

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.A.No.1050 OF 2014

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Ms.S.Nanda, learned counsel for the appellant,
Sri V.Ravi Kumar for respondent No.1 and the Government Pleader for
Revenue for respondent No.2.

The writ appeal arises from the order dated 27.06.2014 in
W.P.No.19104 of 2010.

The issue arises under the Swantantrata Sainik Samman
Pension Scheme, 1980 (for short 'the Scheme').

The appellant through communication dated 06.09.2006
rejected the claim of 1st respondent for sanction of pension under the
Scheme. The communication dated 06.09.2006 rejecting the claim of
1st respondent for grant of freedom fighters pension reads as follows:

“(i) You have not furnished acceptable record-
based primary evidence in support of your
claimed sufferings (as indicated in para 4 above).

(ii) You have not furnished a valid non-availability of
Records Certificate (NARC) from the State
Government (i.e., the competent authority)
containing all ingredients prescribed therefor (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. The PKC submitted by
you from Shri K.V. Damodar Rao has, however,
been scrutinised. The same is not acceptable as
the certifier has not furnished any record/evidence of
his own two years' jail suffering (i.e., he has furnished
no record/evidence to establish that he is an
eligible certifier).

(iv) The camp-in-charge certificates submitted by you

from Shri B. Ramganayakulu and Sri K.V. Narsing Rao apropos your participation in boarder camps at Venkatapur and Chanda, respectively, have also been scrutinized. However, the same are not acceptable, as they are relevant only in case recommended by the erstwhile Hyderabad Special Screening Committee (HSSC). Since there is no document on record to show that your claim was scrutinized and duly recommended by the HSSC, the camp-in-charge certificates are not acceptable/relevant.

(v) In your application dated 10.04.1984 you have stated that you were in Venkatpur camp; this has also been (supposedly) certified in a camp-in-charge certificate from Shri B. Ranganayakulu. In another camp-in-charge certificate from Shri K.V. Narsing Rao, received with the State Government's letter No.53355/FF.II/A2/93-1 dated 8.10.1993, it is (supposedly) certified that you were in Chanda camp in the same period. Thus there is self-evident contradiction in the claimed boarder camp, which creates further doubts regarding the bonafide and genuineness of your claim."

The 1st respondent in W.P.No.19204 of 2010 challenges the legality of the communication dated 06.09.2006. Through the order impugned in the appeal, the learned Single Judge, after examining the entire material available on record and on being satisfied with the entitlement of 1st respondent for sanction of Freedom Fighters Pension (FFP), allowed the writ petition as follows:

10. The Government of India, with a laudable and sacred object of safeguarding the interests of freedom fighters and their dependents from the onslaught of the financial constraints, which they are exposed to because of the sacrifices made by them during the freedom struggle for the purpose of liberating the country from the shackles of the colonial and feudal forces, introduced Swatantra Sainik Samman Pension Scheme, 1980. The freedom fighters, who sacrificed their lives, wealth, health and young age, in the considered opinion of this Court, are entitled for the said benefit as a matter of

right and the same is neither a gratis nor a charity for them and on the other hand, the same is the recognition of their sacrifices. Therefore, the authorities, functioning for enforcement of the said Scheme, are required to address the claims under the Scheme expeditiously and by adopting pragmatic approach keeping in view the object of the scheme.

11. In the light of the above, now it is required to be examined as to whether the 1st respondent is justified in turning down the request of the petitioner for grant of freedom fighters pension under such a holy Scheme. As per the Clauses in the Scheme, when the primary evidence is made available by the claimant, the question of production of secondary evidence would not arise by any stretch of imagination.

12. In the instant case, the petitioner herein along with the application enclosed the order of detention issued by the Inspector General of Police, Sarkar-e-Aali, Hyderabad, Deccan, addressed to the Secretary of Courts, Police and General Administration, Nizam's Government, Hyderabad Deccan. As per the Scheme, the same is primary evidence for consideration of claim. Therefore, the 1st respondent is not justified in saying that the petitioner did not furnish any acceptable record based on the primary evidence nor the 1st respondent is justified in insisting upon the secondary evidence which is unnecessary and unwarranted in the facts and circumstances of the present case. Therefore, the objections shown in the impugned order at Sl.Nos. (i), (ii) & (iii), are highly unreasonable and untenable.

13. In the instant case, after thoroughly undertaking enquiry with regard to the entitlement of the petitioner, the State Government recommended the case of the petitioner for grant of freedom fighters pension vide letters No.53355/FF.II/A2/93-1, dated 8.10.1993 and No.1676/FF.II/A1/94, dated 9.03.1995. The enquiry undertaken by the revenue authorities at the ground level and the reports submitted thereon by the Revenue Divisional Officer and the District Collector would undoubtedly demonstrate that only after meticulously and thoroughly examining all the issues pertaining to the claim, the 2nd respondent recommended the case of the petitioner for grant

of pension under the Scheme.

14. At this juncture, it would be appropriate to refer to the judgments in the case of Gudial Singh v. Union of India (2001) 8 SCC 8m Kamalabai Sinkar v. State of Maharashtra (2012) 11 SCC 754; and Bommakanti Venkavva v. Union of India (2013) (5) ALD 173) wherein the Hon'ble Apex Court and this Court have categorically held that the standard of proof applicable while assessing participation in the freedom movement shall be on the basis of preponderance of probabilities, but not on the touchstone of the test of probability beyond reasonable doubt.

15. Therefore, the authorities discharging the functions under the said Scheme are required to keep the very object behind the Scheme in their mind while dealing with the claims under the scheme. The facts and circumstances of this case would drive this Court towards an unhesitating conclusion that the 1st respondent is not justified in rejecting the claim of the petitioner for grant of freedom fighters pension.

16. For the aforesaid reasons, the writ petition is allowed and the order bearing No.52/CC/499/2000-FF(HC), dated 6.09.2006 is set aside and the 1st respondent herein is directed to sanction freedom fighters pension to the petitioner under Swatantra Sainik Samman Pension Scheme, 1980 from the date of application of the petitioner within a period of three months from the date of receipt of a copy of this order. The arrears, from the date of application till the date of sanction, shall be paid to the petitioner within a period of six months from today”.

Hence, the appeal.

Learned counsel appearing for the contesting parties have brought to our notice the decisions reported in **BOMMAKANTI SITHARAMMA v. GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI**^[1], **PANJANALA RAJAIAH v. GOVERNMENT OF INDIA, NEW DELHI**^[2] and **STATE OF MAHARASTRA AND OTHERS**

v. NAMDEO^[3] .

Learned counsel for the appellant vehemently contends that the order rejecting 1st respondent's application for grant of FFP is in accordance with the Scheme and communication dated 08.10.1993 and 09.03.1995. According to the learned counsel for the appellant, the details furnished by the 1st respondent are either vague or not discernable and the appellant was justified in refusing claim of 1st respondent for grant of FFP. It is further contented that the report of State Government is not binding on appellant and an independent view is taken in the matter and the reasons stated by the learned Single Judge in the order under appeal are untenable and prays for allowing the appeal.

Learned counsel for 1st respondent contends that the Scheme provides for various documents to prove the actual suffering of a freedom fighter and the freedom fighter in proving the claim for FFP can certainly place for examination the best material available at his disposal. According to the extant procedure for verification, the details/documents furnished by the 1st respondent/applicant are subjected to actual, physical and field verification by the Revenue Divisional Officer. It is further contended that once open examination, as contended above, is completed, the rejection of application on stereotyped orders does not amount to implementation of the Scheme in letter and spirit of the Scheme. He draws our attention to the material relied upon by the 1st respondent and the findings recorded by the learned Single Judge.

Learned Government Pleader for respondent No.2 from the material available on record contends that the verification by the State Government is in accordance with the extant Scheme and there is no justifiable reason to overlook the report for assumed reasons. Though the report of the State Government is

recommendatory, rejection of a well considered report with stereotyped reasoning does not fit into the Scheme of grant of FFP and prays for dismissal of writ appeal.

Learned counsel appearing for the parties have drawn our attention to the documents relied upon by the 1st respondent for grant of FFP and the verification report of the State Government.

It is matter of record that as early as on 13.04.2007, the Principal Secretary to Government reiterated that the State Government have decided to take up 100% re-verification of cases of pending applications and also the cases in which the FFP has already been sanctioned by the Government. The communication suggests the seriousness of State Government in examining the details of freedom fighters.

Now, the question that arises for consideration is - whether the appellant has made out any ground for interfering with the order under appeal?

Before proceeding further, we would like to refer to the decision of the Apex Court in **Namdeo's** case (3 supra) and the summary of legal position in considering FFP of 1st respondent.

“The aforementioned discussion leads us to sum up the legal position as under:-

- (a) The claims of the freedom fighters are to be dealt with, with sympathy.
- (b) The authorities are not to go by the test of “beyond reasonable doubt” and standard of proof based on this principle has to be discarded.
- (c) On the contrary, the principle of probability is to be applied and eschewing the technicalities, the approach should be to uphold the entitlement.
- (d) When scheme itself mentions the documents which are required to be produced by the applicant, normally those documents need to be produced to prove the claim.
- (e) The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State

Government like an appellate authority. The order of the State Government is to be examined applying the parameters of judicial review which are available in examining the validity of such orders.

(f) Even if order is found to be perverse or flawed, the High Court can, at the most, remit back to the State Government to reconsider the case. However, this Court has also observed that there may be cases where because of long lapse of time or other circumstances beyond the control of the applicant, it is almost impossible or cumbersome to procure and produce all the stipulated documents. In such cases, the claim cannot be summarily rejected for want of documents, even though as per the Pension Scheme, such documents are to be provided. We are of the opinion that to meet such eventualities, following principle needs to be added:

(g) On the basis of evidence/documents/material submitted by the applicant, the Government should examine whether it is a genuine case and the documents produced establish that the applicant had participated in the freedom movement. It should be done applying the principle of probability. If the material/documents produced are otherwise convincing, the Government in appropriate cases may not insist on strict compliance with all the requirements stated in the Scheme.

These principles show a clear path as to how the claims under the Freedom Fighters Scheme are to be examined.”

We have examined the order under appeal on the principles enunciated in the above case. It is evident that the conclusion of appellant for rejecting FFP of 1st respondent is that the 1st respondent has furnished vague and unverifiable statements. The conclusion is bereft of any consideration of material available on record, much less the communication does not record why from the material available on record the applicants are inclined to ignore the recommendation of the State Government. We are not concluding by recording a finding that the recommendation of State Government is binding on the appellant, but the conclusion recorded or arrived at by appellant must refer to a semblance of reason and observe that the

report of State Government is required to be ignored. On the other hand, from the material available on record and in field verification, it appears the department was satisfied with the details given by the 1st respondent. Now, to insist upon what could not be actually made available amounts to, in our considered view, is contrary to the principles reiterated in **Namdeo's** case (3 supra). The State Government as early as in 2007 decided to examine 100% applications filed for grant of FFP.

A report to Central Government was sent on 30.04.2011 recommending for sanction of FFP. The decision to reject was taken on 06.09.2006 by the Central Government. The 1st respondent claims to have been detained in a camp. The insistence upon by the appellant to provide more details for FFP is contrary to the Scheme and on the contrary Scheme provides for detailed verification of documents/details furnished by freedom fighters. Upon verification if details are accepted by State Government, cryptic remark resulting in rejection is impermissible. The 1st respondent cannot also, at that point of time, provide details with exactitude and the rejection of claim is contrary to the view of the Hon'ble Apex Court in **Namdeo's** case (3 supra). Independently, we have perused the material available on record and are satisfied that the learned Single Judge has rightly set aside the communication dated 06.09.2006 and directed payment of FFP to 1st respondent, who is admittedly aged 80 years.

For the above reasons, the writ appeal fails and is accordingly dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B.

J

Date: 10.09.2015

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[\[1\]](#) 2013(5) ALD 23
[\[2\]](#) (2006 (4) ALD 185
[\[3\]](#) 2013) 14 SCC 225