

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.397 OF 2011**

Mr. Higinio Vilar de Maria Viegas,
s/o. late Joao Viegas, aged 72 years,
married, Indian National,
retired Superintendent of Police,
r/o. 16, Abhinav Housing Complex,
Alto Betim, Post Porvorim,
Bardez, Goa-403 521.

... Petitioner

Versus

1. Government of Goa,
through the Secretary (Home),
Home Department (G), Secretariat,
Porvorim, Bardez, Goa.
2. Freedom Fighters' Welfare Committee
through its Member Secretary (Special
Secretary/Under Secretary – Home),
Home Department, Government of Goa,
Secretariat, Porvorim, Bardez, Goa.
3. Government of India,
through the Secretary,
Ministry of Home Affairs,
Freedom Fighters' Cell, 1st Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi.

... Respondents

Mr. S.G. Dessai, Senior Advocate with Mr. S. Naik, Advocate for the
Petitioner.

Ms. Sapna Mordekar, Additional Government Advocate for Respondents
No.1 & 2.

Mr. D. Lawande, Central Government Standing Counsel for Respondent
No.3.

**Coram:- F. M. REIS &
K. L. WADANE, JJ.**

Date:- 5th January, 2016

ORAL JUDGMENT :(Per F.M. Reis, J.)

Heard Mr. S.G. Dessai, the learned Senior Counsel appearing for the petitioner, Ms. Sapna Mordekar, the learned Additional Government Advocate for respondents no.1 & 2 and Mr. D. Lawande, Central Government Standing Counsel for respondent no.3.

2. The above petition, inter alia, takes exception to the decisions taken on 12/10/2010 and 28/01/2011 whereby the claim of the petitioner for life pension as freedom fighter came to be rejected.

3. Briefly, the facts of the case of the petitioner in a nutshell are that the petitioner was a freedom fighter and in fact according to him he was a student in Belgaum and was involved in the freedom movement which resulted into the Liberation of Goa, Daman and Diu. It is further the contention of the petitioner that he was in the freedom movement in the year 1953 and was detained in Canacona Police Station in the year 1957 and thereafter there were summons issued against the petitioner which forced the petitioner to go underground from the year 1957 to 1961. It is further his case that immediately after the liberation of Goa, Daman and Diu, the petitioner got himself registered as a freedom fighter in the year 1962 in the Home Department. It is further the case of the

petitioner that rules were framed in the year 1973 to provide pension to the freedom fighters and according to him the petitioner was not eligible to the eligibility criteria mentioned therein as he did not suffer imprisonment for the period of 6 months, though the petitioner had applied for such relief. It is further the contention of the petitioner that in the year 1988 fresh pension rules for freedom fighters came to be enacted by the State Government and according to him under the rules as the petitioner was underground for a period of more than one year the petitioner was entitled for such life pension. It is further the case of the petitioner that in the year 2004, the petitioner applied for such pension and a Scrutiny Committee was constituted by the State Government to look into such claims of freedom fighters. The Committee which was then constituted had recommended the name of the petitioner to be eligible for such life pension though one of the members had taken a view that instead of life pension the petitioner be considered for any other relief. This exercise was completed by the said Scrutiny Committee in July, 2004. It is further the case of the petitioner that this recommendation of the Scrutiny Committee was not informed to the petitioner though the petitioner was seeking information and entering into correspondence with that regard with the concerned authority. It is further the contention of the petitioner that only in the year 2011 the

petitioner learnt that the respondent/State Government had refused the claim of the petitioner for life pension on the ground that the subsequent scrutiny Committee constituted by the State Government had rejected the claim of the petitioner. Being aggrieved by the said two impugned orders passed by the respondents refusing the life pension of the petitioner as freedom fighter the present petition came to be filed inter alia seeking to quash and set aside the said orders.

4. Mr. S.G. Dessai, the learned Senior Counsel appearing for the petitioner has taken us through the minutes of the Scrutiny Committee constituted in the year 2004 to point out that the three out of four Committee members had recommended the name of the petitioner to be granted such life pension. The learned Senior Counsel further pointed out that one member who had dissented from such view had in fact not rejected totally the claim of the petitioner though the recommendation was to grant the petitioner some other benefits as the member was of the view that the role of the petitioner was minimum. The learned Senior Counsel further points out that without accepting the recommendation of the Scrutiny Committee constituted in the year 2004, the respondent arbitrarily referred the application filed by the petitioner in the year 2004 again to the new Scrutiny Committee whereby the impugned

orders came to be passed rejecting the claim of the petitioner. The learned Senior Counsel has taken us through the impugned orders to point out that there is no scrutiny of the material produced by the petitioner nor any reasons given therein to justify the refusal of the claims of the petitioner. The learned Senior Counsel further submits that in the impugned orders there is no reference given to the recommendation of the earlier Scrutiny Committee which has categorically recommended the name of the petitioner for life pension. The learned Senior Counsel further submits that as the material produced by the petitioner has not been scrutinized and there are no justifiable reasons to refuse the claim of the petitioner the impugned orders cannot be sustained and deserve to be quashed and set aside. The learned Senior Counsel further pointed out that considering the material on record there can be no dispute that the petitioner was in fact a freedom fighter and, as such, entitled to the life pension in terms of the rules of the year 1988. The learned Senior Counsel further pointed out that the petition be accordingly allowed and the respondents be directed to pay life pension to the petitioner in terms of the said rules. In support of the his submission the learned Senior Counsel has relied on the judgment of the Apex Court reported in AIR **2001 SC 3883** in the case of **Gurdial Singh V/s. Union of India & Ors.**

5. On the other hand, Ms. S. Mordekar, the learned Additional Government Advocate has submitted that the petitioner was not a freedom fighter as according to her the petitioner was not involved in any freedom movement. The learned Counsel further submits that though the impugned order may not disclose the reasons why the claim of the petitioner has been rejected, nevertheless, the learned Counsel, upon instructions, states that there were records maintained by the State Government disclosing specific reasons why such application was rejected, but the file with that regard has been misplaced by the concerned authority. The learned Additional Government Advocate further pointed out that as the records are not available the respondents cannot produce the record to disclose the specific reason as to why the application came to be rejected. The learned Counsel further pointed out that based on the material produced by the petitioner himself the contradiction which can be drawn therefrom would itself justify to refuse the claim of the petitioner that he was a freedom fighter. The learned Counsel further pointed out that the recommendation of the earlier Scrutiny Committee are not binding on the State Government and according to her the State Government was justified to refuse the recommendation of the earlier Scrutiny Committee. The learned

Counsel further pointed out that there is no material on record produced by the petitioner to establish that the petitioner had gone underground for a minimum period of one year in terms of the requirements provided in rule 2(h) of the Rules of 1988. The learned Counsel further submits that the case put forward by the petitioner that he was a freedom fighter cannot be believed in view of the inner contradiction in the documents as well as in the affidavits filed by the petitioner himself. The learned Counsel further pointed out that in case this Court directs this Committee to reexamine the matter such exercise would be carried out as expeditiously as possible.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. On perusal of the recommendation of the first Scrutiny Committee constituted in the year 2004, we find that three out of four members of such Committee had in fact accepted the claim of the petitioner for life pension. The remaining one member had recommended that the petitioner could be given some other benefits instead of life pension as the involvement of the petitioner in the freedom movement was minimal. The said recommendation of the first Scrutiny Committee would reveal that the involvement of the petitioner to some extent in the freedom movement cannot be disputed.

But however, the fact remains as to whether the material on record would suffice the requirements of rule 2(h) of the Rules of 1988. On perusal of the recommendations of the second Scrutiny Committee in the year 2011, we find that the earlier recommendation of the first Scrutiny Committee have not even been considered nor there are any specific or cogent reasons disclosed therein to justify the decision taken therein rejecting the claim of the petitioner. In a petition under Article 226 and 227 of the Constitution of India one aspect which this Court can examine is whether the principles of natural justice have been followed whilst arriving to such decision. Not furnishing adequate reasons in such decision would itself be a ground for interference by this Court in a petition under Article 226 and 227 of the Constitution of India. Considering that the impugned decisions in the above petition does not disclose any reasons rejecting the claim of the petitioner, we find that it would be appropriate in the interest of justice to direct the Scrutiny Committee to examine the claim of the petitioner based on the application dated 23/01/2004 afresh by considering all the material produced by the petitioner. It would not be out of place to note that while taking such decision the recommendation of the earlier Scrutiny Committee would also, have to be considered by such Scrutiny Committee especially when the reason why the earlier recommendations

are rejected are not available. The petitioner if so advised may produce copies of any additional documents in support of his claim to such Scrutiny Committee at the earliest. Needless to say, the Committee would have to scrutinize the documents produced by the petitioner and pass a speaking order on the said application filed by the petitioner.

7. In view of the above, we pass the following order:

ORDER

(i) The impugned orders dated 12/10/2010 and 28/01/2011 are quashed and set aside.

(ii) The respondent no.2 or any other Committee designated by the Government with that regard shall proceed to examine the application of the petitioner dated 23/01/2004 afresh in the light of the observations made herein above as expeditiously as possible, in any event within 6 weeks from the date of the receipt of this order.

(iii) All contentions of the parties on merits are left open.

(iv) Rule is made absolute in the above terms with no order as to costs.

K. L. WADANE, J.
NH/-

F. M. REIS, J.