

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.2388 OF 1998

Dhrupadabai w/o Madhavrao Chavan,
(Deceased) through L.Rs.

1. Radhakishan s/o Madhavrao Chavan,
Age major, Occ. Labour (Blacksmith),
R/o Yewla, District Nashik
2. Changdeo s/o Madhavrao Chavan,
Age major, Occ. Labour (Blacksmith)
3. Dnyandeo s/o Madhavrao Chavan,
Age major, occ. Labour

Nos.2 & 3 R/o Kayegaon,
Tq. Gangapur, District Aurangabad.

4. Dilip s/o Madhavrao Chavan,
Age major, occ. Labour,
R/o Kolhar, Tq. Rahta,
District Aurangabad
5. Supan s/o Madhavrao Chavan,
Age major, Occ. Labour (Blacksmith),
R/o Yewla, District Nashik
6. Tarabai w/o Madan Hiwale,
Age major, Occ. Household
R/o Bidkin, Taluka Paithan,
District Aurangabad.
7. Muktabai w/o Kachru Laad,
Age major, Occ. Household,
R/o Dheknu (Bk.), Tq. Nandgaon,
District Nashik.
8. Mangala w/o Vinayak Laad,
Age major, Occ. Household,
R/o Tisgaon, Taluka Pathardi,
District Ahmednagar.

... PETITIONERS

VERSUS

1. The State of Maharashtra
(Copy to be served on
Government Pleader, High Court of
Bombay, Bench at Aurangabad)
 2. Secretary to the Government
of Maharashtra, General
Administration Department,
Freedom Fighters Cell,
Mantralaya, Mumbai – 400 032
 3. District Collector, Aurangabad
 4. District Gavrav Samiti,
through its President,
Aurangabad
- ... RESPONDENTS

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Shri A.S. Bajaj, Advocate for petitioner
Shri G.K. Thigale, A.G.P. for respondents No.1, 3 and 4/ State
Shri Bhushan Kulkarni, Advocate for respondent No.2

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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 31st March, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. Mr. Bajaj, learned counsel for the petitioner strenuously contends that Madhavrao Chavan was a freedom fighter, had participated in Hyderabad Mukti Sangram. He was underground and had participated in the military activities with Shankarlal Harlal Navandar. He also worked under the leadership of Shri Vijayendra Kabra along with Kishanrao Ramdin. The name of deceased Madhavrao has also been

published in the book printed by the respondent No.1 at Page 445 as a freedom fighter. This shows that work of deceased Madhavrao as a freedom fighter is recognized by the Government. Deceased Madhavrao expired on 6.12.1995 and the petition is filed by the widow. The widow has subsequently expired and the petition is prosecuted now by the legal heirs of deceased Madhavrao and Dhruvadabai. The learned counsel submits that, the application was made in the year 1994 itself by the deceased Madhavrao. As such, the requirement as laid down by the Government Resolution of the year 1995 would not be applicable. The petitioner had filed the affidavits of two freedom fighters and even the certificate of Shri Vijayendra Kabra. All these documents are sufficient to consider the case of deceased Madhavrao as a freedom fighter. Even the claim for freedom fighters' pension of deceased Madhavrao is recommended by the Gaurav Samiti and once the case is recommended by the Gaurav Samiti, the Government is expected to consider the same. On erroneous reasons, the Government has rejected the claim of freedom fighters' pension. The learned counsel relies on the judgment of the Apex Court in the case of Kamalbai Sinkar Vs. State of Maharashtra & ors., reported in AIR 2012 SC 2960 so also, the judgment of the Apex Court in the case of State of Maharashtra Vs. Namdeo etc. etc., reported in 2013(14) SCC 225.

2. The learned counsel submits that, the proof that is required is not on the touchstone of "beyond reasonable doubt", but has to be established by probabilities. All the documents aforesaid would establish the case of the deceased Madhavrao as a freedom fighter. Mr. Kulkarni, the learned counsel submits that, the Jilha Gaurav Samiti has recommended in the year 1997 and in view of the judgment of the Full Bench of this Court in the case of Tukaram s/o Ramji Koli Vs. State of Maharashtra & ors., reported in 2000 AIR Bombay 138, if the recommendation is prior to the Government Resolution of 1995, then only the requirement as laid down by the Government Resolution of 1995 would not apply. As the recommendations were in the year 1997, the requirement of Government Resolution is mandatory.

3. We have considered the submissions canvassed by learned counsel for the respective parties. There cannot be any manner of debate in the proposition that the cases of freedom fighters should be considered sympathetically.

4. The object in providing the freedom fighters' pension is to mitigate the suffers of those who have given their all for the country in the hour of its need. The spirit of the scheme is both to assist and honour the need and acknowledge valuable services rendered. The Apex Court, in the case of State of Maharashtra Vs. Namdeo (referred supra), has observed that it would be

contrary to its spirit to convert it into some kind of programme of compensation. In the present case, the deceased Madhavrao who claimed to be freedom fighter, is dead. The writ petition is filed by widow Smt. Dhruvadabai, who is also now dead. The petition is prosecuted by the children of the deceased Madhavrao and Dhruvadabai. The purpose of mitigating the sufferings of the deceased certainly would not survive. Had it been a fact that either of them would have been alive and prosecuting the petition, this Court would have been more liberal in considering the case.

5. It would be seen that, the documents as are required under the Government Resolution of 1995 are not appearing on record. The affidavit is of one freedom fighter and one of the freedom fighter has given a certificate. The requirements laid down in Government Resolution of 1995 are lacking. Considering the aforesaid judgments and the facts as appearing in the case, we are not inclined to entertain the writ petition. The writ petition, as such is disposed of. Rule discharged. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)