

(1998) 05 CAL CK 0016**Calcutta High Court****Case No:** Writ Petition No. 1218 of 1998

Nikunja Behari Dinda

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: May 5, 1998**Citation:** (1999) 1 ILR (Cal) 33**Hon'ble Judges:** Ruma Pal, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Ruma Pal, J.

The issue involved in this writ application is whether the Petitioner No. 1 is entitled to transfer a flat allotted to him by the West Bengal Housing Board (referred to as the Board for short) to the Petitioner No. 2. The Petitioner No. 2 is not related to the Petitioner No. 1. The flat in question is in a block of apartments built by the Board and known as Purbachal Housing Estate in the Salt Lake area of the city.

2. The Petitioner No. 1 applied to the Board for allotment of a flat in the Housing Estate. The Petitioner No. 1 was a member of the Purbachal Housing Cluster III Co-operative Society Limited (referred to as the Society). Both the Society and the, Petitioner No. 1 requested the Board that the demise should be made to the Society and that the Petitioner No. 1, as the allottee, would be entitled to the leasehold right of the said flat for a period of 999 years commencing from February 15, 1984 by virtue of his membership of the society. Pursuant to that application a lease deed was executed between the Board and the Society on February 15, 1984 which records that the Petitioner No. 1 had been allotted a flat in the Housing estate. The flat was Petitioner's pension stood. It was further stated that if nothing further was heard from the Petitioner steps would be taken to recover the pension already paid to him in accordance with law.

3. The present writ application has been filed challenging the decision of the Central Government to cancel the pension of the Petitioner. The records of the case have been produced by the Respondents pursuant to orders of Court. The Respondents have relied upon the decision of the Supreme Court in Union of India Vs. R.V. Swamy alias R. Vellaichamy, to contend that the High Court could not re-appreciate the evidence nor could the High Court direct grant of Freedom Fighters" Pension.

4. There can be no doubt that the High Court can neither appreciate evidence as if it were sitting in appeal over the decision impugned in the writ petition nor can it assume the functions of the Central Government and direct the grant of pension normally.

Such a direction could be made only where the facts are not in dispute. Otherwise the jurisdiction exercised by the Court under Article 226 would be ill-suited for sifting and weighing evidence. However, where pension which has been once granted is sought to be cancelled on extraneous considerations or arbitrarily or illegally, the Court can and will set aside the order of cancellation (See judgment dated February 25, 1998 in W.P. No. 825 of 1988: Hara Govinda Samanta v. Union of India).

5. This is one of those cases where the Court must set aside the order of cancellation, for the following reasons:

(1) The order of cancellation dated April 26, 1996 which the present undated order seeks to affirm was passed after the show cause notice was issued on November 23, 1993. The only ground on which the Petitioner was asked to show cause was that the certificate produced by the Petitioner was not genuine as the signature thereof was allegedly not that of Hiralal Maity and on no other ground. Yet by the impugned order the Central Government has rejected the case of the Petitioner on the ground of the report of DIG-IB that there was no information in respect of his political sufferings. This was not a ground to which the Petitioner had been asked to show cause. The order is therefore is violation of the principles of natural justice.

(2) Admittedly both the first order of cancellation dated April 26, 1996 and the second undated order were, passed on the basis of a letter written by the Government of West Bengal on February 7, 1976, February 20, 1996 which reads as follows:

Sub: Grant of SSS Pension from Central Revenues - case of Shri Nikunja Behari Dinda, S/o. Late Bhusan Ch. Dinda, VIII. and P.O. - Khanchi, P.S. - Mahishadal, Dist. - Midnapur, West Bengal.

Sir,

I am directed to refer to the Ministry's letter No. CC/6/26/91-EZ.II, dated 23.11.94 on the subject noted above and to state the followings in respect of the reply to the show-cause notice submitted by Shri Dinda as described in the Ministry's letter of

even number 13.1.94:

(a) The DLAC, Midnapur which is rightly expected to have better knowledge of the sufferings of the freedom fighters did not give specific recommendation for grant of pension.

(b) While considering the case SAC might not have been well aware of the facts that there are certificates with the signature of Late Hiralal Maity in more than three types of signatures. These do not appear similar and does not have no hearing with the signature of the certifier appearing on his own application/affidavit.

(c) The State Govt. have no information whatsoever that Late Maity was sick and because of his sickness he signed in so different styles.

(d) As per existing provisions of the scheme, the personal knowledge certificate is acceptable, if his claimed suffering is not supported from evidence based on official records and official records are not forthcoming. But the official records since received from the Dy. Inspector of General of Police IB, West Bengal (copy enclosed) reveals that there is no information in respect of the past political sufferings during the pre-independence days of Shri Dinda with given particular on their records. When the primary evidence as now available is against the applicant's claimed suffering, the question of considering the applicant's case for grant of pension does not therefore arise.

2.1 There was in fact no report of the DIG of Police at all as mentioned in sub-paragraph (d) of the State Government's letter. What was enclosed with the State Government's letter was certificate issued by the Superintendent of Police to one Niranjan Behari Dinda son of Bhuban Behari Dinda who was not the Petitioner at all. It was only after the third writ petition was moved challenging the order of cancellation dated April 26, 1996 and the Court directed the matter to be reconsidered that the Central Government referred the matter again to the State Government. The Superintendent of Police DIB again filed a cyclostyled report with only the name of the Petitioner filled in which reads as follows:

To

Shri G. Mohammad,

Deputy Secretary,

Home (Poll-PSP) Department,

Govt. of West Bengal,

131A, B.B. Ganguly Street (Top Floor),

Calcutta 700 012

Sub: Grant of Pension for SSS Scheme case of Shri Nikunja Behari Dinda, S/o. Late Bhuban Chandra Dinda.

Ref: Your Memo No. 1477-HPS dated 1.11.96.

The undersigned writes to inform you that there is no information in respect of the past political sufferings during pre-independence days of Shri Nikunja Behari Dinda with the given particulars, on this office records.

6. What the office records were have not been specified by the Superintendent. More significantly it is not at all apparent from the so called report of the Superintendent of Police that the office records consulted related to the period in question. In any event no report of the DIG-IB, West Bengal was as all forwarded to the Central Government as wrongly stated in the impugned order.

2.2 The State Government's letter was also incorrect in that the DLAC Midnapur had rejected the Petitioners case because Hiralal Maity was not then an eligible certifier. What the State Government failed to say was that the State Government had found Hiralal Maity's signature to be genuine.

2.3 At the State level prior to 1986, it was nobody's case that the signature of Hiralal Maity was not genuine. On the other hand the specific finding in the Petitioner's was that the signature was genuine. There were certainly no scope for the State Government to take a different stand. In the unreported decision of the Division Bench of this Court in FMAT No. 660 of 1994: order dated 15th June, 1994 the Division Bench said:

Once the case had been recommended by the State Government for granting of political pension, it had no occasion to recall such recommendation on the ground of fresh material having become available after the recommendation was given. Learned Single Judge correctly allowed the writ petition and granted relief.

The appeal and the application are thus dismissed without any order as to costs.

2.4 Hiralal Maity's signature on the basis of which his signature in the Petitioner's certificate has been held to be false had applied for his pension in 1972 when he was 72 years old. It is not unlikely that the signature of a person of 72 would vary when he was and 81 which was the age when Hiralal Maity was when he signed the Petitioner's certificate.

2.5 The State Governments letter also did not mention as to what inquiries were made, who made the enquiries or from whom enquiries were made to ascertain whether Hiralal Maity was ill in 1980 as claimed by the Petitioner. There is no record of any enquiry at all in support of the ipse dixit of the Joint Secretary.

2.6 It is also to be noted that the petition. s application as or originally made, was supported not only by the certificate of Hiralal Maity but also the certificate of Nitai Chandra Jana Deben Das (Ex-MLA), Haripada Maiti, Dhirendra Nath Ghorai. Rabindra

Nath Giri had also issued a certificate in favour of the Petitioner.

(3) In terms of the scheme it is for the State Government to satisfy itself regarding such primary matters and not for the Central Government. The State Government having come to a finding specifically with regard to the Petitioner's case that the signature of Hiralal Maity was genuine and having recommended the Petitioner's case, there was no scope at the subsequent stage for the Central Government to reopen that issue at all. In any event the decision of the Central Government "was passed solely on the Joint Secretary's letter of the State Government dated February 7, 1996 for the reasons stated the letter of the Joint Secretary cannot withstand scrutiny. The Central Government's decision cannot therefore stand.

7. In the circumstances of the case I set aside the order dated April 26, 1996 as well as the impugned undated order and direct the Respondents to restore the pension of the Petitioner with immediate effect from the date of suspension by issuing necessary direction to the Pension Cell and other authorities within 2 weeks from the date of communication of this order. All arrears must be paid to the Petitioner within 4 weeks from the date of communication of this order.

8. The writ application is accordingly allowed with costs assessed at 100 Gms.