

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6730 OF 2014

Tulshiram s/o. Eknathrao Kolhe .. Petitioner
Age. 83 years, Occ. Nil,
R/o. Gurupimpri, Tq. Ghansavangi,
Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through Principal Secretary,
General Administration Department,
(Freedom Fighter's Section),
Mantralaya,
Mumbai-400 032.
2. Freedom Fighter's High Power Committee,
New Administrative Building, 8th Floor,
Mantralaya, Mumbai - 32.
Through its Member Secretary
3. Desk Officer,
General Administration Department
(Freedom Fighters Section)
Mantralaya, Mumbai - 400 032.
4. The Collector,
Jalna.

Mr.V.S.Panpatte, Advocate for the petitioner.
Mr.P.S.Patil, Addl. G.P. For respondent Nos.1 & 4.
Mr.Bhushan Kulkarni, Advocate for respondent Nos. 2 & 3.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

**RESERVED ON : 07.11.2017
PRONOUNCED ON : 20.03.2018**

JUDGMENT [PER : S.M.GAVHANE, J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsels appearing for the parties.

2. The petitioner has filed this petition for the following substantive reliefs :-

"B) By a writ of Certiorari or any other appropriate writ or directions in the like nature, the decision dated 18th February, 2014 issued by the respondent no.1 may please be quashed and set aside;

C) It may please be held and declared that the petitioner is an underground freedom fighter;

D) By a writ of Mandamus or any other appropriate writ or direction in the like nature, the respondents may please be directed to award all the benefits applicable to the underground freedom fighters under the 'Swatantrya Sainik Pension Scheme' to the petitioner from the date of his application i.e. 18.04.2001 and the respondents may please be ordered to release the arrears of pension to the petitioner within a period of one month."

3. According to the petitioner during the year 1947-48 he had participated in the freedom movement called as Hyderabad Mukti Sangram and he had worked as underground freedom fighter. The Government of Maharashtra has framed a scheme, namely, 'Swatantrya Sainik Sanman Pension Scheme' whereby the persons who fought in the various freedom struggles and participated, were declared to be entitled and eligible for the benefits flowing from the said scheme. The main object of the said scheme is to provide monetary benefits to the persons who participated in the freedom movements.

4. It is further contended that on 18.04.2001 the petitioner applied for grant of Sanman Pension and submitted all the necessary documents. The petitioner is the underground freedom fighter and struggled for freedom of the nation and hence he is entitled for the benefits of the 'Freedom Fighters' pension Scheme as per the norms and conditions laid down in the Government Resolution.

On 29.08.2001, respondent No.4 called upon the petitioner to submit certain details as regards sufferings by him during the Hyderabad Mukti Sangram at the hands of police and in respect of publication of his name in any newspaper at that time and the names of veteran freedom fighters with whom and under whose leadership the petitioner had worked. As per the above letter and GR dated 04.07.1995 the petitioner has produced evidence along with his own affidavit and affidavits of the veteran freedom fighters. In the affidavits these veteran freedom fighters have certified that the petitioner had participated in the Hyderabad Mukti Sangram in the year 1947-48.

5. By representation dated 12.09.2002, the petitioner has pointed out to respondent No.4 that by remaining underground he has worked in the said movement. On 17.10.2002, respondent No.4 communicated to the petitioner that since he had not submitted any documentary evidence, the District Honour Committee has

given decision to give him opportunity and he was called to attend hearing on 01.02.2002 with all documentary evidence. Thereupon, on 30.10.2002, the petitioner made detailed representation stating that he has already submitted the required documents with his application. On 01.11.2002 he personally attended the office of respondent No.4 and requested in writing to recommend his claim to the Government for further necessary action. On 12.08.2003 the District Honour Committee unanimously resolved that they are satisfied that the petitioner had participated in the Hyderabad Mukti Sangram in the year 1947-48 and the Government has already accepted him as underground freedom fighter and accordingly recommended his claim to the Government for grant of Sanman Pension and vide letter dated 21.08.2004, respondent No.4 forwarded his claim with recommendation of District Honour Committee to the Government. However, without considering documents and the above said recommendation, respondent No.1 on 19.08.2005 rejected the claim of the petitioner on the ground that he did not submit

documentary evidence as per GR dated 04.07.1995, which decision was communicated to him on 23.09.2005. Thereafter, he made representation dated 23.09.2005 and 29.09.2005 pointing out his entitlement for pension. Thereafter, on 17.09.2009 the Principal Secretary and Chairman of the High Power Committee strongly recommended his claim for sanction of pension. The matter was placed before the Hon'ble Chief Minister, who was pleased to direct the Principal Secretary of General Administration Department to reconsider the proposal of the petitioner, but the said proposal was pending for final orders.

6. In the above circumstances, the petitioner filed Writ Petition No.11157 of 2010, however, said petition was withdrawn as respondent No.1 was reconsidering the claim of the petitioner as per recommendation of the High Power Committee, the Chief Minister and the State Minister - General Administration Department. Thereafter also on 05.03.2011 and 25.03.2011 the petitioner made representations to the Chief Minister, Secretary of

Freedom Fighter Cell and Chairman of High Power Committee. However, on 30.03.2011 respondent No.1 again rejected the claim of the petitioner giving same reasons as were given in earlier decision dated 19.08.2005.

7. It is the contention of the petitioner that in similar set of facts and circumstances, the underground freedom fighters whose claims for getting Sanman Pension were rejected by the State Government though the said persons in support of their claims have produced affidavits of two freedom fighters and their imprisonment certificates, preferred Writ Petition Nos.2831, 3980 and 4023 of 2000 before this High Court and this High Court by judgment and order dated 26.07.2010 allowed the said Writ Petition by quashing the impugned decision of the Government and this High Court pleased to direct the State Government to pay freedom fighters pension to the respective petitioners. Though the claims of the similarly situated persons along with whom the petitioner had participated in the said freedom movement are similar

and evidence of his co-workers and that of the petitioner in support of respective claims is similar, respondent No.1 allowed the claims of his co-workers i.e. similarly situated persons. However, respondent No.1 by applying different yardsticks to the claim of the petitioner has wrongly and erroneously rejected the claim of the petitioner by the impugned order dated 18.04.2014. Hence, this petition.

8. Mr.Panpatte, learned advocate appearing for the petitioner has made submissions in the light of aforesaid contentions in the petition, more particularly, he submitted that the petitioner fulfills the requirements of both the Government Resolutions dated 05.09.1992 and 04.07.1995 to get pension as underground freedom fighter. He submits that similarly situated 29 persons have been granted pension under the freedom fighter pension scheme by the Government. So also, similarly situated persons had filed Writ Petition Nos.2831, 2980 and 4023 of 2000 and this Court by order dated 26.07.2010 held that orders

of rejection of their claims for pension under the above said scheme by the Government are not justified and accordingly petitions were allowed and the State was directed to pay freedom fighters pension to the petitioners in the respective petitions from the date of their applications. On petitioner's behalf, written notes of arguments have been filed. To support his submissions, learned advocate appearing for the petitioner has mainly relied upon the following decisions :-

- 1) Kamalbai Sinkar Vs. State of Maharashtra & Ors., Civil Appeal No.5344 of 2012 (@ SLP (C) No.8899 of 2010) decided on 20.07.2012.
- 2) State of Maharashtra & Ors. Vs. Namdeo etc.etc. Civil Appeal Nos.7899-7901/2013 (arising out of SLP (Civil) Nos.26441-26443 of 2012) decided on 09.09.2013.
- 3) Kishansinha s/o. Tukaramsinha Chandel Vs. The State of Maharashtra & Ors., W.P.No.2831 of 2000. (Bombay High Court, Bench at Aurangabad) decided on 26.07.2010.
- 4) Kalidas Nivrutti Dhale Vs. State of Maharashtra, 2014 (4) Bom.C.R.397 decided on 14.02.2014.
- 5) Punjaram s/o. Madhav Indewad Vs. The State of Maharashtra & Ors. W.P. No.2632 of 2011 (Bombay High Court, Bench at Aurangabad) decided on 28.08.2013.
- 6) Rajabai w/o. Pandoji Kshirsagar Vs. The State of Maharashtra & ors., W.P. No.3087 of 2013. (Bombay High Court, Bench at Aurangabad) decided on 09.02.2016.

9. In the case of Kamalabai Sinkar (Supra), the Hon'ble Supreme Court in para 3 has considered Government Resolution dated 04.07.1995 and observed that the criteria for grant of freedom fighters' pension was specified under two different categories, namely, one under prisoners' freedom fighters and other under the category of underground freedom fighter. In para 3, it was observed that for grant of pension under the second category, namely, underground freedom fighter, following requisites were stipulated :-

"E) Underground Freedom Fighter:-

Those freedom fighters who were under ground and doing a work in a movement of Quit India 1942-44 and Hyderabad Mukti Sangram 1947-48. They submit the following necessary certificates :-

- 1) Required to quit house and stay outside.
- 2) Required to leave education or removed from Educational Institutions.
- 3) Was so beaten by the police that caused disability.
- 4) The Certificates of two Freedom Fighters who were convicted for minimum two years or who were declared absconding or who remained absconded for at least two years and along with

such certificate, the Proclamation of conviction or absconding or supporting affidavit of person issuing such certificate along with the orders of Government.

5) The certified copy, if any, Government document of that time is available regarding the underground.

6) If any information about the name published in newspapers, the original newspaper.

7) At the time of the remark, District Gaurao Committee shall submit their opinion.

. In **Kamalbai Shankar (Supra)**, the Apex Court has referred decision in **Gurdial Singh Vs. Union of India & Ors., [2001 (8) SCC 8]**, in which in paragraph 7, it was observed as under :-

"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the

imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence, it is probabalized that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle a presumption is required to be drawn in his favour, unless the same is rebutted by cogent, reasonable and reliable evidence."

10. Respondent Nos. 1 and 3 have filed affidavit-in-reply (page No.158). Referring to the contents of said reply affidavit of Mr.Sunil Namdeo Rankhambe, Jt. Secretary, General Administration Department, Mantralaya, Mumbai, the learned AGP appearing for the respondent/ State submitted that the proposal submitted by the District Collector, Jalna of the petitioner has been scrutinized in the light of provisions of the Government Resolution dated 04.07.1995, under which specific guidelines/terms and conditions are prescribed for scrutiny of such proposals in respect of the persons

claiming to be underground freedom fighter.

11. Further it is submitted by the learned AGP that the Zilla Gaurav Samiti has recommended case of the petitioner for grant of freedom fighter pension in its meeting held on 12.08.2003. However, the Collector, Jalna did not agree with the said recommendation for the reasons that the petitioner does not fulfill conditions required by the scheme dated 04.07.1995 for sanction of pension. The petitioner has submitted an affidavit of two freedom fighters, namely, Motilal Laxmichand Sharma and Nivrutti Dadarao Raut, who had suffered imprisonment of two years, mentioning that on their instructions the petitioner hoisted tricolor, gave slogans, cut down sindhi trees, set on the fire the records of patwari, damaged Government bridges, distributed handbills, posters and arms on camp, arranged secret meetings of leaders, supplied Tiffins to the freedom fighters. The Collector, Jalna had forwarded proposal on 21.08.2004. Referring to the decision dated 09.09.2013 of the Hon'ble

Supreme Court in Civil Appeal Nos.7899-7901/2013 **(State of Maharashtra & Ors. Vs. Namdeo etc.)** and particularly referring to paras 21 and 22 of the said judgment it is submitted that except affidavits of two freedom fighters, no other material is placed to substantiate his claim by the petitioner and therefore the Government has rightly rejected the claim of the petitioner as the petitioner has not furnished the required documents as per Government Resolution dated 04.07.1995. It is further submitted that if such claim is allowed merely on such affidavit, that would amount to giving complete go-bye to the requirements of the scheme. It is submitted that the petitioner does not possess the requisite documentary evidence as per the Government Resolution dated 04.07.1995 and in view of this the Freedom Fighter High Power Committee at State level has not approved the claim of the petitioner for sanction of freedom fighter pension and hence, the petition has no merit and it is claimed that the same be dismissed.

12. We have carefully considered the submissions made by the learned Counsel appearing for the petitioner and learned AGP. We have perused the pleadings, reply filed by respondent Nos.1 and 3, the documents produced by the petitioner, original proceeding in the matter and the impugned order dated 18.02.2014 (page No.155).

13. Before considering the documents produced by the petitioner in support of his contentions to see whether he has proved the requirements of Government Resolution dated 04.07.1995, it is necessary to refer to the decision of this Court in Kishansinha s/o. Tukaramsinha Chandel Vs. The State of Maharashtra & Ors. (Writ Petition No.2831 of 2000) with connected writ petitions dated 26.07.2010, wherein in paragraphs 4 and 5, it is observed as under :-

"4. Perusal of the Government Resolution dated 7th August 1992 would reveal that for being eligible to the benefits of the Freedom Fighters' Scheme, the name ought to have been recommended by the District Level Gaurav Samiti. The recommendations of, at least, two freedom fighters, who have been held to be entitled

under the said scheme, and who were knowing the candidate concerned, from the time of movement, should be annexed along with the application.

5. The Government Resolution dated 4th July 1995 has provided the details regarding evidence which is to be submitted in support of the claim of the persons seeking benefit under the Freedom Fighters' Scheme. In so far as the claim under the category of underground Freedom Fighters is concerned, it is stipulated that the applicant concerned will have to substantiate as to what hardships he was required to suffer. He would be required to prove that either he was compelled to leave his house, that he was required to leave his education, or that he was assaulted by Police in such a manner, which resulted in his disability. However, on perusal of the provisions under the Scheme, it would reveal that either of these conditions is required to be fulfilled and not all the three. A person could be entitled under the scheme, if he was required to leave his house, or if he was required to leave his education or he was assaulted in such a manner, that he received physical disability. The said Government Resolution would further require that the certificate of two freedom fighters who were sentenced to suffer imprisonment for two years or who were underground for a period of two years, in support of the claim of the candidate should be submitted. The said Government Resolution further provides that if any official document in support of the claim is available or if any newspaper report, reporting that the candidate concerned was absconding, is available, the same should also be submitted."

14. Thus, as per the Government Resolution dated 04.07.1995, the petitioner will have to prove one of the conditions that either he was compelled to leave his house or that he was required to leave his education or that he was assaulted by the police in such a manner, which resulted in his disability. Further, as per the said Resolution, he is required to submit certificates of two freedom fighters who were sentenced to suffer imprisonment of two years or who were underground for a period of two years. On perusal of the impugned order as per clause (2) of the said order it has been held that the petitioner has proved the requirement of submitting certificates of two freedom fighters who were sentenced to suffer imprisonment for two years. Even on perusal of the affidavits of Motial Laxmichand Sharma and Nivrutti Dadarao Raut, both have stated regarding their involvement in Hyderabad Mukti Sangram in 1947-48 and about imprisonment to them for more than two years. So also the certificates issued by these two freedom fighters respectively at page 51 and 54 show that the

petitioner was underground freedom fighter and had participated in various activities, such as, cutting sindhi trees, hoisting national flag, raising slogans etc. Thus, the requirement of Government Resolution dated 04.07.1995 of submitting two certificates of freedom fighters who were sentenced to suffer imprisonment for two years in support of claim of the petitioner is proved and the authority concerned of respondent/State has rightly held so while passing the impugned order.

15. The petitioner has produced certificate at Exh.X-I (page No.96) of Police Patil of village Bhanang Jalgaon. Said certificate shows that petitioner Tulshiram Eknath Kolhe was doing work of giving confidential information to Vithalrao Savargaonkar, who was head of the camp and freedom fighter. The Nizam Government was knowing about the work of the petitioner. When the Nizam police had come to arrest the petitioner, the petitioner was not found. There was camp of underground freedom fighters at Sadegaon and Vithalrao

Savargaonkar was the chief of the said camp. The petitioner – Tulshiram was not found to the police. Further, it is stated in the certificate that along with freedom fighter Khanderao Ganpatrao Khalse, many workers had stayed for more than six months period in the wada of Khanderao Khalse. From this certificate of Police Patil, it can be said that the petitioner was compelled to leave his house and to stay at the place other than his native place. As such, he has proved one of the three requirements mentioned earlier in Government Resolution dated 04.07.1995.

16. The petitioner has also produced recommendation of the District Honour Committee dated 12.08.2003 (page 88) (Exh. "O") and it shows that the petitioner was underground freedom fighter in Hyderabad Mukti Sangram of 1947-48 and the District Honour Committee has ascertained the same.

17. Moreover, the petitioner's affidavit at Exh. "C"

(Page No.49) shows that he has taken part as underground freedom fighter in the movement against the Nizam under the guidance of freedom fighters, namely, Khanderao Khalse and Motilal Sharma.

18. On perusal of the impugned order Exh.A-1 (page 155), it appears that out of five requirements, proposal of the petitioner makes compliance of requirement No.2 regarding recommendations of two freedom fighters who were sentenced to suffer imprisonment for two years. Requirement No.1 is that the petitioner has to leave his house, he has to stay outside and that he has to leave education or he was removed from educational institution and he was assaulted by the police and therefore he was disabled. As referred earlier, it is seen from the certificate of police patil that the petitioner was not found to the police and he was compelled to leave his house and he stayed at the place other than his native place and as such the petitioner has proved one of the requirements in requirement No.1 above. Therefore, the

observations in the impugned order that requirement No.1 is not complied is not proper. As regards requirement Nos.3 and 4 i.e. production of certified copy of Government record showing that the petitioner was underground freedom fighter, if available and production of original newspaper in case there was news in that respect are concerned, when it is not the case of the petitioner that Government record or the original newspaper showing that the petitioner was underground freedom fighter are available, even if the petitioner has not complied requirement Nos.3 and 4 as above, his claim cannot be rejected on the said ground. As observed above, the District Honour Committee's recommendation shows that the petitioner was underground freedom fighter and therefore rejection of claim of the petitioner on the ground that he has not complied requirement No.5, as recommendation of the District Honour Committee is not acceptable, is not correct.

19. For the above reasons, we are of the considered

view that the petitioner has proved the requirements of Government Resolution dated 04.07.1995 to get pension as underground freedom fighter. Therefore and relying upon the ratio laid down by this Court in the decisions in the case of Kishansinha s/o. Tukaramsinha Chandel (Supra) and Rajabai w/o. Pandoji Kshirsagar (Supra), we hold that the petitioner is entitled to pension as underground freedom fighter as per Government Resolution dated 04.07.1995 and therefore, the impugned order is liable to be quashed and set aside.

20. For the foregoing reasons, we set aside the impugned order/decision dated 18.02.2014 passed by respondent No.1 and declare the petitioner as an underground freedom fighter. We further direct the respondents to award all the benefits applicable to underground freedom fighter under the 'Swatantrya Sainik Pension Scheme' to the petitioner, from the date of his application/representation dated 23.09.2005 and to release the arrears of pension to the petitioner within a

period of three months from today.

21. Rule is accordingly made absolute in above terms. The writ petition is disposed of. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]