

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.A.No.836 OF 2015

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

Heard Ms.S.Nanda, learned counsel for the appellants,
Sri Avinash Desai for respondent No.1 and the Government Pleader for Revenue for
respondent No.2.

The writ appeal arises from the order dated 17.12.2014 in W.P.No.10779 of 2012.

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

The appellants through communication dated 28.02.2012 rejected the claim of 1st
respondent for sanction of pension under the Scheme. The communication dated
28.02.2012 reads as follows:

"The re-verification report has been examined as per the policy for grant of Samman Pension under the Swatantrata Sainik Samman Pension Scheme, 1980, and the guidelines/instructions issued from time to time. As per guidelines issued under Ministry's letter No.112/08/2008-FF(HC) dated 10th September, 2009 only those Personal Knowledge Certificate/Co-Freedom Fighters Certificate, which indicate the specific details of the authority, cases which necessitated the underground/ border camp suffering as also the period of underground/ border camp suffering should be accepted. PKCs/CFCs which do not indicate the period of suffering or the details of the cases and authority should not be relied upon.

On examining the re-verification report, it has been noticed that PKC and CFCs certifiers have made vague unverifiable statements, without giving specific details of the case/authority which led the claimant for going underground sufferings in a border camp. Hence,

the recommendation of the State Government on the basis of PKC/CFCs furnished by them along with their re-verification report is in consistent with the guidelines issued to the State Government”.

The 1st respondent in W.P.No.10779 of 2012 challenges the legality of the communication dated 28.02.2012. 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:

“As seen from the material paper book filed along with the writ petition, the case has a checkered history and for one reason or the other, the claim of the petitioner has been rejected. Initially, it was rejected on the ground that Hanamakonda Camp was not one of the camps identified, whereas the orders of the Government of India, dated 28.01.2005 where the list of 18 additional border camps recognized for grant of “Swatantra Sainik Sanman Pension Scheme, 1980” is enclosed, Hanamakonda Town is shown at Serial No.12. Therefore, the petitioner was eligible, but since no formal order of recognition was granted when his application was processed, it was rejected. Though this Court passed detailed orders fixing time limit in the judgment, dated 30.01.2006 in W.P.No.7411 of 2004, the Central Government took its own time to pass orders i.e., for more than six years and that too at the stage when W.P.No.30890 of 2010 was taken up for consideration. No reasons are assigned as to why the central Government took so much time for taking a decision even though the recommendations of the State Government was made on 15.07.2008.

Even now the rejection is on the ground that the statements made in the Personal Knowledge Certificate and the Co-Freedom Fighters Certificate are vague, which stand of the central Government is contrary to record. It is, thus, seen that there is absolutely no application of mind by the competent authority while considering the claim of the petitioner. The petitioner is made to wait to receive the benefits which he is legally entitled to in accordance with the “Swatantra Sainik Sanman Pension Scheme, 1980” for so long only because competent authority in the central Government has not applied its mind and not verified the records before taking a decision. The petitioner is invoking the jurisdiction of this Court again and again and compelled to litigate before this Court for long time.

The very idea of notifying such a policy is to provide some kind of succour to those persons, who have sacrificed their life for the purpose of securing freedom to this country. As certified by the Camp Incharge, the petitioner had to lose one year of his education on account of his participation in the movement which might have had cascading effect on the entire career of the person. Thus, it is wholly illegal on the part of the central Government to mechanically deal with the matter when the claim is genuine and the document on record support the claim of the individual. Already sufficient time is consumed by the central Government in considering the genuine claim of the petitioner. As noted above, the earlier rejection on 08.07.2003 was on the ground that the Camp of the movement where the petitioner stated to have participated was not recognized and now it is rejected on the ground that the details furnished are not clear, vague and unsubstantiated. On both occasions, the rejection was not on valid grounds and shows non-application of mind defeating the very object of the Act.

Having regard to the fact that the petitioner has already crossed 80 years and the rejection on two occasions was wholly illegal and that the documents on record support the claim of petitioner for grant of pension under the Scheme, the order impugned in the writ petition is set aside and consequently, the central Government (first respondent) is directed to forthwith pass orders granting pension to the petitioner under the "Swatantra Sainik Sanman Pension Scheme, 1980", as expeditiously as possible, preferably within a period of three (3) months from the date of receipt of a copy of this order."

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, PANJANALA RAJAIAH v. GOVERNMENT OF INDIA, NEW DELHI** and **STATE OF MAHARASTRA AND OTHERS v. NAMDEO.**

Learned counsel for the appellants vehemently contends that the order rejecting 1st respondent's application for grant of FFP is in accordance with the Scheme and communication dated 01.05.2001. According to the learned counsel for the

appellants, the details furnished by the 1st respondent are either vague or not discernable and the appellants were 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 appellants 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 appellants have 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 appellants 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 appellants, but the conclusion recorded or arrived at by appellants 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 28.02.2012 by the Central Government. The 1st respondent claims to have been detained in a camp in 1947. The insistence upon by the appellants to provide more details for FFP is contrary to the Scheme. 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). Before accepting the findings recorded by the learned Single Judge, we have perused the material available on record and are satisfied that the learned Single Judge has rightly set aside the communication dated 28.02.2012 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.

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

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 01.09.2015

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