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High Court Of Kerala

Case No: Writ Petition (C) No. 39646 of 2003 (T)

Narayanan Pillai A.S.	APPELLANT
Vs	
State of Kerala and Another	RESPONDENT

Date of Decision: June 10, 2009

Citation: (2009) 3 ILR (Ker) 290 : (2009) 2 KLJ 649 : (2009) 3 KLT 351

Hon'ble Judges: C.K. Abdul Rehim, J

Bench: Single Bench

Advocate: V.N. Achutha Kurup and Bindu Sreekumar, for the Appellant; K.P. Pradeep, G.P., for the Respondent

Judgement

C.K. Abdul Rehim, J.
The petitioner, at his age of 86 years at present, is on second round of litigation before this Court, against denial of Freedom Fighter''s Pension. Petitioner claims that while he was a student, in the year 1939, he had actively participated in the agitation, "Travancore State Congress", which was subsequently approved as a freedom struggle. He also claims to have participated in the "Quit India" movement, in the year 1942. He went underground from 19.8.1942 to28.8.1943 apprehending arrest pursuant to warrant proclaimed against him by the Judicial First Class Magistrate Court, Thodupuzha in C.C. Nos. 54/114 to 567114 ME.

2. The petitioner submitted application for grant of Freedom Fighters Pension, under the Kerala Freedom Fighter''s Pension Rules, 1971, The application was supported by Ext.P1 certificate issued by a veteran freedom fighter, Sri.K.C. Mathew, who is an awardee of Ext.P16 "Thamrapathra" and recipient of Freedom Fighters Pension under the "Swathanthrata Sainik Samman Pension Scheme 1980", which is formerly known as Freedom Fighters Pension Scheme 1972. In Ext.P1 certificate it is stated that the certifier had suffered imprisonment for more than two years pursuant to conviction and sentence awarded by the Judicial First Class Magistrate Court, Alwaye. It is certified in Ext.P1 that, the petitioner remained underground for more than six months for the period from

19.8.1942 to 28.8.1943. It is further certified that there was an award of arrest announced against the petitioner and he went underground voluntarily on the fear of arrest. Ext.P2 is the format of "Convict Register" issued from Central Prison, Thiruvananthapuram, enumerating details of imprisonment undergone by the certifier, Sri.K.C. Mathew. The petitioner had also produced Ext.P4 certificate issued by another veteran freedom fighter, Sri. K.M. George, Ex.M.L.A, in order to show that he was a Volunteer in the "Travancore State Congress" agitation. Ext.P4 certifies that on several occasions the petitioner went underground as per advice of the Congress High Command as and when warrant of arrest was issued against him. In order to prove details regarding the case in which the warrant of arrest was issued, no records were available, and hence the petitioner produced Ext.PS "Non-Availability of Record Certificate" (NARC), along with the application. In Ext.P5 it is certified that the records in C.C. No. 54/114 to 56/114 ME on the files of the Munsiff-Magistrate Court, Thodupuzha, which became defunct, are not available.

3. The State Government rejected the application through ExtP6 assigning reasons that the NARC is not as per the provisions and that the certifier Shri K.C. Mathew had undergone imprisonment only for 11 months, as reported by the District Collector, Wayanad, and as evidenced from Ext.P2. It is stated in Ext.P6 that the petitioner had failed to produce acceptable evidence in order to prove his entitlement. Against ExtP6, the petitioner submitted Ext.P7 review petition before the Government, seeking reconsideration of the decision. The petitioner had further produced Ext.P8, another certificate issued by Sri. P.K. Vasudevan Nair, yet another prominent freedom fighter, who is former Chief Minister of the State, certifying that the petitioner remained underground during the above said period pursuant to announcement of arrest by the Munsiff-Magistrate Court, Thodupuzha in the above said cases. But through Ext.P10 proceedings, Government again rejected the application as not acceptable, on the ground that Ext.P8 certificate issued by Sri. P.K. Vasudevan Nair was not accompanied with certifier''s jail records, and also on the ground that the petitioner had failed to produce copies of certain Judgments which he had referred to in his review petition.

4. Aggrieved by ExtP10 the petitioner had approached this Court in OP. No. 34941/02. Through Ext. P11 judgment Government was directed to re-consider the matter with reference to ruling of the Hon''ble Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, . This Court observed that the way in which the claim was disposed is not satisfactory and as the petitioner is a person who is in the region of 80''s, the matter need be considered afresh and a decision need be taken within a period of three months. The petitioner further produced Ext.P12 certificate, which is an extract of "Convict Register" with respect to another freedom fighter, Sri. Kutty Gangadharan. It was further pointed out that both in the case of Sri. K.C. Mathew and Sri. Kutty Gangadharan, the term of sentence was for a period of two years but they were released prematurely by virtue of a decision taken by the Government It is evident from Ext.P12 that Sri. Kutty Gangadharan was released before expiry of sentence by virtue of a Government order.

5. Ext.P4 is the order issued by the Government in compliance with the directions contained in ExtP11 Judgment. The petitioner''s application was again rejected stating that apart from the certificates produced earlier, the petitioner has not produced any fresh materials to substantiate his claim and that he had failed to produce jail records of the certifier (Sri. P.K. Vasudevan Nair) along with Ext.P8 certificate. It is further stated that the petitioner had not produced copy of arrest warrant. His request for grant of pension under the State Scheme and recommendation of his name for grant of pension under the Central Scheme were declined through Ext.P14. Further, the Government have also issued Ext.Pl 5, on the basis of a representation submitted by the petitioner to the District Collector which was forwarded for consideration, again declining the grant of pension. There again it is stated that, in Ext.Pl certificate issued by Sri. K.C. Mathew no details of arrest warrant in the specific place is mentioned in the certificate and therefore it is not accepted.

6. Heard Sri. V.N. Achutha Kurup, learned senior counsel appearing for the petitioner and Sri. K.P. Pradeep, learned Government Pleader. In the counter affidavit of the 1st respondent, it is contended that the certifier, Sri. K.C. Mathew, had not endured imprisonment sufferings for a period of two to "Disposal with date", what is written is "sent to the Sty.Mag: Alwaye 8.6.22". It is not evident as to whether "8.6.22" is the date of release of Sri.K.C. Mathew. In the counter affidavit the respondent asserts," It is clear from the jail records that he had been released before the expiry date of the sentence, i.e.; 8.6.1922." It is not evident on what basis such a statement is made. Whether it is based on any verification of the Jail records or whether it is based on Ext.P2 alone, is not clear. If it is based on Ext.P2, it needs further clarification, because of the nature of the certificate and its vagueness. Regarding the NARC the contention of the respondent cannot be accepted. Since it is certified that no records are available with the Magistrate Court, it may not be possible to mention as to whether the case number pertains to freedom movement or whether it relates to the petitioner. Therefore I am of the considered opinion that eligibility of the petitioner is totally dependent upon acceptability of Ext.Pl certificate supported by Ext.P2 Jail records.

7. The learned senior counsel contends that on a reasonable interpretation of the provisions in the ''Swathanthrata Sainik Samman Pension Scheme 19801, it is sufficient that the certificate need be issued only by a veteran freedom fighter who had been sentenced for imprisonment for a period of 2 years, no matter whether his actual imprisonment is less than two years. He points out explanations to Clause 4 (a) and (b) of the Scheme which shows that period of normal remission upto one month will be treated as part of imprisonment. Therefore Clause 9(b)(ii) of the Scheme need be construed as it takes in all cases wherein the certifier has been sentenced for a period of two years or more, is the contention.

8. The learned Government Pleader, on the contra, submitted that the remission mentioned in explanation 2 of Clause 4{b) is only with respect to the eligibility of the applicant and not with respect to eligibility of the certifier. Whereas Clause 9(b)(ii) is clear

that the certificate should be obtained from a veteran freedom fighter who had undergone imprisonment for two years or more. therefore the question to be decided is as to whether the wordings in Clause 9(b)(ii) of the SSS Pension Scheme can be considered as it includes persons sentenced for a period of 2 years or more eventhough they had undergone imprisonment only for a lesser period.

9. In this regard, the learned senior counsel appearing for the petitioner had drawn my attention to a Judgment of this Court in P. Bhaskara Menon v. Union of India OP. No. 9558/99 (unreported) dated 1.3.2000. In an identical case this Court held as follows:

In paragraph 6 of the counter affidavit only certificate issued by Sri. Kumaran was disputed as Sri. Kumaran did not suffer two years imprisonment. But including the date of remission he had undergone two years imprisonment. Therefore, certificates produced by the petitioner are in order.

10. The learned senior counsel appearing for the petitioner had drawn my attention to various rulings of the Hon''ble Supreme Court in order to canvass the position that a liberal interpretation need be adopted by the authority concerned, while considering eligibility for granting Freedom Fighters Pension, In Mukund Lai Bhandari''s case (supra) the Hon''ble Supreme Court held that:

In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such schemes.

In another decision, Gurdial Singh Vs. Union of India and Others, the Hon''ble Apex Court observed:

Standard of proof required for is not the same as is required in a criminal case or in a case adjudicated upon rival contentions or the evidence of parties. Since the object of the Scheme is to honour, and to mitigate sufferings of the petitioner, a liberal and not a technical approach should be adopted. Hence a claim under the Scheme should be determined on the basis of the probabilities and not by applying the test of beyond reasonable doubt.

11. The learned Government Pleader on the other hand points out the decision of the Supreme Court in Union of India (UOI) Vs. Shri Avtar Singh, . It is observed by the Court that white the genuine freedom fighters are deserved to be treated with reverence, respect and honour, it could not be lost sight that the people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of freedom fighters, most of whom in the normal course are septuagenarians and octogenarians.

12. On an anxious consideration of the issue in the above context, taking note of the purpose and objectives of the scheme, and taking note of the guidelines and principles settled through various precedents of the hon"ble apex Court, I feel that the approach and interpretations in this regard should always be liberal. The object sought to be achieved in insisting that, certificate should be obtained from any veteran freedom fighter who had undergone imprisonment for a period of two years or more, is clear that such certifier should be a person who had really participated in the freedom struggle in an active manner and had suffered sentence of imprisonment for a considerable extent of time. Normally remission on the period in sentence of jailors are granted for various reasons. Such remissions or premature release will not in any way dilute the regour or seriousness of the offence alleged or sentence imposed. Taken on that view of the issue, I hold that the requirement under Clause 9(b)(ii) of the SSS Pension Scheme can be construed as it takes in freedom fighters who were sentenced for a period of two years or more on conviction in any case connected with freedom struggle, eventhough they had undergone imprisonment only for a lesser period due to remission of sentence allowed while undergoing such imprisonment.

13. Under the above circumstances, Exts.P14 and P15 are hereby quashed. The 1st respondent is directed to conduct a verification from the records available with the authorities concerned, with respect to the details of conviction, sentence and history of imprisonment undergone by the certifier in Ext.Pl, Sri.K.C. Mathew. Keeping in view of the findings above, and also the observations in the decisions cited above, a final decision may be taken on the eligibility of the petitioner under the State Scheme and for recommending his name for SSS Pension Scheme. It is made clear that the petitioner should be held eligible if there is proof that the certifier was sentenced for a period of 2 years or more in connection with any case registered on freedom struggle, despite he had undergone only a lesser period of actual imprisonment due to any sort of remission. Considering the age of the petitioner, a decision in this regard may be taken at the earliest after affording a personal hearing to him, at any rate within 2 months from the date of receipt of a copy of this Judgment. The petitioner will produce copy of this Judgment before the 1st respondent, along with copies of all relevant records, forthwith.

The writ petition is disposed of as above.