

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1368 OF 2012

Bapurao s/o Ayanathrao Dhongde,
Age-80 years, Occu:Nil,
R/o-Bachori, Tq-Kandhar,
Dist-Nanaded.

...PETITIONER

VERSUS

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

...RESPONDENTS

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Mr.V.S. Panpatte Advocate for Petitioner.
Mrs. Vaishali S. Chaudhari, A.G.P. for
Respondent Nos. 1 to 4.

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WITH

WRIT PETITION NO.1391 OF 2012

Raghunath s/o Balaji Aglawe,
Age-82 years, Occu:Nil,
R/o-Guntur, Tq-Kandhar,
Dist-Nanaded.

...PETITIONER

VERSUS

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

...RESPONDENTS

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Mr.V.S. Panpatte Advocate for Petitioner.
Mrs. Vaishali S. Chaudhari, A.G.P. for
Respondent Nos. 1 to 4.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 10TH APRIL, 2018.

DATE OF PRONOUNCING JUDGMENT: 19TH APRIL, 2018.

JUDGMENT [PER S.S. SHINDE, J.]:

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

2. The facts in both these Petitions are almost similar and the reliefs claimed are also identical, therefore both these Writ Petitions are being disposed of by this common Judgment and order.

3. So far as Writ Petition No.1368 of 2012 is concerned, the same is filed with following substantive prayers:

"B] By a writ of Certiorari or any other appropriate writ or direction in the like nature, the decision dated

18.11.2000 passed by the respondent no.1 rejecting the claim of the petitioner for grant of Freedom Fighter's Pension may please be quashed and set aside.

B-1] By a writ of certiorari or any other appropriate writ or direction in the like nature, the decision dated 9th May, 2012 passed 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 fighter under the Scheme to the

petitioner from the date of his application 1.10.1995. The respondents may please be ordered to release the arrears of pension to the petitioner within a period of one month."

4. So far as Writ Petition No.1391 of 2012 is concerned, the same is filed with following substantive prayers:

"B] By a writ of Certiorari or any other appropriate writ or direction in the like nature, the decision dated 12.09.2006 passed by the respondent no.1 rejecting the claim of the petitioner for grant of Freedom Fighter's Pension 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 fighter under the Scheme to the petitioner from the date of his application i.e. from 15.09.1995. The respondents may please be ordered to release the arrears of pension to the petitioner within a period of one month."

5. The background facts for filing the present Petitions, as disclosed in the memo of the Petitions, in brief, can be stated as below:

A) It is the case of the Petitioners that during the period of 1947-1948, the Petitioners had participated in the freedom movement called as

Hyderabad Mukti Sangram, as underground freedom fighters. They had actively participated and involved in the activities such as campaigning the people against the erstwhile Nizam Government to flag "Tiranga" and to distribute pamphlets to the people against Nizam Government, collection of funds for the movement, supply of arms and weapons and secret information to the volunteers, providing meals to the senior volunteers, providing secret information of police movements to the workers, arranging for attacks on police, to cut down trees on Government lands, to make arrangements for meetings of senior freedom fighters and other allied activities. The Petitioners had worked as underground freedom fighters in Hyderabad Mukti Sangram under the leadership and guidance of the veteran freedom fighters, namely, S/Shri Nagorao Bhujanga Mugal, Bhujanga Pandoji Panchal, Govindrao More, Potale, Gangaprasad Yetalkar, Maroterao Balwantrao Puyad, Santoba Dhongade, Laxman Gaikwad, Partaba Mugal,

Maroti Potale, Punjarao Masarao Wadkute, Amilkanthwar, Gurunathrao Kurude, Anant Kishan Mamde, Maroti Boddawar etc.

B) It is the case of the Petitioners that as per the Government Resolutions dated 5th September, 1992 and 4th July, 1995 the Government of India has framed a scheme namely; "Swatantraya Sainik Sanman Pension Scheme" whereby the persons who fought in the various freedom struggle and participated in movement 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 said movement.

C) It is the case of the Petitioners that during Hyderabad Mukti Sangram, the Petitioners participated in the combat which took place at village Kalhali, Taluka-Kandhar, which is 3 Kms. away from the village of the Petitioners. On 28th

July, 1948, Nizam Police and Razakars suddenly attacked on village Kalhali for taking revenge against Shri Appraro Naik and Shri More who were the head of the camp in that area. The Nizam Police killed the villagers from villages Kalhali, Pethwadaj and other several villages. Shri Apparao Naik and his associates from Kalhali and Guntur defended the said attack of Nizam Police and Razakars and fought with them and lastly defeated them. Again on next day Razakars and Nizam Police made attack. The Petitioners along with others strongly defended the said attack with guns, stones etc. under the leadership of camp in-charge Shri Apparao Naik and other veteran freedom fighters, namely, S/Shri More, Mugal, Panchal, Yetalkar, Bidvai, Anant Kishan Mamde, Maroti Boddwar, Maroti Patole etc. The said combat lasted for two days in which freedom fighters killed more than 100 Razakars. All the freedom fighters including the Petitioners gathered on Gadhi of Shri Apparao Naik and from top of the said Gadhi,

they started fighting back so as to stop the external aggression of the Razakars with the help of weapons/ instruments available on the Gadhi. Lastly freedom fighters including the Petitioners made attack on the police force and defeated them. The said news came to be published by the Secretary of State Congress, Maharashtra Prant, Congress House, Mumbai No.4, dated 28th July, 1948.

D) The Petitioners were the members of the State Congress. The first conference of the State Congress was held on 16th June, 1947 to 18th June, 1947 at Narayanguda, Hyderabad, and both the Petitioners attended the said conference. The Petitioners had also actively participated in Jangal Satyagraha at several places in Nanded District. By remaining underground, the Petitioners used to supply secret information to the camp leaders Shri Rangnathrao and Shri Anantrao Bhalerao at Umarkhed and Kamari. The

Petitioners had also actively participated in the Satyagraha in January, 1947 at Arjapur under the leadership of Shri Govindrao Pansare. Both the Petitioners were successful to escape from the attention of the police. On account of participation of the Petitioners in Hyderabad Mukti Sangram, their family members suffered heavily. The Razakars and Rohile of Nizam Government have behaved very cruelly with the parents of the Petitioners. Due to participation in the movement, the Petitioners could not prosecute their education. Thus the Petitioners by actively participating in the said movement, had given up their personal life, stayed away from the home and were deprived from taking education.

E) In the year 1995 both the Petitioners had applied for grant of Sanman Pension on 1st October, 1995, along with the documents such as, (i) application in the prescribed form, (ii) affidavit of Petitioners, (iii) certificates

issued by freedom fighters Shri Anant Kishan Mamde, Shri Govind Narsing More along with Sanman Patra issued by the State Government and also medical certificates in respect of their age.

F) On the basis of Government Resolution dated 4th July, 1995, Respondent No.4 issued notice on 11th November, 1997 to the Petitioners to make compliance and accordingly the Petitioners had filed affidavits specifying actual activities performed by them. The Petitioners also filed recommendatory affidavits on stamp paper of senior freedom fighters, namely Shri Govindrao More, Anant Mamde, Maroti Potale etc. After scrutiny and conducting interview of the Petitioners, District Honour Committee arrived at subjective satisfaction that the claim of the Petitioners deserves to be granted and on 27th March, 1998, unanimously forwarded the claim of the Petitioners to the State Government for grant of Sanman pension. However, inspite of producing

satisfactory and reliable evidence by the Petitioners, the same has not been considered and their applications came to be rejected by the impugned orders, on the ground that they do not fulfill the eligibility criteria. It is submitted that the claims of the similarly situated persons came to be allowed on the basis of similar evidence. The copies of relevant decisions were never supplied to the Petitioners, and it is only after inquiry, copies of said order was served upon the Petitioners belatedly in the month of June and August, 2009.

G) In similar set of facts the underground freedom fighters whose claims for getting Sanman Pension were rejected, have preferred Writ Petition Nos.2831, 3980 and 4023 of 2000 and the High Court allowed the said Petitions and directed the State Government to pay freedom fighters pension to the respective Petitioners therein. It is further submitted that by Government Resolution

dated 1st October, 2001, Respondent No.1 sanctioned and released freedom fighters pension to as many as 29 persons. In the similar facts and on similar evidence the co-workers of the Petitioners had been granted Sanman Pension by the Government, however the claim of the Petitioners had been rejected by the impugned decisions by applying altogether different yardsticks to the claim of the Petitioners.

6. Learned counsel appearing for the Petitioners, referring to the grounds taken in the Petitions, submits that the conclusions drawn by the Government in the impugned decisions are based on assumptions and presumptions than that of consideration of matter on merits. The entire approach of the Government while dealing with the case and appreciation of evidence and conclusion drawn, therefore, exhibits total non-application of mind and mechanical approach.

7. Learned counsel further submits that the Government ought to have considered that when the Petitioners have fulfilled all the eligibility criteria as laid down under the Scheme and in the Government Resolutions of 1992 and 1995, referred above, and since the claim of the Petitioners were recommended by the District Honour Committee, and the veteran freedom fighters have certified that the Petitioners had participated in the freedom movement and had worked as underground freedom fighters, the Government ought to have granted and allowed the claim of the Petitioners.

8. Learned counsel further submits that the Petitioners have complied with all the conditions as stipulated in the concerned Government Resolutions and in such circumstances, the Government ought to have called upon the Petitioners to furnish detailed particulars if at all necessary and ought not to have rejected the genuine claim of the Petitioners on

technicalities. Moreover all the material particulars about the participation of the Petitioners have been elaborately mentioned in the applications and the affidavits filed by them in support of their claims were already before the Government. In these circumstances, the impugned decisions are erroneous, illegal and contrary to the eligibility criteria prescribed in the scheme.

9. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Mukund Lal Bhandari Vs. Union of India¹, wherein the Apex Court has observed that the Government should make endeavour to find out the persons who have participated in various movements for independence and every effort should be made to help them.

10. Learned counsel further submitted that on the same set of evidence the claim of similarly

¹ 1993 AIR [SC] 2127

situated persons came to be allowed, however, the claim of the Petitioners came to be rejected and therefore the impugned decisions are discriminatory and not at all sustainable in law. It is submitted that the findings recorded and conclusions arrived by Respondent No.1 are arbitrary and illegal. Learned counsel therefore submits that both the Petitions deserve to be allowed.

11. Learned A.G.P., referring to the affidavit in reply filed on behalf of the Respondents, submits that the Petitioners had applied to the office of the Collector, Nanded for grant of freedom fighter's pension in October, 1995. The District Collector, Nanded has submitted proposal of the Petitioners in the month of March, 1998 to the State Government in General Administration Department for sanction of freedom fighter's pension. The said proposals have been scrutinized in the light of the provisions of

Government Resolution in General Administration Department dated 4th July, 1995, under which following specific guidelines/ terms and conditions are prescribed for scrutiny of such proposals:- I) The documentary evidence stating as to what type of problems and hardships the applicant had undergone due to participation in the freedom movement, A) whether he had to remain away from his home and family, B) whether he had to give up education or he was expelled from any educational institution due to his participation in the Freedom Movement, C) He was beaten up by the police in such a manner that he became permanently disabled. II) The requisite certificates of two freedom fighters of their respective areas who had either undergone at-least two years imprisonment or those who had been declared absconded for at least two years for participation in freedom movement due to issuance warrant, III) Certified Copy of the Government record which proves that he was an underground

freedom fighter, IV) The newspaper of relevant time with the news item described that the applicant was underground for participation in the freedom struggle, V) The recommendation of Zilla Gaurav Samiti.

12. Learned A.G.P. further submits that as far as condition (I) is concerned, the Petitioners have not produced any evidence to prove that they had to remain away from home, had to give up education, became permanently disabled due to beating given by police. So far as Condition (II) is concerned, in applications the Petitioners have stated that they worked under Shri Anandrao Tekaliker and Shri Govindrao Tekaliker, they cut Sindhi trees, canvassed for Satyagraha. However in a prescribed form 'A', the Petitioners have stated that they cut Shindhi trees, prepared Satyagrahis, fought with Razakars, supplied arms and ammunition to the youth. In another affidavits the Petitioners have stated that they worked under

S/Shri Anand Tekalika, Govind More, Dattatraya Bidawai, Anant Mamde, Bhusari, Deshpande, Ramchandra Bidawai, and passed on secret messages, supplied material required for cutting of trees, distributed bread, when they were cutting trees in the jungle Nizam police fired at them which resulted in death of some persons. It is submitted that contents in every document are different.

13. Learned A.G.P. further submits that in the affidavit of Ex- MLA Shri Govinddas More, he has stated that Petitioner - Bapurao Ayanathrao Dhongde has worked under him and at his instance the Petitioner distributed bulletins, unfurl flag, supplied ammunitions. It is submitted that Ex-MLA has himself affirmed his own affidavit. It is submitted that Freedom Fighter Shri Bhujangrao Panchal, in his affidavit stated that at his instance the Petitioner cut shindhi trees, and participated in Satyagraha. Freedom Fighter Shri Nagorao Mungal has stated in his affidavit that

the petitioners had passed on secret messages. Freedom Fighter Shri Anant Mamde has stated in his affidavit that at his instance the Petitioners distributed bulletins, unfurled flag, supplied ammunitions, hindered in collection of levy. Learned A.G.P. submits that the above facts go to show that there is no consistency in the two statements of the Petitioners and there is inconsistency in the statements of the supporting freedom fighters. Further every supporting freedom fighter claims that the petitioners had worked under him. Therefore, it does not inspire confidence about participation of the Petitioners in Hyderabad Mukti Sangram. There is no evidence to show participation of the Petitioners in Hyderabad Mukti Sangram except statements and affidavits. Learned A.G.P. further submits that as far as conditions (III) and (IV) are concerned, the Petitioners have not submitted any evidence to support their claims.

14. Learned A.G.P. further submits that as far as condition No. (V) is concerned, the Zilla Gaurav Samiti, Nanded has recommended the case of the Petitioners for grant of freedom fighter pension in its meeting, however, the recommendations of said Samiti are not binding on the Freedom Fighter High Power Committee at the State level. As the Petitioners had not fulfilled the above said conditions required as per the Government Resolution dated 4th July, 1995, the Freedom Fighter High Power Committee has rejected the claims of the Petitioners. Learned A.G.P. further submits that the Petitioner - Bapurao Ayanathrao Dhongde, has submitted an application dated 9th November, 2011 along with his own affidavit and affidavits of other three freedom fighters namely, Shri Gurunath Manikrao Kurude, Shri Maroti Gangaram Boddawar and Shri Bhagwat Maroti Mahajan. Perusal of these affidavits show that they have no evidentiary value. It is submitted that in the light of observations of the

Hon'ble Supreme Court in Civil Appeal Nos.7899-7901 of 2013 [State of Maharashtra Vs. Namdeo and others], the Petitioners have not produced any other material except affidavits of some freedom fighters, therefore, pension cannot be sanctioned to the Petitioners only on the strength of affidavits of supporting freedom fighters. It is further submitted that sanction of pension to other freedom fighters cannot be a base for sanction of pension to the Petitioners.

15. Learned A.G.P. further submits that the Petitioners have not produced requisite documentary evidence as per Government Resolution dated 04.07.1995 and therefore the claim of the Petitioners for sanction of freedom fighter's pension came to be rejected. Learned A.G.P. prayed that both the Petitions may be rejected.

16. We have carefully considered the submissions of the learned counsel appearing for

the Petitioners, learned A.G.P. appearing for the Respondents. With their able assistance, we have perused the grounds taken in the Petitions, annexures thereto and the affidavits in reply filed on behalf of the Respondents in both the Petitions.

17. As per the Government Resolution dated 4th July, 1995 issued by the Government of Maharashtra in its General Administration Department, so far as 'Underground Freedom Fighter' is concerned, for grant of Sanman Pension, alongwith his application, the freedom fighter is required to furnish certificates of two freedom fighters of his respective areas, who had either undergone at least two years imprisonment or those who had been declared absconded or who had been absconding for at least two years. Such certificate should be accompanied with the copies of jail certificates about the imprisonment or copies of Government orders or an advertisement

declaring the freedom fighter as absconder. Besides this, duly verified affidavit of the freedom fighters issuing the certificates should also be enclosed with it.

18. In Writ Petition No.1368 of 2012, we have perused the documents placed on record by the Petitioner therein along with his application for getting freedom fighter's pension. An affidavit of one Shri Govindrao Narsingrao More, who is recipient of freedom fighter's pension under the State Government, as well as Central Government Scheme is submitted by the Petitioner in support of his claim. The said affidavit clearly states the various acts rendered by the Petitioner - Bapurao Ayanatharao Dhongde in the various movements in Kandhar area, such as hoisting flag, distributing pamphlets, supplying of arms and weapons to the freedom fighters, obstructing in levy collection, and participating in Satyagrah. Along with his application, the Petitioner has

also submitted copy of 'Sanman Patra' issued by the Government of Maharashtra to Shri Govindrao Narsingrao More, a freedom fighter. The Petitioner has also submitted a certificate of imprisonment issued by the Superintendent, Nanded District Prison, certifying that freedom fighter Shri Govindrao s/o Narsingrao, was sentenced to two years and one month rigorous imprisonment and he was also detained as under-trial prisoner from 8.11.1356 Fasli to 13.1.1357 Fasli. Another affidavit of one Shri Anant Kishan Mamde, who is also recipient of the freedom fighter's pension, is also placed on record to the same effect. The Petitioner has also submitted copy of 'Sanman Patra' issued by the Government of Maharashtra to Shri Anant Kishan Mamde, a freedom fighter.

19. Along with the application, the Petitioner - Bapurao Ayanathrao Dhongde has submitted a certificate dated 29th September, 1995, issued by the Medical Officer, Civil

Hospital, Kandhar, certifying the age of the Petitioner on 29th September, 1995, as 67 years. The Petitioner has also submitted an affidavit sworn in by another freedom fighter, namely, Shri Maroti Sidram Potale, who is recipient of freedom fighter's pension under the State Government, as well as Central Government Scheme, along with copy of his imprisonment certificate and "Sanman Patra". It further appears from the perusal of the documents placed on record that claim of the Petitioner has been considered by the District Level Committee and recommended the same to the Government of Maharashtra for its approval.

20. Thus, after perusal of the documents submitted by the Petitioner - Bapurao s/o Ayanathrao Dhongde along with his application claiming freedom fighter's pension, it appears that the Petitioner has placed on record documentary evidence showing his participation in freedom movement, which requires reconsideration

by Respondent Nos.1 and 2.

21. In so far as the Petitioner in Writ Petition No.1391 of 2012, namely, Raghunath s/o Balaji Aglawe is concerned, it reveals that the said Petitioner has also filed affidavits of freedom fighters, namely, Shri Govindrao Narsingrao More, Shri Anant Kishanrao Mamde, Shri Maruti Gangaram Bodawar, who are recipients of freedom fighter's pension under the State Government, as well as Central Government Scheme, along with "Sanman Patra" issued in their favour by the Government of Maharashtra and imprisonment certificate issued in their favour certifying that they had undergone the imprisonment in freedom movement. Along with the application, the Petitioner - Raghunath Balaji Aglawe has submitted a certificate dated 7th August, 1995, issued by the Medical Officer, certifying the age of the Petitioner on 7th August, 1995, as 65 years. It further appears from the perusal of the documents

placed on record that after considering the claim of the Petitioner, the District Level Committee has recommended the same to the Government of Maharashtra, by its letter dated 27th March, 1998.

22. Thus, it is clear from the perusal of the documents placed on record that the Petitioners in both the Petitions have filed the affidavits of more than two freedom fighters who had participated in the said movement, so also their claims were recommended by the District Level Committee. Therefore, we find that the claim of both the Petitioners deserves re-consideration.

23. For the reasons afore-stated, we pass the following order:

O R D E R

(I) The impugned orders thereby rejecting the claim of the Petitioners

for grant of freedom fighter's pension,
are quashed and set aside.

(II) Respondent No.1 - the State of Maharashtra, through its Principal Secretary and Respondent No.2 - Freedom Fighter's High Power Committee (as informed, now headed under the Chairmanship of the Chief Minister), are directed to reconsider the claim of both the Petitioners afresh and if necessary, by giving them an opportunity of hearing.

(III) Considering the age of both the Petitioners, Respondent Nos.1 and 2 are directed to decide the claim of both the Petitioners within SIX MONTHS from today and the decision so taken be communicated to the Petitioners within the period of one month from the date

of decision.

(IV) We make it clear that we have not expressed any opinion on the merits of the claims of the Petitioners. Respondent Nos.1 and 2 shall decide the claim of the Petitioners after carefully verifying the documents placed on record by them and in accordance with the relevant Rules, Regulations, Guidelines applicable, on its own merits.

(V) Rule is accordingly made partly absolute with no order as to costs.

(VI) Both the Writ Petitions stand disposed of, accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]