

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9241 OF 2010

Parcharam @ Parcho Kewalram Ailani
@ Vidyarthi, since deceased, through
legal heir:- Chanderlal Parcharam Ailani
@ Vidyarthi

.... Petitioner

Vs.

Union of India & Anr.

.... Respondents

Mr. J.M. Puranik for the Petitioner.

Mr. B.V. Samant, AGP, for Respondent No.2-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 13, 2017

P.C:

1. We have heard the petitioner's Advocate.
2. The petitioner claims to be a freedom fighter. He firstly contends that he has actively participated in the Quit India Movement of 1942. That is what his claim is in para 1.
3. Thereafter, the petitioner states that he was born on

15-6-1919, completed his studies, and was a recognised freedom fighter. He was recognised as such by the State of Maharashtra. He has been issued an Identity Card and a *Sanman Patra*.

4. The petitioner claims that he took active part in the Quit India Movement. He was arrested in the year 1943 and was awarded death sentence for waging war against the then British Government. Thereafter, the death sentence was commuted to life sentence. The petitioner managed to escape from jail after spending two months. He remained underground and the British Government could not trace him out until the independence, which we achieved in 1947.

5. Then, the petitioner claims that he worked for the betterment of the plight of Sindhi community and has done a lot of social work. The petitioner claims that a freedom fighter's pension was awarded to him and he was also elected as Member of the Maharashtra Legislative Assembly from the Ulhasnagar constituency. He was an independent candidate.

6. It is stated that the petitioner being a recognised freedom fighter and entitled to receive pension, prayed for issuance of such pension. However, the first respondent/Union of India did not sanction any such pension. Therefore, the petitioner gave a notice, copy of which is at Annexure "F". Thereafter, the State Government responded by reiterating that the petitioner indeed is a freedom fighter and forwarded his case with the requisite documents to the Union of India.

7. The petitioner was then informed that the Union of India has rejected his claim.

8. Though the writ petition refers to the petitioner's participation in the Quit India Movement, what we are informed by the learned Advocate appearing for the petitioner is that the petitioner participated in the Goa Liberation Struggle. There is not a single averment, much less any document to that effect. Equally for those who are claiming to be freedom fighters, there is a complete scheme and under which the evidence has to be submitted. The documentary evidence which is styled as both

primary and secondary is in the form of Government's orders proclaiming the applicant/freedom fighter as an absconder, announcing an award on his head or for his arrest or ordering his detention.

9. In that regard, we find that the petitioner has made a bald statement in para 6 of this petition with regard to his arrest and detention and equally a reward on his head of Rs.10,000/-. However, no primary evidence of this nature was forwarded.

10. Then the secondary evidence which is only permissible in the absence of such primary record is in the form of a declaration on affidavit from a prominent freedom fighter who has proven jail suffering for a minimum of two years and who happened to be from the same administrative District.

11. We do not find on what basis the State Government made favourable recommendation because what the documents annexed to the petition indicate are that the State Government

has sanctioned the pension and equally granted other benefits. However, we do not find any reference made by the State Government to a primary or a secondary evidence and which is mandated by the scheme. In such circumstances, the Government of India was right in rejecting the claim for freedom fighter's pension.

12. What we have on record is a document at page 36 which is styled as certificate. That is a certificate given by one Newandram V. Gurbani. He says that the petitioner is known to him and he took active part in the Quit India Movement of 1942. He was underground and was arrested in 1943. He was sentenced to death and later on that was commuted to life imprisonment. He escaped from Karachi District Jail in 1945. There was an award announced. Till freedom, he was not arrested. This certificate is dated 18-1-83. Then, one Anand Hingorani gives a certificate dated 28-9-1990 and supporting the claim of Newandram Gurbani. We have found that the petitioner relies upon a letter, copy of which is at page 39 of the paper-book. That letter makes an interesting reading and the

relevant portion thereof reads thus:-

“Government is granting various concessions e.g. financial assistance, allotment of land, educational concessions, service. Government has under Government Resolution, General Administration Department, No.POS-1066/L, dated the 12th August 1966 prescribed definition of the term “Freedom Fighter” which inter alia lays down that such person should have suffered imprisonment for a period of not less than one month (including broken period). To become eligible for the concessions, the person concerned has to produce documentary evidence such as jail certificate etc. as already stipulated by Government from time to time. In the case of persons who have participated in the areas now forming part of Pakistan, especially the Sindhi Freedom Fighters, it is not possible for them to produce such certificates. After careful consideration of the question, it has been decided that such freedom fighters should be asked to file an affidavit in the matter, in lieu of the jail certificate and also to produce a corroborative certificate, testifying the statements made in the affidavit, from any of the following persons who were known as the prominent leaders in the freedom struggle in Sindh.

- 1) Shri Jairamdas Doulatram, Ex: Governor of Bihar and Assam, Ex: Union Minister for Food, Ex: Member of Congress Working Committee for number of years, and at present member of Rajya Sabha.*
- 2) Shri S.P. Thawani, Ex-Vice President of Sind Provincial Committee and ex-member of All India Congress Committee for number of years.*
- 3) Shri Parsram Tahilramani, Ex-President of Sind Provincial Congress Committee.*
- 4) Prof. Ganshyam Shivdasani, Ex-leader of Sind Assembly Congress Party, from beginning to the*

date of partition.

- 5) *Shri Metharam Khilnani, Ex-General Secretary of Sind Provincial Congress Committee.*
- 6) *Shri Newandram Gurbani, Ex-Congress M.L.A. in Sind and Ex-M.L.A. of Maharashtra Assembly.*

The applications for grant of 'Sanmanpatra' received from such persons may also be considered on the same lines as of other freedom fighters, defined in the aforesaid Government Resolution."

13. The petitioner was also known as Parcharam @ Parcho Vidyarthi and he gave an affidavit, copy of which is at pages 41-42, in the year 2002. Thereafter, he issued an Advocate's notice.

14. The Government of Maharashtra addressed a letter dated 11-8-2009 to the Under Secretary, Government of India, Ministry of Home Affairs (Freedom Fighter Cell), New Delhi. This letter reads as under:-

"Subject:- Swatantrata Sainik Sanman Pension Scheme 1980 Case of Shri Parcharam K. Ailani District Thane.

Reference:- Letter No: 121/5089/82-FF(WZ) dated 13.09.2007.

Sir,

With reference to the abovementioned letter, I am directed to forward herewith a proposal in respect of the claim of Shri Parcharam K. Ailani of District Thane, for grant of pension from the Central Revenue under the above scheme vide his application dated 10.06.1993.

2. On verification of requisite documents received through the Collector, it is observed that Shri Parcharam K. Ailani, District Thane satisfies the conditions for grant of pension. Hence his case is recommended for grant of pension.

3. Application of the applicant, an affidavit, Co-prisoner's affidavits and the previous correspondence etc. are enclosed herewith.

4. This case is scrutinised by this State Government.

Yours faithfully,

Encl: As above

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Sd/-

*Section Officer to the
Government of Maharashtra*

*Copy to The Collector of Thane,
2. Shri Parcharam K. Ailani. Bk No:595/7,8
at Ulhasnagar 2, Dist: Thane."*

15. From a perusal of this document as well it is evident that once the Government of Maharashtra was informed that the petitioner allegedly underwent imprisonment and was detained in District Jail, Karachi and escaped from that jail, it is not possible for him to produce any document, much less on

affidavit of any co-detenu/s, then, it is not known as to how the Government of Maharashtra certified the petitioner as a freedom fighter.

16. Precisely, this is the reason assigned in the Government of India's impugned communication and the contents of which are reiterated in the affidavit in reply.

17. It is in these circumstances, we find that the petitioner could not establish and prove his claim as a freedom fighter. Any support of the Government of Maharashtra in the facts and circumstances of the present case is beyond comprehension. How the State Government could change its stand and state affirmatively that the petitioner has affidavit of co-detenu and other documents when it sanctioned the pension on the footing that the petitioner was in the then Pakistan, has not been explained by filing any affidavit. It is in these circumstances that the petitioner's self-certification or self-assertion from the petition and the rejoinder affidavit does not carry his case any further.

18. For the reasons aforestated, we are of the opinion that the impugned order does not suffer from any error of law apparent from the face of the record nor perversity calling for our intervention in writ jurisdiction. The petition is entirely misconceived and is dismissed.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)