

(2009) 01 CAL CK 0008

Calcutta High Court

Case No: M.A.T. No. 992 of 2008 and C.A.N. No. 10764/08

Union of India and
Others

APPELLANT

Vs

Sri Sudhangshu Maity
and Others

RESPONDENT

Date of Decision: Jan. 12, 2009

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2009) 01 CAL CK 0008

Hon'ble Judges: Surinder Singh Nijjar, C.J; Biswanath Somadder, J

Bench: Division Bench

Advocate: Md. Nizamuddin, for the Appellant; Prasanto Mukherjee, Basudeb Bag for the U.O.I., Mr. Pradyot Kumar Datta and Amar Mitra for the State, for the Respondent

Final Decision: Dismissed

Judgement

1. We have heard Counsel for the parties at length. Considering the averments made in the application for condonation of delay we are satisfied that sufficient grounds have been shown for condoning the delay in preferring the appeal. The delay is, therefore, condoned. The application for condonation of delay is allowed.

Re :- An appln. for Stay (C.A.N. No. 10767/08):

2. We have heard Learned Counsel for the parties. We have also perused the pleadings.

3. The writ petitioner claims to be a freedom fighter. According to the petitioner, he took active part in freedom struggle and remained underground from 2nd October, 1942 to December, 1945. According to the petitioner a search warrant and warrant of arrest was issued against him. On or 13th August, 1981, he applied for pension along with personal knowledge certificate of Sri Rabindra Nath Giri. The petitioner claims to be eligible for

pension under the Swatantra Sainik Samman Pension Scheme, 1980. This Scheme was in furtherance of the Indian Independence Freedom Fighters Pension Scheme, 1952 which had been announced earlier by the Central Government to mark the completion of twenty-five years of Indian Independence. The Scheme provides for grant of pension to the freedom fighters. The expressed intention of the Scheme was to honour the freedom fighters for their immense personal sacrifice. Claiming to be eligible under the aforesaid scheme, the petitioner submitted an application along with the certificate from an eminent freedom fighter. The application submitted by the writ petitioner was referred by the Central Government for scrutiny to the State Government. The scheme provides that if upon scrutiny and/or verification, the State Government is of the view that the claim is genuine and recommends the pension might be granted to the applicant the Central Government shall scrutinize the claim and grant pension to the applicant as per the policy guidelines of the Government in this regard, if the applicant is eligible for pension. The petitioner claims to have taken active part in freedom struggle and remained underground from 2nd October, 1942 till December, 1945. As noticed earlier, according to the petitioner a search warrant and warrant of arrest was issued against him. The petitioner made an application for grant of pension on 13th August, 1981. Along with the application he submitted a personal certificate of Sri Rabindra Nath Giri, who is eligible to grant such a certificate according to a communication dated 18th November, 1989 of the Deputy Secretary, Government of West Bengal, Home (Poll-PSP) Department to the Secretary to the Government of India, Ministry of Home Affairs, Freedom Fighters" Division. The trial Court notices the findings recorded in numerous judgments including in particular the judgment in Gokul Chandra Panja v. Union of India reported in 1991 (1) C.L.T. 241, where the Court found that the relevant jail record during the period in question was not available. The trial Court also notices that on due scrutiny the State Government recommended the claim of the petitioner by communication dated 18th November, 1989. It is not the case of the appellants either before the learned Single Judge or before us that the recommendation was not based on any material or that it had been made without requisite enquiry. The submissions made by the Learned Counsel for the appellants are that since the relevant record was not available, it was necessary for the writ petitioner to produce the relevant records. The petitioner having failed to produce the records showing that any proclamation declaring him as a proclaimed offender could not be granted pension. It is also submitted that the certificate issued by the eminent freedom fighter ought not to have been relied upon for grant of pension.

4. Learned Counsel emphasized the fact that Rabindra Nath Giri himself was in prison from 25th July, 1944 till 20th of May, 1946. This fact is evident from the narration given in the certificate relied upon by the petitioner. Consequently, Rabindra Nath Giri could not possibly have certified that the writ petitioner remained underground from 2nd October, 1942 to December, 1945. Since there was no evidence produced by the writ petitioner, having been declared proclaimed offender, the benefit could not be granted under the policy of the Government. Learned Counsel relied on a judgment of the Division Bench in the case of Union of India & Ors. v. Smt. Suvadra Bala Paul & Ors. In that case the

Division Bench upheld the decision of the Central Government where a similar certificate issued by Rabindra Nath Giri had been rejected. The Division Bench held as follows:-

"The scheme does not make a freedom-fighter eligible for pension if he remained underground for more than six months for mere joining or involving in the "Quit India Movement" in the year 1942 unless (a) it is shown that he was either declared as a proclaimed offender or (b) on whom an award for arrest/head was announced or (c) whose detention order was issued but could not be served. Therefore, if a freedom fighter under the guidance of the certifier remained underground for years for joining Quit India Movement but it was not preceded by any of those three circumstances, he is not entitled to get pension under the said scheme. The aforesaid certificate merely stated that the "search warrant and warrant of arrest" were issued against him but the writ petitioner himself did not claim that any case was registered against him nor did he mention any case number in the application for pension. Moreover, abscondence as a result of issue of mere search warrant or warrant of arrest issued under the Code of Criminal Procedure is not sufficient for the entitlement of pension unless one comes within any of the three conditions as pointed out above. The certifier has certified something which the applicant himself did not claim in the application. Moreover, the certifier himself was arrested on July 25, 1944 and was acquitted on May 20, 1946; therefore, he could not certify that the original writ petitioner was absconding till December, 1945. If a person himself is in jail, he cannot certify true to his knowledge whether another person at that point of time was really absconding or not. If any such certificate is given, the same is either a false one or based on hearsay evidence.

Moreover, the certifier did not take the responsibility of his statement that the applicant did not secure reprieve on account of any oral or written apology by not certifying the statement as true to his knowledge. To qualify the certificate as to the best of knowledge and belief he did not secure reprieve" means that the certifier is not prepared to vouch for the veracity of such statement.

A certificate is the testimony given in writing to declare or verify the truth of something. Such element is absent in the above certificate in respect of some of the statements as mentioned above.

We, thus, find that the applicant's statement that he remained underground till December, 1945 but was neither arrested on the following day when he surfaced out nor was the case against him dropped is an absurd one and as such, a certificate to that effect should not be accepted."

5. Answering the aforesaid submissions the Learned Counsel for the writ petitioner/respondent submitted that the learned trial Judge had relied upon a judgment of the learned Single Judge in the case of Sri Gokul Chandra Panja v. Union of India & Ors., reported in 1991(1) C.L.T. 241, in which it had been categorically held that if the authorities failed to produce the relevant records in Court, no reliance can be placed on

the assertion that the writ petitioner's name does not appear from the available records in the list of proclaimed offender. The trial Court took note of the following observations made by the learned Single Judge in Sri Gokul Chandra Panja's case (supra) is as follows:-

"30. It is therefore clear that previously the Intelligence Branch and District Intelligence Branch records would not contain information regarding terrorist groups which did not belong to the "middle class intelligentsia". In other words, if a person were a villager or not a prominent member of an association or who did not indulge in violence and who may have participated in the non-violent struggle for independence, his name would not be recorded.

31. Keeping this limited scope of the DIB records in view, the records produced by the Police in connection with the petitioner's case are unlikely to be relevant. His case is that he is a villager, a follower of R. N. Giri and not a leader nor has he claimed to have participated in any violent activity in connection with the underground movement. His case, by definition, would not be included in the IB records.

32. The intelligence Branch index which contained a list of persons alphabetically arranged printed in 1953 for the period 1936 to 14th August, 1947 were in two volumes. Vol-I contains names of persons whose surnames begin with the letter "a". Volume-II contains the names of persons whose surnames began with the letter "G". These volumes could have therefore no relation to the petitioner whose surname begins with letter "P".

33. The sheet indexes were presented in files. Such files are produced in respect of 1940, 1941, 1943, 1944 and 1945. The file relating to 1942 which is relevant to this case is missing. No explanation is forthcoming for this absence.

34. The card index is said to have been prepared on the basis of the sheet index is of recent preparation. This is clear at least from one of the entries at least which relates to one Amullya Mukherjee and who is described as being the son of late Jogendra of "Bangladesh". As Bangladesh came into being only in 1971, the Card Index must have been prepared after that. In any event it is at best secondary evidence of the worst kind as the primary evidence viz. the Sheet Index for 1942 are not produced. A Card Index, as already seen is not a complete record, and were selectively prepared.

35. In these circumstances to say that the petitioner's name does not appear from the available records may be literally correct in the sense that the relevant records were missing. But that is just another way of saying that the records which would be relevant to the petitioner's case were not available. In that event the certificate of personal knowledge granted by Shri R.N. Giri must be taken as proof of the petitioners claim in terms of the Pension Scheme.

36. In my opinion the writ application of the petitioner must therefore be allowed not only in the circumstances mentioned but also on the basis of the reasoning in the judgment and order dated 17.9.97 and 18.9.97 in the contempt proceedings. The order was set aside in appeal only the ground that the contempt jurisdiction was not appropriate proceeding to determine the validity of the order dated 28.12.95 in the circumstances of the case."

6. We may also notice here that the aforesaid observations made by the trial Court have been approved by the Division Bench. The appeal filed against the judgment of the learned Single Judge was dismissed by the Division Bench with the following observations:-

"We have heard the Learned Counsel, for the parties, and perused the application for condonation of delay made u/s 5 of the Limitation Act. The delay is of 149 days. The certified copy of the order impugned was obtained, the matter was sent to Delhi and in the process of granting sanction, the delay is caused. Though, this is nothing but a ease of sheer negligence. The period of limitation is described (illegible) unanimously for all, including the Union of India and the State Government. Hence, they are (illegible) assumed to have filed this appeal in time despite such limitation. We, therefore, dispose of the application made u/s 5 of the Limitation Act, as such.

Be that as it may, we have also examined the order on merits and we are satisfied that the view taken by the learned Single Judge, in the facts and circumstances of this case, for giving Freedom Fighters" Pension to the petitioner being the respondent herein, is fully justified. The learned Single Judge also took the oath of the Superintendent of Police, D.I.B, Midnapore and also looked into the report of the District Magistrate, Midnapore. Although, the Central Government declined to grant Freedom Fighters" pension to the petitioner-respondent and the same was challenged before this Court but no reason was shown by the learned Single Judge that on what basis, opinion was given by the Superintendent of Police, D.I.B., Midnapore an the District Magistrate, Midnapore despite the fact that they had earlier opined that the petitioner was a freedom fighter on the basis of the report filed by them in respect of the concerned freedom fighter.

The learned Single Judge, after elaborately dealing with the matter, had come to the conclusion that the petitioner was entitled to a pension in terms of the Government circular and accordingly, directed the Central Government to grant pension.

The Learned Counsel for the petitioner-respondent submits that the pension has already been released to his client.

In this view of the matter, we do not find any merit in this appeal and the application for stay and, consequently, both the appeal and the application for stay are dismissed.

Xerox certified copy of this order, if applied for, be delivered to the "arties as expeditiously as possible."

7. Learned Counsel for the writ petitioner submitted that the aforesaid judgment of the learned Single Judge as well as the Division Bench were not brought to the notice of the Division Bench in Smt. Suvadra Bala Paul's case (supra).

8. We have considered the entire matter. We are of the opinion that in the facts and circumstances of the present case, the trial Court correctly concluded that in the absence of official record being available the certificate issued by the eminent freedom fighter, Rabindra Nath Giri. had to be accepted. We may also notice that the State Government has not withdrawn its recommendation. Therefore, the claim of the writ petitioner clearly had to be considered by the Central Government on the basis of the certificate submitted along with the application.

9. We see no reason to interfere with the order passed by the learned trial Court.

10. The appeal as well as the application are, thus, dismissed.

Xerox certified copy of this order, if applied for, be delivered to the parties as expeditiously as possible.