

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P (C) No. 8506/2010

% Judgment reserved on: 31st October, 2012
Judgment delivered on: 31st January, 2013

SUNDER PRASAD CHOUDHARY Petitioner
Through: Mr. I. C. Mishra and Ms. Swati
Chakraborty, Advocates.
Versus

UOI AND ORS Respondents
Through: Ms.Sweety Manchanda, CGSC for
Respondents No. 1 and 2.
Mr.Amrendra Kumar Choubey,
Advocate for Respondent No.4/State
of Jharkhand.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner is assailing the order dated 17.08.2009, whereby the respondent No. 2 has come to the conclusion that the petitioner does not meet the eligibility criteria and evidentiary requirements of the *Swantantra Sainik Samman Pension Scheme, 1980* (for short 'SSS Pension Scheme'). Consequently, rejected the application of the petitioner.

2. Case of the petitioner is that he participated in the Quit India Movement, 1942 on the call of senior leaders like Gandhiji, Rajendra Babu, Shri Krishna Sinha and Anugrah Babu. On his participation in

the aforesaid movement, a criminal case bearing G.R. No.701/42, titled as ***Emperor Vs. Mathura Shah & Ors.*** got registered and the petitioner was also named as an accused in said case. The petitioner had remained absconded upto 1946 despite NBWs and proceedings U/s 82/83 Cr.P.C.

3. Further case of the petitioner is that despite issuance of NBWs on 29.09.1942 against him from the court of Mr. L. L. Singh, Magistrate Ist Class, Deoghar, he could not be arrested. Thereafter, vide order dated 01.11.1942 proceedings U/s 82/83 Cr.P.C. were initiated against the petitioner. Consequently, he was declared P.O. by the said court on 30.04.1943 and since then upto 1946, he remained underground due to apprehension of arrest by the English Government.

4. Learned counsel for the petitioner submitted that since the judicial record of case bearing G.R. No. 701/42 was disposed off, therefore, NARC dated 07.08.1985 in a prescribed form was issued by Dy. Collector, District Record Room, Deoghar, wherein stated as under:-

“7.8.1985 GR No. 701/42 Emperor Vs. Mathura Shah and others dated 11.10.1942 in the court of L.L.Singh, Magistrate Deoghar’s record is not available in this record room.”

5. He further submitted that the petitioner had applied for the SSS Pension Scheme with respondent Nos. 2 and 3 alongwith certificates issued by Veteran Freedom Fighters like Bhokal Mahto, Jagannath Jha, Krishna Pad Sen, Nagdi Prasad Roy and others.

6. In November 1999, after due verification received from the Dy. Commissioner, Deoghar, the Standing Committee of the Bihar State passed the resolution by recommending the case of the petitioner. Meanwhile, Jharkhand became the successive State, therefore, the respondent No.3 did not send the recommendation to the respondent No.2. On 15.10.2008, the Jharkhand Government enquired the matter afresh and after satisfaction, verification of record and local enquiries, the case of the petitioner was recommended and sent to the respondent No.2 vide letter No.3607 dated 15.10.2008, wherein it was stated as under:-

“ In enquiry report it states that in the court of Sh. L.L.Singh, Magistrate, Deoghar, GR No. 701/42 Emperor Vs. Mathura Shah & Others, the name of Sh. Choudhary is also mentioned same has verified from District Record Room Deoghar letter No. 1 dated 4.1.1999.

And on the local verification it has found that Sundar Choudhary son of Late Satya Narayan Choudhary had participated in the movement 1942, he had absconded but not served the jail and his claim is fit for grant of SSS Pension.”

7. Learned counsel for the petitioner submitted that the Central Government through respondent No.2 rejected the application of the petitioner being beyond the policy and without considering the afore discussed communications.

8. To sum up his arguments, learned counsel submitted that GR No.701/42 has been verified from both the Governments, i.e., Bihar and Jharkhand. Despite, application of the petitioner was rejected.

Application of one Satish Chandra Mishra, Deoghar District, was also similarly rejected by the respondent No. 2 and the said order of rejection of respondent No. 2 has been quashed by this Court vide its judgment dated 30.05.2009 passed in W.P.(C) No. 9362/2004 and the same has been reported as **164 (2009) DLT 172**.

9. Learned counsel for the petitioner submitted that the case of the petitioner is similarly situated with the case of above named Satish Chandra Mishra and since the judgment rendered by this Court in the aforesaid case has been accepted by the respondent Nos. 1 and 2, therefore, the petitioner is also seeking parity.

10. Learned counsel has drawn the attention of this Court to the communication dated 28.05.1999 sent by the District Commissioner, Deoghar to the Director-cum-Deputy Secretary, Home (Special) Department at Patna, Bihar whereby stated as under:-

“ A copy of the record received with the abovesaid reference was got verified from the Deoghar Archives and has been found to be correct. A copy of the verification report received from District Archives, Deoghar is enclosed herewith for further necessary action. Kindly acknowledge the receipt.”

11. On the other hand, learned counsel for the respondents has submitted that as per the provisions of SSS Pension Scheme, a person who on account of his participation in freedom struggle remained underground for more than six months can be considered for grant of pension, provided he was:-

A. A proclaimed offender, or

- B. One on whom an award for arrest/head was announced; or
- C. One for whose detention, order was issued but not served.

Voluntary underground suffering or self-exile suffering for party work under command of the party leaders are not covered as eligible suffering for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

- a. Documentary evidence by way of court's / Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention.
 - b. In case records of the relevant period are not available, secondary evidence in the form of a personal knowledge certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certify that documentary evidence from the official records in support of the claimed sufferings were not available.
12. Learned counsel further submitted that the case in hand is based on the secondary evidences, which can be considered only if supported by a valid Non-Availability of Records Certificate (NARC), which should invariably be worded as follows:-

“ All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.”

13. He further submitted that case of the petitioner was submitted by the Government of Jharkhand vide its letter dated 15.10.2008. In support of the case, copies of the minutes of the meetings of Bihar State Advisory Committee held on 19.11.1999 and 20.11.1999 have been filed with the application. Letter dated 28.05.1999 from Deputy Commissioner, Deogarh, Bihar enclosing verification report dated 04.01.1999 from Abhilekhakar, Deogarh, stated therein that the court records as mentioned by the petitioner for his involvement in the freedom struggle were not available and a Personal Knowledge Certificate (PKC) from Shri Nagdi Prasad was sent by the State Government.

14. Learned counsel further submitted that after going through the application and documents, the petitioner was not found eligible for grant of the pension in question.

15. He has clarified that the Deputy Commissioner, Deogarh vide letter dated 28.05.1999 forwarded the letter of Prabhari Padadhikari, District Achieve, Deogarh dated 04.01.1999 confirming issuing of court information dated 07.08.1985 on an application by the petitioner, whereby he sought record from District Archive related to G.R. No. 701/42. In reply thereto, it was informed that the court records were not available.

16. He further clarified that in the letter dated 15.10.2008, Government of Jharkhand has not mentioned that they conducted fresh enquiry in the pension case of the petitioner, rather they recommended his case on the basis of the recommendations of Bihar State Advisory Committee.

17. Therefore, the respondent No.2 rejected the application of the petitioner finding discrepancies/short comings as under:-

- “i) He has not produced any acceptable record based primary evidence in support of his claimed underground suffering (as indicated in para 4 above).*
- ii) He has not furnished a valid Non Availability of Records Certificates (NARC) from the State Government (i.e. the competent authority) containing all ingredients prescribed therefore (as indicated in para 4 above).*
- iii) In the absence of a valid ‘NARC’, secondary evidence, i.e. personal knowledge certificate (PKC) cannot be considered. However, PKC of Shri Nagdi Prasad Rai is not acceptable as the certifier has marked that the applicant was “one of whose detention orders were issued but he evaded arrest” but the applicant has not submitted any formal application for grant of pension under Swantantrata Sainik Samman (S.S.S.) Pension Scheme, 1980. Further the certifier has not furnished any evidence for his minimum period of two years of his proven jail suffering’s record, to be an eligible certifier (as indicated in para 4 above).*

With regard to the observation of the Hon’ble Court about acceptance of certificates

issued by those persons who were in jail during the period for which their certifying the absconsion of some other persons who are outside the jail it is submitted that the Hon'ble Patna High Court in CWP No. 10450/2000 in the case of Shri Hari Nandan Singh Vs. UOI and others vide judgement dated 23.10.2000 has held:

“ This Court fails to appreciate as to how such a certificate could be granted by Sri Sahdeo Singh when during most of the said period he was himself in jail custody as is evident from his own certificate quoted above. This, in my opinion, shows that the scheme for the grant of Samman Pension is being completely misused so much so that even the freedom fighter who has been granted Samman Pension also grants such certificate fro which they cannot be said to be competent in the facts and circumstances aforementioned”

*iv) The State Govt. has forwarded a copy of the letter dated 28.5.1999 of Deputy Commissioner, Deogarh, who has forwarded a copy of the letter dated 4.1.1999 of “Prabhari Padadhikar, Distt. Abhilekhagar, Deoghar, who has certified that it was verified from the Official Registeer No. 168 at Sl. No. 172/48 dated 7.8.1985. In this connection it is submitted that this certificate has not certified the dates of absconsion of the applicant that from which date he absconded and upto what date. Rather it mention that the records are not available with them. Hence the same is no acceptable upon which the State Govt. had relied upon and **recommended** the claim of applicant for Central Samman pension.*

v) The State Government recommended the case vide their letter dated 15.10.2008. In this connection it is submitted that recommendation of

the State Government is not binding on the Central Government if the conditions necessary for the grant of pension are not fulfilled.

*The Hon'ble High Court of Patna in C.W.J.C. No. 8665/97, in the case of **Kishori Singh** Vs. Union of India & others vide judgment dt. 8.1.1999 has held that-*

“ It is true that the Central Government will grant Swatantrata Samman Pension under the aforesaid Scheme of 1980 on the recommendation of the State Government, but the recommendation of the State Government is not binding on the authority granting such pension.”

“.....the recommendation is sent to the Central Government for consideration and not for granting pension. In other words the recommendation of the State Government is not final or conclusive. It is for the authority of the Central Government granting such pension to make further scrutiny in the matter and take final decision.”

6. *In view of above, the claim of Shri Sundar Prasad Choudhary does not meet the eligibility criteria and evidentiary requirements of the Swatantrata Sainik Samman Pension Scheme, 1980. Hence, the claim is, hereby, rejected.”*

18. Learned counsel for the respondents has further submitted that the present case cannot be equated with the case of **Satish Chandra Mishra** (*supra*) being different facts and evidences. The petitioner has to stand on his own legs to establish his case. Since the case of **Satish Chandra Mishra** was rejected by the respondents on different grounds,

therefore, while allowing the petition filed by him, the decision of the respondents was set aside by this Court.

19. Learned counsel for the respondents has relied upon a case of ***Union of India Vs. R.V. Swamy @ Vellaichamy, (1997) 9 SCC 446***, wherein the Supreme Court has observed as under:

“3. This appeal by special leave arises from the judgment of the High Court of Madras, made on 3.1.1996 in Writ Petition No. 11957/94. The High Court, on appreciation of evidence, has observed in paragraph 9 of the judgment as under:

“ I have carefully considered the submissions of learned Counsel for the petitioner and the respondents. Admittedly, the petitioner was sanctioned freedom fighters pension by the State Government. Five prominent Freedom Fighters have given certificates who were eligible to give such certificates under the very scheme and nothing is stated to discredit these certificates. In view of the certificates produced by the petitioner though the records for the relevant period of 1942-43 were not available since they were destroyed, the certificates given by the prominent freedom fighters are to be accepted. Added to this, the claim of the petitioner also finds place in the book published by the Government of Tamil Nadu and it further supports the claim of the petitioner that he suffered imprisonment for a period of two months in Alipuram Jail. The report of the Collector of Madurai that no record as to arrest warrant is available or that there is no material to show that the arrest warrant was issued against the petitioner cannot be taken as conclusive because there is nothing to show that as to what is the basis for such a statement. If it were to be a certificate

issued by the authorities or the Court which had issued arrest a warrant that could have been a different matter. At any rate, even the same Collector recommended for the sanction of Central Pension to the petitioner. Even on earlier occasion, the State Government had recommended for grant of central Freedom Fighters Pension to the petitioner as can be seen from the letter dated 22.1.1982 addressed to the first respondent. Thus, having regard to overall circumstances of the case and the materials placed on record, I am of the opinion that the petitioner is entitled to grant of pension under the SSS Pension Scheme of the Central Government. Having regard to the fact that the petitioner has been struggling to get pension from 14.12.1981 and the petitioner made an application to the first respondent for the third time and in view of the fact that this Court remanded the case of the first respondent and the first respondent did not consider the claim of the petitioner, having regard to the guidelines and directions given in Thangavela v. The Government of India (1994) 1 MLJ 622, I do not think that it is appropriate to direct the first respondent again to consider the case of the petitioner. In view of the materials placed on record, the petitioner is entitled to get the pension sought for.”

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5. The question, therefore, is whether the view taken by the High Court is correct in law. This Court in Mukund Lal Bhandari and Ors. v. Union of India and Ors. 1993 Supp (3) SCC 2 held thus:

“6. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the

documents which according to the petitioner, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.

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9. The question is whether the High Court is right in appreciating the evidence and to conclude that the respondent is a freedom fighter to claim Freedom Fighters' Pension. The Government, in fact, has considered that evidence and stated as under:

“ In compliance of the above direction of the Hon'ble High Court your case has again been re-examined. It is, however, regretted that it has not been possible to grant you pension for the following reasons:

(i) The Government of Tamil Nadu has reported that no warrant of arrest was issued against you and no other acceptable documentary evidence was available in proof of your claimed underground suffering for more than six months.

(ii) No jail record for the claimed imprisonment period from 2nd week of September 1941, to 1st week of November, 1941 has been furnished.

(iii) Since no warrant of arrest etc. was issued against you as reported by the State Government. The certificates from S/Shri P.S. Lakshmipathy Raju, A.B. Nagier and Dr. T. Khannan, D. Ramakrishnan, I, Mayandi Bharati and A.K. Sonnamurthu are not acceptable, because for sanction of pension person should have remained

underground against some executive of the Government before issued of warrant of arrest etc.

(iv) The non-availability of record certificate with reference to issue of warrant of arrest etc. against you as submitted by you, has been issued in 1988 wherein you did not mention the specific details of case No. etc. in your application of issue of warrant etc. Since earlier in 1985 State Government have already intimated that no arrest warrant etc. was issued against you. In view of these circumstances NARC cannot be accepted.

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11. Of late, large number of cases have been coming up quite frequently for grant of Freedom Fighter pension on the basis of the certificates issued by some persons with status of freedom fighters and are by and large not found to be acceptable to the Government of India. Since several matters are coming up to this Court, it is for the Government of India to re-consider the matter and to lay down appropriate clear guide-lines for the so-called freedom fighters who issue certificates to persons who come forward for Freedom Fighter Pension. Learned Counsel for the respondent has stated that since the State Government has recommended the case of the deceased-respondent for grant of Freedom Fighter Pension, the respondent-widow may be given liberty to approach the State Government in that behalf. Liberty is given to her to approach the State Government. It is for the State Government to consider the application according to their guidelines and dispose it of on merits.”

20. I have heard the learned counsel for the parties.

21. Case of the petitioner is that he participated in the Quit India Movement, 1942 on the call of senior leaders. On his participation, a criminal case bearing G.R. No.701/42, titled as ***Emperor Vs. Mathura Shah & Ors.*** got registered against so many persons including the petitioner. Due to the said case, petitioner had remained absconded upto 1946 despite NBWs and proceedings U/s 82/83 Cr.P.C.

22. The present case is of secondary evidence enumerated in SSS Pension Scheme. Since, alleged record of G.R. No. 701/42 was disposed off, therefore, he filed NARC dated 07.08.1985 issued by Dy. Collector, District Record Room, Deoghar, wherein it was stated that the record regarding the aforesaid G.R. was not available in the record room.

23. The petitioner has further relied upon a letter dated 15.10.2008 issued by the Jharkhand Government, wherein it was stated that the petitioner had participated in the Movement 1942. He remained absconded but not served the jail, therefore, his claim is fit for grant of SSS Pension.

24. The petitioner has also relied upon a case of ***Satish Chandra Mishra (supra)***, wherein respondent No. 2 had also rejected the his claim, however, the same was allowed by this Court.

25. As per the provisions of SSS Pension Scheme, a person who on account of his participation in freedom struggle remained underground for more than six months can be considered for grant of pension, provided he was;

- A. A proclaimed offender, or
- B. One on whom an award for arrest/head was announced; or
- C. One for whose detention, order was issued but not served.

26. The claim of underground suffering can be considered only subject to furnishing documentary evidence by way of Court's /Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head for his arrest or ordering his detention. In case records of the relevant period are not available, secondary evidence in the form of a personal knowledge certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government concerned, after due verification of the claim and its genuineness, certify that documentary evidence from the official records in support of the claimed sufferings were not available.

27. The secondary evidences can be considered only if supported by a valid Non-Availability of Records Certificate (NARC), which should invariably be worded that all concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.

28. The case of the petitioner was submitted by the Government of Jharkhand vide its letter dated 15.10.2008. In support of the case, copies of the minutes of the meetings of Bihar State Advisory Committee held on 19.11.1999 and 20.11.1999 have been filed with the application. Letter dated 28.05.1999 from Deputy Commissioner,

Deogarh, Bihar enclosing verification report dated 04.01.1999 from Abhilekhakar, Deogarh, stated therein that the court records were not available. In letter dated 15.10.2008 issued by the Government of Jharkhand, it has not been mentioned that they had conducted fresh inquiry in the case of petitioner, rather they recommended his case on the basis of the recommendations of the State Advisory Committee, Bihar.

29. The respondent No. 2 has rejected the application of the petitioner vide impugned letter dated 17.08.2009 for the reasons that the petitioner neither produced any acceptable record based on the primary evidence nor the secondary evidence in support of his claim. Therefore, in the absence of a valid NARC, secondary evidence, i.e. personal knowledge certificate cannot be accepted for grant of pension. PKC issued by Shri Nagdi Prasad Rai is not acceptable as said certifier has re-marked that the applicant was one of whose detention orders were issued but he evaded arrest. Since the certifier has not furnished any evidence/record for his minimum period of two years of his proven jail sufferings', therefore, the said PKC cannot be considered for the pension. Moreover, the petitioner neither filed any document regarding his arrest nor the certifier mentioned any date of the absconsion of the petitioner and upto what date. Rather it mentioned that records were not available with them.

30. The petitioner cannot be equated with the case of **Satish Chandra Mishra** (*supra*) for the reasons that the facts and evidences of both the cases are different. The petitioner has to stand on his own legs

to establish his case. Simply, the report of the Collector is not sufficient as there is no material to show that the arrest warrants were issued against the petitioner.

31. Moreover, of late large numbers of cases have come in the notice of the Government of India for grant of freedom fighters pension on the basis of the certificates issued by some persons with status of Freedom Fighters, by and large not found to be acceptable. Therefore, to establish the case under the Scheme, one has to give the proper documents, as enumerated in the SSS Pension Scheme.

32. The Supreme Court in case of *Union of India v. Bikash R. Bhowmik and Ors. (2004) & SCC 722* has decided that pension could be sanctioned only as per proof as required in the pension scheme and in no other manner. The courts should not travelled beyond the pension scheme to find that there was substantial compliance with the pre-requisites as to suffering of imprisonment. In order to get the benefit of the pension scheme, the proof required must be provided as per the pension scheme itself.

33. The Apex Court in case of *Union of India v. K. Indrasena Reddy & Anr. AIR 2007 SC 2484* has held that if only an order of detention was issued, the same by itself may not lead to the conclusion that the person had remained underground for more than six months unless he proves one or the other requisite condition precedents mentioned in the scheme.

34. I am conscious as held in *Union of India v. M.S. Mohammad Rawthere, AIR 2007 SC 3014* that the courts cannot encroach upon the executive or legislative domain and cannot assume the role of investigator of facts. The court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate itself the power of the executive. The court must exercise judicial restraint in such matters.

35. In view of the above discussion and legal position, I find no merit in the instant petition. Same is dismissed with no order as to costs.

CM No.12807/2011 (delay)

In view of the above, instant application has become infructuous and disposed of as such.

SURESH KAIT, J.

JANUARY 31, 2013

Sb/jg