

(2014) 02 BOM CK 0156

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3447 of 2011

Kalidas Nivrutti Dhale

APPELLANT

Vs

The state of Maharashtra and
The Collector

RESPONDENT

Date of Decision: Feb. 14, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14 226 227

Citation: (2014) 3 ABR 254 : (2014) 3 ALLMR 319 : (2014) 4 BomCR 397 : (2014) 3 MhLj 673

Hon'ble Judges: S.C. Dharmadhikari, J; Ravindra V. Ghuge, J

Bench: Division Bench

Advocate: S.S. Shinde, for the Appellant; K.G. Patil, AGP Respondents 1, 3 and 4 and Shri Bhushan Kulkarni Respondent 2, for the Respondent

Final Decision: Partly Allowed

Judgement

Ravindra V. Ghuge, J.

Heard. Rule. Rule made returnable forthwith. Heard finally, by consent of the parties.

2. By this petition filed under Articles 226 and 227 read with Article 14 of the Constitution of India, the petitioner seeks to challenge the rejection of his application for Freedom Fighter's Pension, dated 30.10.2010.

3. The petitioner claims to be an underground freedom fighter. Presently, the petitioner is 86 years of age. Respondent No. 1 is the State of Maharashtra through its Secretary, General Administration (Freedom Fighters' Section). Respondent No. 2 is the Swatantra Sainik Pension High Power Committee. Respondent No. 3 is the Desk Officer, GAD, (Freedom Fighters' Section), State of Maharashtra and Respondent No. 4 is the Collector of District Osmanabad, who forwarded the proposal of the petitioner for grant of Sanman Pension as being Member-Secretary of the District Level Gaurav Samiti.

4. It is an admitted position that the first application of the petitioner dated 27.9.1995 was rejected by the District Committee in 1999. He, therefore, has moved a second application dated 1.2.2005 requesting Respondent No. 4 to consider his claim afresh.

5. The petitioner claims to be an underground freedom fighter, who participated in the Hyderabad Mukti Sangram. He campaigned against the erstwhile Nizam Government, took part in several activities against the Razakar (the Army of the Nizam), joined the Kajala and Matula camp, participated in the Loot of Karodgiri Naka at Deotala, Edshi and Aarola. He left his house and joined the camp operated by the freedom fighter Manik Bhosale. He suffered injuries in the attacks of the Razakar and the Nizam Police. He had filed the affidavit of freedom fighter Manik Bhosale along with two other freedom fighters who were honoured with the Sanman Patra. However, his said application dated 27.9.1995 was rejected.

6. The petitioner submits that along with his second application dated 1.2.2005, he submitted affidavits of two freedom fighters, who had suffered imprisonment for more than two years in the freedom movement. Respondent No. 4, by its letter dated 26.9.2007, directed the petitioner to appear before the Committee on 8.10.2007 along with necessary documents and affidavits of freedom fighters who had undergone two years' imprisonment and copies of Sanman Patras. The petitioner, accordingly, appeared before the Committee and also filed his own affidavit, coupled with the certificate issued by the Village Police Patil and the certificate of the Head Master of the Zilla Parishad, School, Mahalangi. The petitioner filed affidavits of Devidas Kishanrao Joshi, Hambirrao Krushnaji @ Ram Chavan, Shivling Malakappa Kumbhar and Srinivas Yeshwantrao Kulkarni.

7. Respondent No. 2 High Power Committee recommended the case of the petitioner. However, vide the impugned order dated 30.10.2010, the claim of the petitioner was rejected on the ground that he did not fulfill the criteria Nos. 1, 3 and 4. The required four conditions, according to the petitioner, for grant of freedom fighters pension are as follows:-

(a) Proof of torture sustained by the petitioner.

(b) Petitioner was required to leave his home and reside elsewhere (underground).

(c) Submitting Government record regarding underground freedom fighter and,

(d) News paper report about activities as an underground freedom fighter.

8. The petitioner contends that several documents were unavailable and therefore, could not be submitted to Respondent No. 2. He had filed his own affidavit, stating that he had left his home and joined the camp of freedom fighters. Being an underground freedom fighter, his name did not appear in the Government record or news papers. Respondent - State has asked for such documents, which are either not available or cannot be made available inspite of the petitioner participating in

the Hyderabad Mukti Sangram. It is, therefore, contended that a technical view has been taken by the respondents and the claim of the petitioner has been rejected.

9. The contesting Respondent No. 4 as well as Respondent No. 1 have filed their affidavits-in-reply. It is contended by Respondent No. 4 that there was no evidence of the petitioner actually participating in the loot of Karodgiri Naka and suffering injuries at the hands of the Razakars and the Nizam Police. The affidavits were filed by three freedom fighters namely, Manikrao Bhosale, Shrirang Sontakke and Hariram Gaikwad, who were not convicted to suffer any sentence for two years.

10. The petitioner has produced two affidavits of two other freedom fighters namely, Devidas Kisanrao Joshi and Hambirrao Krishnaji Chavan, who have suffered imprisonment for two years, along with his second application. The District Gaurav Samiti had not recommended the claim of the petitioner but had merely forwarded the same to the High Power Committee. Thereafter, the petitioner produced two more affidavits of two other freedom fighters namely, Shivling Malakappa Kumbhar and Srinivas Kulkarni, directly to Respondent No. 3 freedom fighters cell in Mantralaya, Mumbai. It is, therefore, contended that at every stage, the petitioner has been producing affidavits of different freedom fighters.

11. Respondent No. 4 has further contended that out of the seven affidavits produced by the petitioner, three were freedom fighters who were not convicted for two years. Affidavit of Devidas Kisanrao Joshi does not assist the cause of the petitioner, since his area of operation as a freedom fighter was taluka Ahmedpur, District Bidar (1947-48). Similarly, Hambirrao Chavan was working at the Waghdari camp, District Solapur along with Shivling Malakappa Kumbhar and Srinivas Kulkarni, whereas, the petitioner claimed to be working at the Kajala camp. Therefore, the said freedom fighters could not certify the work of the petitioner as they never met each other in the 1947-48 movement.

12. In it's affidavit-in-reply, Respondent No. 1 has highlighted the issues which are borne out from the affidavit of Respondent No. 4. In addition thereto, it is submitted that the affidavits of Devidas Joshi and Hambirrao Chavan also cannot be considered as they had given certificates in favour of more than 50 other persons, which is in violation of the condition prescribed in the Government Resolution dated 27.8.2002.

13. We have, with the assistance of the learned advocates for the respective sides, gone through the petition paper book. Learned Advocate for Respondent No. 1 has placed before us the original file pertaining to the claim of the petitioner. It is not disputed that the first application of the petitioner was rejected and it was the second application that has been also rejected by the impugned order. With the first application, the petitioner had submitted affidavits of two underground freedom fighters, who were not convicted for two years or more. However, alongwith the second application, the petitioner has submitted several affidavits referred hereinabove.

14. We are unable to appreciate that two affidavits submitted by freedom fighters namely Mr. Devidas Joshi and Hambirrao Chavan have not been considered only because they have supported claims of more than 50 persons by filing affidavits in contradiction to the Government Resolution dated 27.08.2002. Whether the said affidavits filed in support of the claim of the petitioner reflect the correct picture or not, was a matter to be looked into by the Respondent No. 1 and 2. What has been done is that the said affidavits have been overlooked only for the reason that the said freedom fighters have supported more than 50 applicants. We expect the said Committee to look into the contents of the affidavit than rejecting them only on account of the number of applicants supported by the said freedom fighters.

15. We also find that documents pertaining to proof of torture, area of residence after leaving home, newspaper reports etc. have been demanded by the respondent authorities. The claim of the petitioner that he was an underground freedom fighter and therefore, such documents in connection with his freedom struggle were not available, deserves to be considered with circumspection. It is contended by the petitioner that such documents pertaining to underground freedom fighters are extremely rare and unavailable in most of the cases since such freedom fighters had gone underground. They were never in public glare and as such in most of the cases were not a part of the police record or newspaper reports.

16. Respondent No. 4, through its affidavit in reply, has contended that affidavits filed by Devidas Kisanrao Joshi, Hambirrao Chavan, Shivling Malakappa Kumbhar and Shriniwas Kulkarni are of no assistance to the petitioner since they were operational in taluka Ahmedpur, Dist. Bidar and Waghdari Camp, Dist. Solapur area. The petitioner claims to have worked in the Kajala Camp.

17. However, we find that the impugned order dated 30.10.2010 appears to be quite cryptic and practically does not set out most of the reasons which we find in the affidavit in reply of Respondent No. 4 and Respondent No. 1. When most of the reasons and those relevant to the claim of the petitioner are divulged for the first time through the affidavit in reply and do not find any mention in the impugned order, convinces us to hold that the impugned order has been passed either without application of mind or that the respondents are now inventing reasons to support the impugned order.

18. In the case of [State of Orissa Vs. Choudhuri Nayak \(dead by LR\) and Others,](#) the Hon"ble Apex Court has held as follows:-

10. This Court in [Mukund Lal Bhandari and others Vs. Union of India and others,](#) [Gurdial Singh Vs. Union of India and Others,](#) and [State of M.P. and Another Vs. Devkinandan Maheshwari,](#) considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme as follows:-

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme.

The above principles were spelt out to ensure that no genuine freedom fighter was denied pension under the scheme.

11. Grant of freedom fighters' pension to bogus claimants producing false and fabricated documents is as bad as genuine freedom fighters being denied pension. The only way to respect the sacrifices of freedom fighters is to ensure that only genuine freedom fighters get the pension. This means that the Government should weed out false and fabricated claims and cancel the grant when the bogus nature of the claim comes to light. In [Union of India \(UOI\) Vs. Shri Avtar Singh](#), this Court therefore cautioned:

The genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that 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 the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians.

19. In the case of [Mahender Singh Vs. Union of India \(UOI\)](#), the Hon'ble Apex Court held as under:-

Now, let us consider the manner in which the claim is to be proved which is provided in Para 9 of the Scheme which reads thus:

9. How to prove the Claims (evidence required). - The applicant should furnish the documents indicated below whichever is applicable:

(a) Imprisonment/detention, etc.:

Certificate from the concerned jail authorities District Magistrate or the State Government in case of non-availability of such certificates co-prisoner certificate from a sitting MP or MLA or from an ex-MP or an ex-MLA specifying the jail period (annexure I in the application form)

(b) Remained underground:

(i) Documentary evidence by way of court's/government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention

(ii) Certificates from veteran freedom fighters which had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

(c) Internment or externment:

(i) Order of internment or externment or any other corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available. (Annexure II in the application).

Note:-- The Certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganization of States and their area of operation must be the same.

(d) Loss of property, job, etc.:

Orders of confiscation and sale of property orders of dismissal or removal from service.

11. As stated earlier, the appellant laid his claim only on the ground that he had remained underground for more than four years and from the aforesaid provision, it can be seen that there are two modes of providing the evidence for the same. The first one is by producing documentary evidence and the second where the official records are not forthcoming due to their non-availability, the claim is to be proved

by certificates from the veteran freedom fighters who have themselves undergone imprisonment for five years or more. In the case of the appellant, he asserted that the official records are not traceable due to non-availability and submitted a certificate from one Shri Jagdish Singh who was a veteran freedom fighter. Learned counsel for the appellant also brought to our notice the recommendation dated 09.04.1997 of the Government of Bihar recommending the case of the appellant for payment of freedom fighters pension under the Scheme w.e.f. 01.08.1980.

12. It is true that based on the particulars furnished by the appellant, the State Screening Committee, Bihar recommended the case of the appellant for payment of pension under the Central Scheme. However, the Central Government in the absence of any authenticated records particularly the details about "underground suffering" for a minimum period of six months and finding that the certificate issued by Shri Jagdish Singh is not sufficient rejected the claim of the appellant.

20. In the case of [Kamalbai Sinkar Vs. State of Maharashtra and Others,](#) , the Hon"ble Apex Court has observed thus:-

6. Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in regard to the grant of Freedom Fighter's Pension in the decision reported in [Gurdial Singh Vs. Union of India and Others,](#) . 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. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the appellant's husband in the case on hand.

7. 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.

(emphasis added).

21. In the light of the above, we are of the view that the claim of the petitioner deserves a re-look. We expect the respondent authorities to look into his claim with due circumspection. As has been held by the Hon''ble Apex Court in the above referred cases, the respondent authorities need to bear in mind as follows:-

(a) Sufficiency of evidence is a subjective matter and the claim of the petitioner needs to be looked into reasonably, practicably and with circumspection.

(b) Substantial compliance of the requirements while making an application needs to be the criteria and not that there should be an absolute compliance of each and every condition.

(c) Insistence on documents unavailable may not be the correct approach.

(d) A claimant need not prove his claim on the test of "beyond reasonable doubt" but, on the principles of probabilities.

22. As such, for the reasons recorded above, the petition partly succeeds and stands partly allowed.

23. The impugned order dated 30.10.2010, at page 77 of the petition paper book is quashed and set aside. Respondent Nos. 1 and 2 are directed to reconsider the claim of the petitioner afresh and by giving him an opportunity of hearing. The said application be decided within a period of 3(three) months from the date of this order and the decision of the Committee be communicated to the petitioner within a period of 3(three) weeks from the date of the decision. We make it clear that we have neither looked into the merits of the claim of the petitioner nor have we opined in his favour. The concerned Authorities are expected to decide the petitioner's claim with due circumspection and in accordance with the Law applicable on its own merits, by keeping in mind our observations made in paragraph No. 22 hereinabove. Rule is, accordingly, made partly absolute with no order as to costs.