

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5026 OF 2014

PRABHAKAR SADBUAWA LATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Mr. M. U. Shelke, Advocate for the petitioner
Mr. S. G. Karlekar, A.G.P. for respondent Nos. 1 & 4.
Mr. B. B. Kulkarni, Advocate for respondent Nos. 2 & 3.

.....

**CORAM : R.M. BORDE AND
V. K. JADHAV, JJ.**

DATED : 28TH APRIL, 2015

P.C. (PER V. K. JADHAV, J.) :-

1. The petitioner has approached this Court against the rejection of his claim by the State Government for grant of freedom fighters' pension.

2. Brief facts, giving rise to this petition, are as follows:

3. According to the petitioner, he had participated as underground freedom fighter in the Hyderabad Liberation Movement along with some veteran leaders of the said movement. As per the directions given by the Camp leader, the petitioner had worked in Hyderabad Liberation Movement and performed various activities against the erstwhile Nizam Government. The petitioner contends that, as per

the Government Resolution dated 05.09.1992, respondent No. 2 has determined the conditions for grant of freedom fighters' pension while deciding application regarding pension under the scheme. Furthermore, by Government Resolution dated 04.07.1995, certain conditions also came to be introduced for deciding entitlement of the underground freedom fighters' pension under the scheme. The petitioner, on 04.11.1992, had submitted an application to respondent No. 4 for grant of freedom fighters' pension under the aforesaid scheme framed by the State Government. Respondent No. 4 has also scrutinized the application and verified the documents submitted alongwith the application. The respondent No. 4, thereafter, consequent to the resolution passed in the meeting dated 21.11.1998, recommended the proposal of petitioner to the Government for approval. However, by communication dated 14.07.2000, the petitioner's claim was rejected by the State Government on the ground that the petitioner does not comply the conditions as contemplated in Government Resolution dated 04.07.1995. Hence this Writ Petition.

4. The learned counsel for the petitioner submits that, the petitioner fulfills the condition as contemplated in earlier Government Resolution dated 05.09.1992. The petitioner had submitted an application on 04.11.1992 i.e. much prior to issuance of the

Government Resolution dated 04.07.1995. The learned counsel further submits that, the conditions mentioned in the Government Resolution dated 04.07.1995 are unreasonable, arbitrary and thus, liable to be struck down. The learned counsel further submits that the petitioner had submitted an affidavit of veteran freedom fighters who undergone imprisonment for a period of two years consequent to the freedom struggle in Hyderabad Liberation Movement. The learned counsel submits that since the claim of petitioner was recommended by the Zilla Gaurav Samiti and since the veteran freedom fighters have certified that the petitioner had participated in Hyderabad Liberation Movement as underground freedom fighter, the petitioner fulfills all eligibility criteria laid down under the scheme and in the Government Resolution dated 04.07.1995. The learned counsel for the petitioner, in order to substantiate his contentions, has placed reliance on the following judgments:

1. Judgment dated 10.02.2012 delivered by the Division Bench of this Court in Writ Petition No. 6205 of 2011 i.e. Namdeo s/o Sopan Dhavare v. The State of Maharashtra and others, alongwith other connected matters.
2. Mukund Lal Bhandari and others v. Union of India and others, reported in 1993 Supp (3) SCC 2.
3. Gurdial Singh v. Union of India and others, reported in (2001) 8 SCC 8.

4. Smt. Dropadabai Babasaheb Mote v. State of Maharashtra & others, reported in 1999(4) Bom.C.R. 170.
5. Raghunath Gajanan Waingankar v. State of Maharashtra and others, reported in 2004(1) Mh.L.J. 513.
6. Kamlabai Sinkar v. State of Maharashtra and others, reported in (2012) 11 SCC 754.
7. Kalidas Nivrutti Dhale v. State of Maharashtra and others, reported in 2014 (3) Mh.L.J. 673.

5. The learned counsel for respondent Nos. 2 and 3 submits that the Government has rejected the claim of the petitioner on the ground that the documents, as contemplated and required under the Government Resolution dated 4.7.1995, had not been furnished by the petitioner. The petitioner's claim was based only on the affidavits and no other material was furnished. The learned counsel thus submits that no fault can be found with the order passed by the Government. Learned counsel placed his reliance on the judgment in the case of **State of Maharashtra and others V. Namdev, reported in (2013) 14 SCC 225** and contends that no case is made out by the petitioner to cause any interference in the impugned order.

6. The State Government, by its impugned order dated 14.02.2000, rejected the claim of the petitioner on the ground that the

petitioner has not submitted documents as required under Government Resolution dated 04.07.1995 i.e. the proof of suffering troubles of all sorts of participation in the freedom struggle, including the proof;

- a) to leave away from household,
- b) expelled from educational institution or leaving the education in mid term,
- c) suffered disability due to beating by police.

The petitioner's claim was also rejected on the ground that the petitioner had not submitted certified copy of Government record of the relevant time stating "remained underground", if available. The petitioner has also not submitted the documents in respect of news published at that time showing that the petitioner remained underground. The State Government, by letter dated 30.06.2004, has informed the petitioner that the claim of the petitioner is already rejected and it has been communicated by letter dated 14.02.2000.

7. The Petitioner, except filing affidavits of the veteran freedom fighters, who had undergone imprisonment for participation in Hyderabad Liberation Movement, has not filed any other document as contemplated under Government Resolution dated 04.07.1995. We have carefully gone through the contents of affidavits of the said veteran freedom fighters and also the affidavit submitted by the

petitioner. It is not clear from the affidavits of those freedom fighters as to what sort of trouble made to suffer by the petitioner for participation in freedom struggle. Even the said freedom fighters have mentioned different locations of their camps in their respective affidavits for the same period and according to the petitioner, he had participated in Hyderabad Liberation Movement by staying at a particular camp from 1947 to 1948. Under these circumstances, since the claim of the petitioner is based only on the affidavit and no other material was furnished, we are of the considered opinion that if the claim of the petitioner is allowed merely on such affidavits, that would amount to giving a complete go by to the requirement of the scheme. In the case of ***State of Maharashtra and others V. Namdev (supra) the Hon'ble Supreme Court***, in paragraph No. 22 of the Judgment, has made the following observations:

“22. In the present case, the Government rejected the claim by passing speaking order to the effect that certain documents required under Government Order dated 4.7.1995 had not been furnished. Once, the claim is rejected on these grounds and such an order is in consonance with the requirement of Scheme dated 4.7.1995, no fault can be found with such an order particularly when no case for dispensation of these requirements was made out by the Respondents. The claims were based only on the affidavits with no other material. We are of the opinion that if claims are allowed merely on such affidavits, that would amount to giving a

complete go by to the requirements of the Scheme. This cannot be allowed. We are, therefore, of the opinion that High Court could not have invalidated the orders of the Government."

8. We have dealt with the case of the petitioner with sympathy. Instead of procuring documents, which are required to be produced by the petitioner as per Government Resolution dated 4.7.1995, the petitioner states in the petition that the conditions mentioned in the Government Resolution dated 4.7.1995 are unreasonable, arbitrary and thus liable to be struck down. We do not find that the order passed by the State Government is perverse. We are not exercising extra-ordinary writ jurisdiction to scrutinize the decision of the State Government like an appellate authority. The Zilla Gaurav Samiti, in absence of any other material and only on the basis of affidavits, has recommended the case of petitioner. Merely on the basis of such recommendation, we do not think that other requirements of the scheme, as enumerated in the Government resolution dated 4.7.1995, are liable to be ignored. In view of this, writ petition is devoid of any substance and the same stands rejected.

(V. K. JADHAV, J.)

(R. M. BORDE, J.)

rlj/