

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6801 OF 2004

Shri Ramkishan s/o. Narhari Sangewar
Age 79 years, Occ, Social Worker,
R/o. Kuntur, Tq. Naigaon,
Dist. Nanded.

.. PETITIONER'S

VERSUS

- 1] The State of Maharashtra
through its Secretary,
Freedom Fighters Cell,
General Administration Department,
Mantralaya, Mumbai-32.
- 2] The Chairman,
High power committee of
Freedom Fighters Cell,
General Administration Department,
19th floor, Opp. Mantralaya,
New Administration Building,
Mumbai-32.
- 3] The Desk Officer/section officer,
General Administration Department
Freedom Fighters Cell,
19th floor, Opp. Mantralaya,
Mumbai-32.
- 4] The Collector,
Nanded, Dist. Nanded.

... RESPONDENTS.

Mr. V.S. Panpatte, Advocate for the petitioner.
Mr. B.A. Shinde, AGP for respondent Nos. 1,3 and 4.
Mr. B.B. Kulkarni, Advocate for respondent No.2.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.

DATE OF RESERVING JUDGMENT : 4TH APRIL, 2016
DATE OF PRONOUNCEMENT OF JUDGMENT : 5TH JULY, 2016.

ORAL JUDGMENT [PER K.K. SONAWANE, J.] :-

1] By this petition, the petitioner is agitating the validity, correctness and propriety of the impugned order passed by the respondent dated 4th August, 2004, rejecting the claim for grant of benefit of Samman Pension as envisaged under the Freedom Fighter Pension Scheme, 1972.

2] The factual matrix emerging from the circumstances on record in this petition is that, the petitioner had taken active participation in the Hyderabad Liberation Movement and worked as an underground freedom fighter. He had participated in the activities like campaigning against the erstwhile Nizam Government. He had collected funds for the sake of Liberation Movement. He supplied weapons to the activists of the movement. He was providing secret information about the police activities to the other workers etc. The petitioner participated in the freedom movement as underground freedom fighter. The veteran leaders - Shri Vitthal Bhosale, Kondiba Surne, Nagorao Mugal, Bhujangrao Panchal, Govind More, Rajendra Sangewar and others were the associates of the petitioner in the liberation movement.

3] According to the petitioner, the Government of India introduced a scheme providing grant of pension to the freedom fighters and considering the eligibility criteria, he is entitled to get the benefit of pension under the scheme. Therefore, in the year 1990, the petitioner preferred an application and claimed the benefit of Samman Pension under the Government Scheme. The petitioner submitted all the requisite documents

in support of his claim including the affidavits of veteran leaders/freedom fighters of the Liberation Movement. However, the respondent authority did not take into consideration the claim of the petitioner and kept the application pending uptill 1995. The circumstances constrained the petitioner to file Writ Petition No. 4344 of 1995 and after appreciating the facts and circumstances, this Court issued directions to the respondents to decide the application of the petitioner on merits within a period of six months. Thereafter, the concerned Collector forwarded the proposal to the Government Authority. However, after considering the relevant documents produced on behalf of petitioner, the government authority was not convinced to grant pensionary benefits to the petitioner and rejected the claim vide order dated 16.11.1996, on the ground that the petitioner failed to fulfill the eligibility criteria required under the scheme. Being dissatisfied with the order of rejection of claim, petitioner again approached to this Court and filed W.P. No. 744 of 1998 for re-appraisal of his proposal for grant of pensionary benefit under the scheme. Meanwhile, the petitioner moved another application on 30.4.1998 in prescribed proforma before the District collector, accompanying with all requisite documentary evidence for grant of pensionary benefit under the scheme. Petitioner appended the affidavits of veteran freedom fighters, namely, S/Shri Gangaprasad Yetalkar, Govindrao More, Nagorao Mugal in support of his claim. These freedom fighters have certified that the petitioner had actively participated in the Liberation Movement. In the proceeding of W.P. No. 744 of 1998, the directions were issued by this Court to the respondent to decide the claim of the petitioner

afresh within the period of six months. Despite the efforts to pursue the application, the petitioner did not receive any response from Government authority. Eventually petitioner received the letter dated 10-12-2001, from respondent in which it has been communicated to the petitioner that his claim cannot be granted for non-compliance of conditions prescribed in the Government Resolution dated 4.7.1995. The petitioner immediately filed a representation on 15.1.2002 against the rejection of his claim and requested to review the earlier order dated 10.12.2001. Moreover, the circumstances constrained the petitioner to file another writ petition No. 3465 of 2003 and put in question the genuineness and correctness of the order of rejection of his claim. At last, the petitioner succeeded in the petition to get the impugned order of rejecting the claim set aside and the proceedings once again remanded back to the respondent for hearing afresh within a period of six months. The petitioner taking abundant precaution, filed another representation dated 21.6.2004, in detail and requested to grant his claim for pensionary benefit under the scheme. Unfortunately, at this juncture also, the claim of the petitioner for grant of pension came to be turned down by the respondent, vide impugned order dated 4.8.2004 for the reason that the petitioner did not fulfill the eligibility criteria as contemplated under the scheme. Being aggrieved thereby, the petitioner has preferred the present writ petition for redressal of his grievances.

4] The respondent No.1 appeared and vociferously opposed the contentions put forth on behalf of the petitioner by filing affidavit in reply. According to respondent No.1, the petitioner has claimed himself to be an

underground freedom fighter of the Hyderabad Liberation Movement. He had an involvement in the activities like hoisting the flag, spreading the thoughts of Shri Ramanand Tirth, creating awareness against the Hyderabad regime, providing assistance to the underground freedom fighter by supplying them food, arms, ammunitions etc. He had also participated in the activities like cutting the SHINDI trees, disrupting the rail tracks. It has been submitted that considering the role played by the petitioner in the Liberation Movement, it cannot be said that he was an underground freedom fighter. It was not possible for him to do all these activities by making himself underground. The petitioner did not comply with the eligibility criteria as prescribed under the Government Resolution dated 4.7.1995. The petitioner did not produce any document of his suffering or he was compelled to remain away from the house or expelled from the educational institution. He had not produced any document about any severe assault by the police resulting into his physical disability. There was no evidence to show that the petitioner was absconding, nor there was any newspaper cutting or jail certificate in regard to freedom fighters who filed an affidavit in support of claim of the petitioner. The respondents also criticized that the petitioner has mentioned that he had applied in the year 1990 in prescribed format. However, petitioner produced the documents i.e his own affidavit and affidavit of Vitthal Nagoba executed in the month of January, 1995 and November, 1995. These affidavits reflect that the petitioner must have filed the application in the year 1995. Therefore, the eligibility criteria prescribed under the Government Resolution dated

4.7.1995 are applicable to the petitioner's case. In view of the directions of this Court in W.P. No. 3465 of 2003, the claim of the petitioner was re-examined and at that time also, the petitioner was found not entitled for financial benefits of pension within the ambit of Government Resolution dated 4.7.1995. The petitioner claimed the benefit under the category as underground freedom fighter. But his activities demonstrate that it was not necessary for the petitioner to go underground. The respondents put in controversy the genuineness of the affidavit of Shri Nagorao Mogal. The recitals of the affidavits of the petitioner and affidavit of Nagorao Mogal appear identical and similar one. The jail certificate of Nagorao Mogal reflects his imprisonment for the offence punishable under Section 243 which is an offence relating to counterfeit currency. It has no nexus with the activities of the Liberation Movement. In such circumstances, the claim of the petitioner came to be rejected once again on the ground of insufficiency of proof for his entitlement to get benefit of Samman Pension Scheme.

5] At the outset, it would be imperative to take into consideration the basis of the claim of the petitioner to appreciate the controversial issue of correctness, validity and propriety of the impugned order dated 4.8.2004. It is not in dispute that after various earlier resolutions, the Government of Maharashtra formulated the specific scheme to determine the eligibility criteria for Freedom Fighter Pension vide Govt. Resolution dated 4.7.1995. There are two different categories under the scheme, namely, one under the category of "underground freedom fighters" and another is, "Prisoner

freedom fighters”. Since the petitioner preferred the application under the category of “underground freedom fighters”, he has to comply with the following pre-requisites stipulated under the Government Resolution dated 4.7.1995 to claim the benefit of the scheme. The conditions are :-

[1] The applicant should submit a certificate stating as to what type of problems and hardships he had undergone following his participation in the freedom movement;

[a] he had remained away from his house or family;

[b] he had to leave education or expelled from the educational institution;

[c] he was severely beaten up by the police which resulted in disability;

[2] The certificate of two freedom fighters of their respective area who were convicted for minimum two years or who were declared absconding or who remained absconded for atleast two years. These certificates should be accompanied with the copies of Jail Certificate showing imprisonment or proclamation of conviction or absconding as well as duly verified affidavits of the freedom fighters issuing the certificates.

[3] Certified copy of the Government document of that time, if any, available regarding the fact that he remained underground.

[4] The original newspaper of news item published containing information about the name of the petitioner being underground freedom fighter.

[5] At the time of recommendation, the District Gaurav Committee shall submit their opinion.

6] The impugned order dated 4.8.2004, rejecting the claim of the petitioner demonstrate that the petitioner did not produce any relevant document as required under the aforesaid Government Resolution dated 4.7.1995, except the affidavit of certain persons. But, these affidavits were also not found considerable to fulfill the eligibility criteria to derive the benefit under the scheme. The petitioner failed to submit the documents of his suffering on account of his involvement/participation in the freedom movement. He had not produced the proof that the circumstances compelled him to live away from the household or he was expelled from the educational institution, or that he gave up education or he has suffered disability due to beating inflicted by the police. The petitioner did not furnish the news at that time showing his name as underground freedom fighter published in the newspaper nor any Government record stating that the petitioner was an underground freedom fighter.

7] Shri Panpatte, learned counsel for the petitioner vehemently submitted that the impugned order, rejecting the claim of the petitioner is improper, perverse and contrary to the object and purpose of the scheme. The respondent authority did not appreciate the documents produced on record by the petitioner in its proper perspective and adopted an hyper-technical approach. He further submits that in such cases the standard of proof is not required at par with the proof required in criminal

cases. But, the claim is required to be determined on the basis of probabilities. The respondents have committed error while discarding the affidavits of veteran freedom fighter like Shri Mogal and others, produced on record by the petitioner. According to learned counsel, the claim of the petitioner was filed prior to the year 1990 and, therefore, the eligibility criteria laid down under the Government Resolution dated 4.7.1995 would not be made applicable to the claim of the petitioner. However, the petitioner filed affidavits of other veteran freedom fighters who have certified that the petitioner had an active participation and involvement in the Hyderabad Mukti Sangram. In support of his submissions, the learned counsel for the petitioner has relied on the judgments :-[1] Mukundlal Bhandari Vs. Union of India AIR 1993 SC 2127 [2] Guru Dayalsingh Vs. Union of India (2001) SCC page 8 [3] Chhotubhai H.L. Patel Vs. State of Gujarat and others AIR 1996 Gujarat 291 [4] judgment in SLP Civil No. 8899 of 2010 Kamalbai Sinkar Vs. State of Maharashtra and others. Eventually, the learned counsel for the petitioner prayed to quash and set aside the impugned order and issue directions for grant of pensionary benefits to the petitioner.

8] It is to be noted that the alleged scheme came to be introduced as “Swatantrya Sainik Samman Pension Scheme”. The scheme is meant to benefit the freedom fighters. As observed by the Apex Court in the matter of *“Mukundlal Bhandari vs. Union of India” reported in AIR 1993 SC 2127*, the object of the scheme was to honour and where it was necessary also to mitigate the suffering of those who had given their all for the country

in the hour of its need. The scheme was not to reward or compensate the sacrifices made in the freedom movement. It would be contrary to the spirit to convert the scheme into some kind of programme of compensation. The scheme should retain its high objective with which it was motivated.

9] Pursuant to the aforesaid object and purpose of the scheme, what is necessary in the matter of such claim, is to determine the factum of eligibility of the petitioner to award the benefit of the scheme. It is clear that after rejection of the claim on 16.11.1990 the petitioner moved another application in prescribed proforma on 30.4.1998 before the District Collector with additional documents and thereafter directions were issued by this Court in W.P. No. 744 of 1998 to decide the said claim afresh within six months. The proof of involvement/participation of the petitioner in the Liberation movement would be the decisive factor to ascertain eligibility of the petitioner for benefit of the scheme. It would be fallacious to appreciate that the petitioner preferred the claim prior to the year 1990 and hence, the yardstick laid down under the Government Resolution dated 4.7.1995 would not be made applicable to his claim. In contrast, in view of the judgment of the Full Bench of this Court in the matter of “Tukaram Ramji Koli Vs. State of Maharashtra”, the criteria determined under the Government Resolution dated 4.7.1995 is applicable to all cases which are pending on the given dates with the Collector, however, the old cases already decided will not be reopened.

10] At this juncture, it would be profitable to make a reference to

the guidelines delineated by the Apex Court in the case of ***“State of Maharashtra Vs Namdeo” reported in (2013) 14 SCC 225.*** The Apex Court, after considering the observations made in Mukundlal Bhandari’s case (referred to supra) as well in the case of ***“Gurudayal Singh Vs. Union of India”*** reported in (2001)8 SCC 8, etc. laid down the principles for examination of the claim of the freedom fighters to ascertain their locus-standi for benefit under the scheme. The Apex Court, in para. 18 and 19 of the aforesaid judgment observed thus :-

“18. 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 the 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 the 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, the 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 by 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.

19. These principles show a clear path as to how the claims under the Freedom Fighters' Pension Scheme are to be examined."

11] In the matter in hand, the petitioner did not succeed to place on record any other material except the affidavits of certain persons to substantiate his claim. Admittedly, this is the fourth round of litigation in the claim proceedings of the petitioner. It appears that sufficient opportunity was granted to the petitioner to furnish the proof, as contemplated under the Scheme vide Government Resolution dated 4.7.1995. No doubt, the scheme itself reflects the documents to be produced by the claimant for pensionary benefit. But, on each and every occasion, the respondent authority turned down the petitioner's claim for want of sufficient proof. The respondent authority found reluctant to act upon the bare documents of affidavits of certain persons placed on record by the petitioner. The respondent authority repeatedly insisted for other substantial proof required under the scheme. Eventually, the circumstances and facts on record compelled the respondent authority to reject the claim once again vide order dated 4.8.2004 which is subject matter of this writ

petition.

12] We have carefully examined the claim of the petitioner and the documents appended with it. We do not find any infirmity in the impugned order passed by the respondent authority. We would reiterate that except the affidavits of certain persons, the petitioner failed to produce any other relevant document to substantiate his claim, as required under the Government Resolution dated 4.7.1995. In such circumstances, it would be hazardous to allow the claim of the petitioner merely on the basis of affidavits produced on record, by ignoring other requirements as contemplated under the scheme vide Government Resolution dated 4.7.1995. It would amount to misuse and abuse of the process prescribed to ascertain eligibility of the claimant under the scheme. We would like to make a reference of the judgment of the Apex Court, in the matter of Namdeo (cited Supra), wherein, the Apex Court has dealt with similar situation and refused to keep implicit reliance on the bare affidavits filed on record on behalf of claimant therein. The Apex Court, in the said judgment, in para. 20 and 21, elucidate as under :-

“20. In the present case, as already noted above, except the affidavits of the two freedom fighters, no other material is placed to substantiate the claims. Approach of the High Court accepting the version of the respondents merely on affidavits, ignoring the requirements of the Scheme altogether, is fraught with

dangers and would be prone to misuse and abuse. We can appreciate that direct evidence of having participated in the freedom movement, which events occurred almost 70 years ago, may not be available and therefore it should not be deemed that this Court is insisting on such direct evidence in order to enable an applicant to succeed in his claim. At the same time, the Government Resolution dated 4-7-1995 enlists the documents, on the production of whereof, the respondents could substantiate their participation and involvement in the freedom movement. In a given case, if there is some cogent material on the basis of which satisfaction can be arrived at about the participation in the agitation, the Government may relax the other requirements. However, it would be for the State Government to exercise such a discretion, in a given case, if it is otherwise fully satisfied that the material produced demonstrate that the applicant is a freedom fighter.

21. In the present case, the Government rejected the claim by passing a speaking order to the effect that certain documents required under the 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 the 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  235 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 the High Court could not have invalidated the orders of the Government..

13] In view of the above discussion, we are not inclined to nod in favour of the petitioner for the reliefs claimed in the petition. The impugned order passed by the respondent authority appears in consonance with the Government Resolution dated 4.7.1995. The documents produced on record do not appear sufficient to point out active participation/involvement of the petitioner in the Hyderabad Liberation Movement. There are no documents available on record except the affidavits of certain persons to substantiate the claim and it would be unsafe to draw favourable inference on the basis of bare affidavits, ignoring the other requirements as prescribed under the Government Resolution dated 4.7.1995. In the result, writ petition being devoid of merit stands dismissed. Rule is discharged. In the circumstances, there shall be no orders as to costs.

[K.K. SONAWANE,J]

[S.V. GANGAPURWALA, J]

grt/-