(2009) 1 PLJR 249

Patna High Court

Case No: LPA No. 108 of 2008

Rama Shankar Rai and Another		APPELLANT
	Vs	
The Union of India and Others		RESPONDENT

Date of Decision: July 1, 2008

Citation: (2009) 1 PLJR 249

Hon'ble Judges: R.M. Lodha, C.J; Kishore K. Mandal, J

Bench: Division Bench

Advocate: Chandra Shekhar Pd. Singh, for the Appellant; Sanjeet Kumar, for the Respondent

Final Decision: Dismissed

Judgement

1. We heard the counsel for the parties. Badri Narain Roy (since deceased) and now represented by his legal heirs, was granted provisional

freedom fighter pension in 1974 with effect from the year 1972 until 1977. Later on, an enquiry was held about the genuineness of his being

freedom fighter and after the report was received from the enquiring authority that he was not freedom fighter, by an order dated 24th March,

1999, the provisional order of freedom fighter pension was cancelled and it was ordered that the amount paid to him towards provisional freedom

fighter pension be recovered. He challenged the order dated 24th March, 1999 by filing a writ petition before this Court. He also sought issuance

of a writ of mandamus directing the respondents to continue payment of freedom fighter pension to him in terms of the letter dated 8th May, 1974.

During the pendency of the writ petition, the original petitioner died and his legal representatives were brought on record.

2. After hearing the counsel for the parties, Single Judge dismissed the writ petition vide order dated 20th April, 2007. Hence, the present appeal.

3. The counsel for the appellants strenuously urged that the enquiry report suffered from illegality and there was no justification by the enquiry

officer to hold that the certificates issued by Raja Ram Arya (a co-prisoner) were forged and fabricated. He submitted that the learned Single

Judge as well as the enquiring authority failed to consider the legal proposition laid down by the Supreme Court in the case of Gurdial Singh vs.

Union of India and Ors., 2002(1) PLJR (SC)230. The counsel would submit that the perception and conception of law of the enquiring authority

as well the Single Judge with regard to grant of freedom fighter pension was erroneous being not in conformity with the law laid down by the

Supreme Court in the case of Gurdial Singh.

4. We thoughtfully considered the submissions of the counsel for the appellants. We also perused the impugned order and the decision of the

Supreme Court in the case of Gurdial Singh.

5. The enquiry report dated 16.8.1998 has been placed on record as Annexure A alongwith the counter affidavit filed on behalf of respondent

Nos. 4 and 5 to the writ petition. Even if we assume that the said enquiry report was not within the knowledge of the original petitioner and,

therefore, the same was not challenged initially, but we find no justifiable reason as to why the said enquiry report had not been challenged by way

of amendment once it was brought to the notice of the original petitioner. On this ground alone, we should refrain from going into the legality and

correctness of the enquiry report. However, we looked into the enquiry report. It transpires therefrom that the enquiry was conducted after giving

full opportunity to late Badri Narain Roy. As a matter of fact, he submitted certificates in support of his claim that he was freedom fighter. The

enquiring authority found that the certificates given by co-prisoner were forged. In paragraph-5 of the report, the enquiry officer observed thus:-

Sri Badri Narain Roy ne swargiya Rajaram Arya tatkalin Vidhayak dwara diya gaya ek aur pramanpatra prastoot kiya hai jisme yah kaha gaya

hai ki Sri Roy Kendriya Kara, Buxar tatha Camp jail, Phulwarisharif men chhah mah tak unke sath jail men the. Yah pramanpatra 2.2.1973 ka

nirgat hai. (Annexure-4). Is pramanpatra men swargiya Rajaram Arya ka hastakshar dinank 24.11.81 ko vihit prapatra men nirgat pramanpatra

kiye gay hastakshar se sarvatha bhinna hai. Dono pramanpatron men kiye Swa. Rajaram Arya ke hastakshar ek dusre se mel nahi khate hain aur is

prakar Rajaram Arya ke ye dono hastakshar jali pratif hote hain.

6. No material has been placed on record by the appellants that casts doubt on the correctness on the aforesaid findings. Moreover, in support of

his case, late Badri Narain Roy relied upon a decision of Special Magistrate, Ara passed on 13.1.1943, a copy of which was produced before the

enquiry officer. Despite demand, neither the certified copy of the said judgment was placed by late Badri Narain Roy nor authenticated copy of the

said judgment was produced. The enquiry officer, therefore, found that there was serious doubt about the correctness of the judgment dated

13.1.1943. On a careful scan of the enquiry report, we find that the enquiry officer has given good reasons for holding that Badri Narain Roy failed

to establish that he was freedom fighter. The documents produced by him were found to be forged or unauthenticated. The order passed by the

Central Government on 24.3.1999 is founded on the said enquiry report. As already noticed above, there was no specific challenge to the enquiry

report.

7. For all these reasons, we find no justifiable reason to take a view different from that of the Single Judge.

8. In what we have stated above, the decision of the Supreme Court in the case of Gurdial Singh has no application to the fact situation of the case.

Letters Patent Appeal is dismissed in limine.