KLT 76 Case No. 92, relying on the decisions of the Supreme Court reported in Mukund Lal Bhandari and others Vs.

Union of India and others, and Gurdial Singh v. Union of India and Ors. (2001) 8 SCC 81, as also that of this Court in Pappu Kesavan v. Union

of India 1996 (2) KLT 1035 held that when in regard to Freedom Fighters" Pension under the Central and State Schemes what is required under

the Schemes in the case of underground sufferings is abscondence certificates from prominent veteran freedom fighters along with certificate of

non-availability of record from the concerned authorities, insistence on meticulous details in those certificates is adopting too technical an attitude

which is unwarranted. I am in respectful agreement with the said decision. Freedom fighters are a fast vanishing tribe to whom, according to me,

the present generation has not cared to give the respect or recognition which they and their family deserve and what is being offered to them, who

have sacrificed their life for the country even neglecting themselves and their family in the process, by way of pension is a pittance. When they

prove the sufferings undergone by the five decades ago in whatever way they can, rejection of such proof on technical grounds, can only be

regarded as a further humiliation heaped on them by an ungrateful generation. Therefore, I am of opinion that rejection of the certificate produced

by the petitioner is totally unwarranted and unsustainable. Moreover, the State Government has sanctioned State Pension after considering similar

certificates. It is seen from the 4th reason mentioned in Ext.P-11 that it is the letter dated 29.4.2002 mentioned above which is the basis of all these

objections, which letter has completely ignored the fact that on the basis of the very same documents, the State Government has granted Freedom

Fighters" Pension to the late father of the petitioner which is continued to be received by the petitioner, after the father's death.

4. As I have already found, the documents required for granting of Freedom Fighters" Pension under the Central Scheme are not any the different

from those required under the State Scheme. In this connection it may be noted that the petitioner has in her reply affidavit dated 22.11.2004

pointed out two decisions of the Madras High Court reported in R. Thangavelu Vs. The Government of India and Another, and K.S. Velusamy

Vs. The Government of India and Another, and one decision of the Karnataka High Court reported in B.K. Nagaraj Vs. Union of India (UOI)

and Others, , lay down that once the State Government grants pension, the Central Pension is automatic. Copies of the said decisions have been

made available to me. On the basis of these decisions the petitioner submits that in her case also since the State Government has already granted

pension, the Central pension should also be automatic. To refute this contention the respondents 1 and 2 quote a passage from a Bench decision of

the Madras High Court in W.P. No. 7707 of 2000, full text of which has not been made available. But I would prefer to follow the earlier Bench

Decision of the same High Court in R. Thangavelu Vs. The Government of India and Another, and the other Single Bench decision on K.S.

Velusamy Vs. The Government of India and Another, as also that of the Karnataka High Court in B.K. Nagaraj Vs. Union of India (UOI) and

Others, , which decisions categorically lay down that once the State Government or the Central Government grants pension to a particular freedom

fighter he must automatically get the other pension either under the State or under the Central Government Scheme without any further enquiry. A

person whom the State Government has accepted as a freedom fighter after making necessary enquiries and granted him the Freedom Fighters"

Pension will not become any the less a freedom fighter simply because of some other technical condition in the Central Scheme, once from the

documents available it can be reasonably concluded that the person is a freedom fighter. Narayanan, the late father of the petitioner has been

accepted as a freedom fighter by the State Government as admitted in their counter-affidavit although they say that the same was on the basis of

the decision by the District Advisory Committee. In so far as the Government has accepted the recommendation of the Committee and granted

pension to him and on his death to his widow and later to the petitioner they cannot disown the recommendation. As such, I am of the opinion that

this is a fit case where the respondents 1 and 2 should reconsider their decision in the light of the above findings.

5. I therefore quash Ext.P-11 and the letter dated 29.4.2002 of the State Government mentioned therein to enable them to do so. I therefore

direct the State Government to consider the case of the petitioner afresh after considering all the documents produced by the petitioner. The State

Government should specifically address itself to the fact that the State Government itself had sanctioned State Freedom Fighters' Pension to the

late father of the petitioner which pension continues to be received by the petitioner and shall forward their recommendation/report in the matter

along with all the documents submitted by the petitioner before it and in this Court to the Central Government within a period of one month from

the date of receipt of a copy of this judgment. In such recommendation it shall be specifically mentioned that the petitioner is receiving State

Pension. On receipt of the such recommendation, the Central Government shall pass fresh orders on Ext.P-1 application of the petitioner after

considering the recommendation and the documents so forwarded within a further period of two months thereafter, in the light of the above

findings.

The Original Petition is disposed of as above. No order as to costs.