(2008) 09 CAL CK 0022

Calcutta High Court

Case No: F.M.A. No. 613 of 2008

Indu Bhusan Jana		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Sept. 15, 2008

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 38(1)

Citation: 113 CWN 221

Hon'ble Judges: Surinder Singh Nijjar, C.J; Sanjib Banerjee, J

Bench: Division Bench

Advocate: Prasanta Kumar Mukherjee and Arjun Ray Mukherjee, Tapan Kumar Majumdar, for the Appellant; Vijay Kumar and Balaram Patra, for the Respondent

Judgement

Sanjib Banerjee, J.

The writ petitioner is in appeal complaining of being a third time unlucky in securing the pension that the claims to be his due as a freedom fighter. The appeal poses no real challenge once a fundamental legal principle is recognized, but it is another matter of some importance that the matter throws up. The appellant asserts that he is entitled to partake of the benefits declared for freedom fighters by the Central Government under a scheme floated in the year 1980. The appellant hails from the district of Midnapore which produced its fair share of freedom fighters. The appellant claims that he went underground upon being sought by the British rulers for participating in the Quit India Movement. The appellant has relied on a certificate issued by the District Magistrate, Midnapore that relevant records relating to issue of warrants proclamations and prosecutions during the period 1930 to 1946 were not available. The appellant applied in August, 1981 stating that he had actively participated in the 1942 movement and remain underground for more than a year. He said that he absconded under the instructions of his immediate leaders and continued work while he remained underground.

2. In the absence of relevant records, the appellant relied on a certificate of suffering by abscondence in the printed government format signed by one Tarapada Chakraborty as a prominent freedom fighter. Chakraborty certified that the appellant had remained underground for more than six months till or about September, 1944. The appellant''s application languished before the Advisory Committee and the State Government for nearly a decade before it was recommended by the State to the Central Government.

3. The appellant applied before this Court in 1994 under Article 226 of the Constitution and a clutch of writ petitions by persons claiming to be freedom fighters and entitled to pension was disposed of by this Court upon certain guidelines being set for various types of matters. The appellant says that it is the following part of the order that is relevant to the appellant:

"So far as the cases falling within the category of Group-1 and 2 are concerned, the Central Government/State Government are hereby directed to pass appropriate orders recommending and/or sanctioning the payment of pension under the Scheme, as the case may be, at an early date, and not later than 3 months from the date of communication, of this order...."

4. The Central Government rejected the State''s recommendation of the appellant''s claim on the ground that official records were available and the appellant had not been able to produce any evidence to substantiate his case of suffering an account of abscondence. The Central Government required the appellant to produce evidence from official records duly certified by the State Government that the evidence was genuine.

5. Thus the appellant was driven to this Court far a second time upon fresh material produced by him, a certificate issued by freedom fighter Rabindra Nath Giri, being disregarded. Such second writ petition was disposed of an July 23, 2002 on the following lines :

"Accordingly, it would be proper for me at this stage to set aside the reasons given by the said authorities (and direct the Central Government) to decide the matter afresh oil the basis of the documents produced before the said authorities and recommended by the State of West Bengal. Such steps to be taken by the said authorities within a period of four weeks from date and I am sure that the Central Government shall act in the matter in the spirit of the scheme only and not otherwise as has been (pointed) out by the Hon''ble Supreme Court in the decision referred to hereinabove."

6. By a writing of October 25, 2002 the Central Government found that the appellant was ineligible far grant of pension. The communication referred to judgments of this Court reported at Chaitnya Charan Das Vs. State of West Bengal and others, and 2000(1) Cal LJ 572 (Smt. Sakti Bala Samanta vs. Union of India & Ors.), but the immediate reasons furnished for disregarding the appellant''s claim is found in the

following two sentences in the letter which spills into a couple of lines on the third page :

"3.... However, you have not produced any supporting document to prove that detention orders were issued against you. Therefore, it would appear that when you went underground there was no executive action pending you against you and your remaining underground was purely voluntary as per direction of the leader which has already been stated by you in the Affidavit...."

7. It is such decision of October 25, 2002 that was challenged by the appellant in fresh proceedings under Article 226 of the Constitution of India in W. P. No. 3710 (W) of 2003 on which the impugned judgment was rendered. It appears from the order under appeal that what weighed against the appellant was his reliance on a certificate by Rabindra Nath Giri who was found to have been indiscriminate in issuing certificates. It was noticed that Girl had prepared a cyclostyled letterhead having blank portions where only the name and address of the claimant and the period of sufferance by the claimant were left vacant to be filled in. Such finding appears to be a reasonable assessment of the printed form appearing at page 131 of the appeal papers. But what is in issue is as to whether a de novo appreciation of facts was called for or was permissible upon the appellant having obtained the order of July 23, 2002.

8. Implicit in the order made on the appellant''s second petition was a direction that the further assessment would be made by the Central Government on the basis of the documents produced before it as recommended by the State Government. The Central Government disregarded such direction and proceeded to assess the claim unmindful of the extent of its enquiry permitted by the order of July 23, 2002.

9. In the impugned judgment the reasons preferred by the Central Government have been tested without recognizing the limited scope that was afforded to the Central Government by the order of July 23, 2002. It is such matter that brings to the fore a fundamental legal principle as to finality of orders.

10. Upon an order attaining finality, it matters little as to whether it was erroneous. A party aggrieved by an order has to work out his remedies within the legal framework. If an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is no longer open to the party to undo the effect thereof at any subsequent stage or collaterally unless it is demonstrated that the finding was obtained by fraud or the court lacked jurisdiction to pass the order.. The hierarchy in the judiciary exists to afford litigants to climb up the ladder in pursuit of justice and to right a wrong committed at a lower level. But if a litigant accepts an order, he does it to his prejudice and binds himself thereby.

11. The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or

mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that the issues decided may not be reopened, and has little to do with the merit of the decision. If it were to be otherwise, no dispute can be resolved or concluded. The principles of res judicata and constructive res judicata apply equally to proceedings under Article 226 of the Constitution.

12. A decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by law. It is in the interest of the public at large that finality should attach to the binding decisions pronounced by a court of competent jurisdiction and it is also in public interest that individuals should not be vexed twice over in the assessment of the same matter in issue. Even in case of a judgment passed incuriam which is unchallenged, the efficacy and binding nature of the operative order is conclusive inter partes. The principle applies both to an order from which an appeals lies and no appeal is preferred and to an order from which no appeal is provided.

13. The order of July 23, 2002 required the Central Government to consider the appellant''s claim on the basis of the documents produced before it and as recommended by the State. The order exhorted the Central Government to abide by the spirit of the scheme. It asked of the Central Government to allow the pension to the appellant without asking for any more documents or further proof of the claim. Upon such order remaining unchallenged it attained finality and the propriety thereof was no longer open to question.

14. On considering the appellant''s entreaty afresh following the order dated July 23, 2002 the Central Government called upon the appellant to furnish further evidence. This, the Central Government could not have done in view of the order, The scheme envisages certificates being furnished in lieu of records or firm evidence of the suffering of the claimant in course of the Independence struggle. The Central Government was required to accept the documents at face value and consider the merit of the application on such basis. The Central Government, in rejecting the appellant''s plea by the order of October 25, 2002 travelled way beyond the course that had been charted for it by the order of July 23, 2002.

15. In the order impugned it is the Central Government''s rationale which has been found to be plausible without recognizing that it had transgressed the ambit of its enquiry as limited by the order of July 23, 2002. The discussion in the judgment is centered on the suo motu questioning of the credibility of Rabindra Nath Giri in espousing the appellant''s cause in the manner it has been done though the order of October 25, 2002 assailed in the writ petition speaks not a word of Giri or his cyclostyled certificate.

16. In the context of the facts involved in this case upon recognition of the order of July 23, 2002 binding the parties, the judgments cited by the parties are of little significance. A judgment reported at West Bengal Freedom Fighters'' Organization

Vs. Union of India (UOI) and Others, has been placed for the principle that the Court is hardly equipped to interfere with a decision that an authorised body makes on the basis of available material. The judgment of a learned Single Judge reported at 2000 (1) CLJ 572 (Sakti Bala Samanta vs. Union of India) that the Central Government relied upon in the order of October 25, 2002 has also been relied upon for the proposition that the Central Government is entitled to reject a personal knowledge certificate of another freedom fighter issued in support of an application if other contrary evidence is available falsifying the claim of the applicant or the contents of the supporting certificate. An unreported Division Bench decision of this Court in FMA No. 761 of 2006, MAT No. 1924 of 2005 (Smt. Sumita Patra vs. The Union of India) has been placed in support of the contention that an issue decided by an earlier order of Court cannot be revisited in the guise of questioning the eligibility of a would be pensioner under the scheme.

17. Since the order of July 23, 2002 cannot but mean that the application had to be assessed or the basis of the documents in support thereof as the case had been recommended by the State Government, it was not open to the Central Government to seek other material from the appellant. The scheme permits certificates to substitute copies of records and the order on the second writ petition did not leave any room for the Central Government to foray beyond such documents. The order is conclusive in such aspect which the Central Government sought to unsettle by embarking on an impermissible enquiry. In a sense such enquiry beyond the papers was without jurisdiction.

18. The impugned judgment failed to recognize such position or accord the sanctity to the order of July 23, 2002 that it had accomplished upon remaining unquestioned. The further essay into the conduct of Rabindra Nath Giri was unnecessary and uncalled for, as the order rejecting the claim did not cite such reason. If an authority did not deem it fit to allude to a matter in rejecting a claim, the Court would scarcely supplement the order of refusal with a new found cause in proceedings assailing the order. A ground not quoted in an order of refusal or repudiation of a claim would not have been available to the authority seeking to sustain its order in the proceedings challenging it.

19. It is on such grounds that the order under appeal cries to be set aside, but there is a more glaring matter of judicial importance that the appellant has glossed over that no judicial conscience can be persuaded to overlook.

20. At the head of the impugned judgment it is recorded that the last date of hearing of the matter before the learned Single Judge was on April 16, 2004. The judgment was rendered on April 26, 2005. The matter did not involve long-drawn oral evidence or consideration of any vexed or multifaceted legal issue. To boot, the fate of a citizen claiming recognition as a freedom fighter some 20-odd years after applying under the scheme hung in balance. For a decision on such matter to arrive more than a year after hearing was concluded was an avoidable misery inflicted on

the litigants.

21. Law reports abound with expressions of concern and anguish at delayed delivery of judgments that not only add to the litigants'' woes but also undermine the common judgment reported at Surendra Nath Sarkar Vs. Emperor, where a learned Single Judge was of the opinion that a judgment delivered 10 months after the magistrate had heard the evidence was in itself a ground to direct retrial, to the more elaborate discussion on the affliction in the judgment reported at (2001) 7 SCC 3 18 (Anil Rai vs. State of Bihar), a judicial officer failing to deliver prompt judgment has been frowned upon.

22. In the judgment reported at R.C. Sharma Vs. Union of India (UOI) and Others, such aberration has been commented upon in the following words :

"12. Learned Counsel for the appellant said all that could possibly be said on behalf of his client. He pointed out that the High Court, had given its judgment eight months after it had heard arguments. He urged that the result was that the High Court did not deal with a number of submissions made because they had, apparently, been forgotten. The CPC does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done."

23. In the Anil Rai case the Supreme Court issued guidelines upon noticing the recent unhealthy trend in delayed delivery of judgments despite recognising that there was no fixed time stipulated by any law for High Courts pronouncing judgment on a matter. The Supreme Court urged the judiciary to be alive to the expectation of society.

"9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the CPC or the Criminal Code, but as the pronouncement of the Judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the Judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy

and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice."

24. The guidelines laid down in that case range from reminders being required to be given by the Chief Justice of the High Court if judgments remain awaited for more than two months to the authority given to the Chief Justice to remove the matter from the Bench upon a complaint from a party to the proceedings that judgment had not been rendered six months after hearing had been concluded.

25. In matters where judgments were delivered several years after hearing had been concluded-which, in all fairness, is not the case here- the Supreme Court has noted the contention that inordinate delay in pronouncing judgment may be ground enough for it to be set aside. In the judgment reported at 1995 Supp (4) SCC 125 (Kunwar Singh vs. Sri Thakurji Maharaj) the delay in pronouncing judgment was accepted as a worthy ground for it to be set aside and the matter required to be reheard :

4. We do not propose to examine the larger question whether long delay, by itself, can as a matter of law affect the validity of the judgment. Appellants'' contention is that the appellants, who lost in the High Court, should not have the apprehension that the arguments addressed seven years ago might not have come to be fully appreciated at the time of the writing of the judgment seven years later.

5. There is yet another infirmity urged by the appellants. They contended that the judgment was not notified for pronouncement in the open court. They have appended to the memorandum of appeal the cause-list of the particular Bench for the day indicating that the case was not listed for judgment that day. It is not necessary to pronounce finally on the contention. We are of the opinion that in the facts and the circumstances of this case ends of justice would require that the matter be reheard by the High Court.

26. By the judgment reported at Bhagwandas Fatechand Daswani and Others Vs. HPA International and Others, the impugned judgment passed nearly five years after the conclusion of the hearing was set aside purely on such score :

3. Learned Attorney General appearing for the appellants urged that, before the High Court, the hearing of the appeal was concluded on 22-03-1989 but the judgment was delivered on 24-01-1994-nearly five years after the hearing was concluded, and this long delay in delivery of judgment by itself is sufficient to set aside the judgment under appeal. Learned Attorney General has also relied upon the decision of this Court in the case of Kunwar Singh vs. Sri Thakurji Maharaj [1995 Supp (4) SCC 125]. At present, we are not disposed to go into this broad question as urged by the learned Attorney General. However, it is correct to this extent that a long delay in delivery of judgment gives rise to unnecessary speculations in the minds of parties to a case. Moreover, the appellants whose appeals have been

dismissed by the High Court may have the apprehension that the arguments raised at the Bar have not been reflected or appreciated while dictating the judgment -nearly after five years. This is fairly not disputed by learned Senior Counsel, Shri K. Parasaran appearing for Respondent 1. We, therefore, on this short question, set aside the judgment under appeal without expressing any opinion on the merits of the case and remit the case to the High Court for deciding the appeal afresh, on merits. In view of the fact, that the matter has been pending for a considerable period of time, we request the High Court to decide the matter expeditiously, if possible, within six months.

27. There is a delay inherent in the judicial system which is desirable and deemed to be appropriate as recognised by time-tested rules of procedure. There is the other, undesirable delay of cases not being disposed of well after the procedurally acceptable passage of time. There is also delay due to congestion or congestion due to delay that is the bane of the judiciary. A large part of the undesirable delay in the judicial process is for reasons beyond the control of the institution, but certainly what is within the control of the judicial officer is an effort to abridge the time between the conclusion of the hearing and the delivery of the judgment.

28. History and literature have sketched grim pictures of judicial delay. Early recorded history speaks of Emperor Nero Caesar urging the Roman Senate to set up summer tribunals to ease clogging in court in 42 AD. In Hamlet the Prince of Denmark counted ''law''s delays'' as an inevitable cost of life. Goethe wrote of a lawsuit filed in 1526 being unresolved when the court itself was dissolved in 1806. In 1853 Charles Dickens'' Bleak House referred to the Court of Chancery where "solicitors are mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities and making a pretence of equity with serious faces...". In 1906 Roscoe Pound wrote the paper The causes of popular dissatisfaction with the administration of justice on the slow pace of litigation in American courts.

29. Unfortunately it is the Bleak House image of the judiciary that has stuck and many regard the court as a place which exhausts finances, patience, courage and hope, overthrows the brain and breaks the heart. To compound the undesirable yet unavoidable delay on account of the sheer weight of numbers by adding to it the inexcusable hiatus leading up to the pronouncement of judgment would inflict a body blow to the public image of the institution, denude faith in it and result in understandable suspicion.

30. The one line from Magna Carta that stands out is this from its fortieth paragraph; "To no man will we deny, to no man will we sell, or delay, justice or right." The Universal Declaration of Human Rights speaks of access to justice in its seventh, eighth and tenth Articles. The preamble to the Constitution of India, in the promise held out therein, secures justice to all citizens ahead of liberty and equality. Apart from the preamble the constitutional vision of justice is embodied in Article

38(1) of the Constitution:

"38. State to secure a social order for the promotion of welfare of the people.-(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life."

31. If the right to justice is a constituent of the basket of rights that Article 21 of the Constitution guarantees, the right to prompt judgment upon conclusion of the hearing of a matter is the logical adjunct.

32. The unexplained delay in pronouncing judgment would make it vulnerable per se. If a matter involves a trial requiring tonnes of documentary evidence and unending papers of oral testimony to be examined or if the gravity of the matter demands, the time between the conclusion of hearing and delivery of judgment may prolong beyond the acceptable limit. But ideally, the period for which a judgment stays reserved should be counted in days rather than in larger units of time. By the guidelines enumerated in the Anil Rai case, a judgment not pronounced within six months would entitle a party to the lis to request the Chief Justice of the High Court to withdraw the case from the Bench; or, in other words, the time of six months has been laid down as the outer limit for which judgment may remain reserved. Again, it should be an outer limit for matters of complexity.

33. In at least two reported decisions in (1988) Supp. SCC 713 Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, (Lakshmi Charan Sen vs. A. K. M. Hassan Uzzaman), the highest judicial authority of the land, no less, has expressed regret in the judgments for the delay in pronouncing judgment: in the first case for the records having been misplaced and in the other for a large number of factors'' that the Supreme Court considered unnecessary to dwell on. A judicial order pronounced several weeks or a few months after hearing is concluded needs to record the reason for the delay unless the discussion in the judgment implicitly explains the same.

34. The delay in the pronouncement of the judgment in this case would have verily detracted from the reasons found in support of the conclusion but since the impugned order can otherwise not be sustained on merits it is set aside and the writ petition allowed. The Central Government will proceed to decide on the appellant''s application only on the basis of the documents furnished and without calling for any further evidence. Such decision should be communicated to the appellant within eight weeks from date and, in the event the appellant is found eligible for pension under the scheme, he should be paid the arrears with interest at the rate of nine per cent per annum from the respective due dates till actual payment. The appellant will also be entitled to costs assessed at 1000 GMs. Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Surinder Singh Nijjar, C.J.

I agree.