

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

WRIT PETITION NO. 1355 OF 2017

Smt. Rukminbai Sahebrao Ghumare
Age : 88 years, Occup : Nil, freedom fighter
r/o : Pargaon Ghumra, Tq : Patoda,
District : Beed.

... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
General Administration Department
(Freedom Fighters Cell),
Mantralaya, Mumbai – 32.
2. Freedom Fighters High Power Committee,
Mantralaya, Mumbai – 32,
Through its Member Secretary,
3. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
4. The Collector, Beed,
District Beed.

... RESPONDENTS

Mr. V. S. Panpatte, Advocate for the petitioner
Mr. G.O. Wattamwar, AGP for respondent/State.

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE, JJ.**

DATED : 29-08-2019

ORAL JUDGMENT (PER :- S.M.GAVHANE, J.)

. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. By this petition under Articles 14, 21 and 226 of the Constitution of India, the petitioner has prayed following reliefs in terms of prayer clauses (B) and (C):-

"B. By a writ of certiorari or any other appropriate writ or direction in the like nature, the Order/ Govt. Resolution dated 16th September, 2016 (at Exhibit 'Z-1') issued by the Respondent No. 1 may please be quashed and set aside to the extent of the petitioner;

C. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondents may please be directed to release the arrears of freedom fighter's pension to the petitioner as per the Govt. Resolution dated 30.3.2015 and 8.4.2015 (at Exhibit 'P')."

3. Facts as are relevant to decide this petition are that according to petitioner she had participated in the Hyderabad Liberation Movement as underground freedom fighter during the period of 1947-48 under the guidance and leadership of veteran freedom fighters, namely, Wamanrao Waze, Nivratti Fakira Dhakane, Sona Rama Jaibhaye etc. and therefore she is eligible and entitled to avail the benefits of freedom fighters pension scheme as per Government Resolutions dated 5th September, 1992 and 4th July, 1995. Therefore, she had applied in the office of respondent No.4-Collector for grant of freedom fighters pension in prescribed form for underground freedom fighter. Said application was not considered for years together. Thereafter, from time to time correspondence was made by respondent No.4-Collector to the petitioner to submit documentary evidence. Accordingly, she submitted affidavits of freedom fighters Sona Rama Jaibhaye and Nivratti Fakira Dhakane with their certificates of imprisonment for two years. She also produced copies of attachment warrant dated 14th Ajur 1357 Fasli and corrigendum dated 15th

Ajur 1357 Fasli. Accordingly, District Honor Committee after scrutiny of the application of the petitioner resolved to forward the same for decision at State level on 11-08-2009. Additional Collector, Beed forwarded 17 proposals including that of the petitioner to the State Government. Thereafter, respondent No.2-High Power Committee made enquiry to the respondent No.4-Collector. Accordingly, Additional Collector, Beed submitted explanatory report on 26-10-2010 and clarified that 17 applicants including the petitioner are included in the warrant and therefore they are eligible to get pension. After scrutiny of the petitioner's proposal, the Chairman, Member Secretary of High Power Committee and Deputy Secretary recommended said proposal for sanction of pension. Again report of respondent No.4-Collector was called whether said 17 applicants are satisfying criteria of Government Resolution dated 04-07-1995 and respondent No.4 submitted detailed report. Thereafter, after following necessary procedure as detailed in the petition on 30-03-2015 respondent No.1 by order/Government Resolution sanctioned pension to the petitioner from the date of her new application from 09-12-2014 and subsequently on 08-04-2015 pension was sanctioned to the petitioner from the date of her initial application i.e. 08-01-1985.

4. Further, it is the case of the petitioner that on the basis of so called complaint dated 01-06-2015 made by one Satyawar Uttamrao Kudke alleging that pension was granted to the bogus freedom fighters on the basis of bogus warrants, Joint Secretary by order dated 17-07-2015 directed enquiry in respect of said allegations through respondent No.3-Divisional

Commissioner and until further orders, stayed the release of pension to 79 freedom fighters including the petitioner. Said Satyawar uttamrao Kudke made representation to the Principal Secretary and Special Enquiry Officer-1 on 11-08-2015 stating that false complaint is made in his name and requested to stay order dated 17-07-2015. So also, in his statement before enquiry committee on 10-09-2015 he stated that he did not make complaint dated 01-06-2015 and he has no concern with the said complaint. However, respondent No.3 Divisional Commissioner instead of constituting proper enquiry committee as per Government Resolution dated 14-06-2007 constituted improper committee i.e. Deputy Commissioner from his office, resident Deputy Collector and two Nayab Tahsildars. The enquiry committee which was improperly constituted, without affording adequate and proper opportunity to the petitioner made formal enquiry and submitted its report only on so called factual aspects on 21-10-2015 to respondent No.3. On 23-10-2015 respondent No.3 forwarded said enquiry report to the State Government without giving his remarks on the said enquiry report. Therefore, persistence correspondence was made to respondent No. 3-Divisional Commissioner from the Mantralaya for submission of his views on the enquiry report but he did not take any steps. Freedom fighters made representations but the same were not considered by him.

5. Further it is the case of the petitioner that in the meanwhile petitioner and other freedom fighters filed writ petition No. 2934 of 2016 challenging the Government order dated 17th July, 2015 and they withdrew the

said writ petition with liberty to avail remedy permissible in law.

6. Further it is the case of the petitioner that only after several directions from Mantralaya calling remarks of respondent No.3 after constituting proper enquiry committee as per Government Resolution dated 14-06-2007, respondent No.3- Divisional Commissioner constituted another enquiry committee in July 2016 i.e. Divisional Commissioner as a Chairman, Collector as a member, Superintendent of Police as a member and resident Deputy Collector as Member Secretary. Said subsequent enquiry committee in its meeting dated 05-07-2016 on the basis of report of earlier enquiry committee and on the basis of record of births of respective freedom fighters collected through revenue authorities and without affording any opportunity to the respective freedom fighters concluded that warrant dated 14th Ajur 1357 Fasli is not related to Hyderabad Liberation Movement and therefore held that the said warrant is bogus. Thereafter, on 18-07-2016 respondent No.3 forwarded said enquiry report with his comments to the Principal Secretary and Special Enquiry Officer-1. On the basis of above enquiry report dated 05-07-2016 of the second enquiry committee, respondent No.1 by Government Resolution/Order dated 16-09-2016 cancelled the earlier orders dated 30-03-2015 and 08-04-2015 sanctioning pension to 85 freedom fighters including to petitioner and directed recovery of amounts of pension if withdrawn by the concerned freedom fighters. Therefore, the petitioner is before this Court.

7. Mr. Panpatte, learned counsel for the petitioner submitted that the petitioner is a freedom fighter since she had actively participated in Hyderabad Liberation Movement as underground freedom fighter during the period of 1947-48. Therefore, she is entitled to get pension as per Government Resolutions dated 05th September, 1992 and 4th July, 1995. Accordingly, after following the procedure pension was sanctioned by respondent No.1 to the petitioner as per Government Resolution dated 08-04-2015 from the date of her initial application of 08-01-1985. However, due to so called complaint dated 01-06-2015 made by one Satyawar Uttamrao Kudke alleging that pension has been granted to the bogus freedom fighters on the basis of bogus warrants without verifying the said complaint the Government directly took cognizance of said complaint and through its Joint Secretary issued order dated 17-07-2015 to make enquiry through respondent No.3-Divisional Commissioner and stayed the release of pension to 79 freedom fighters including the petitioner. It is submitted that said complainant Satyawar Uttamrao Kudke made representation and made statement that he did not make such complaint. It is submitted that still respondent No.3- Divisional Commissioner constituted improper committee as stated earlier and said committee without considering the statement of said complainant and without giving opportunity to the petitioner to put forth her submissions submitted report to the respondent No.3 and respondent No.3 submitted said report to the Government. Thereafter, another enquiry committee was constituted. Said committee on the basis of report of earlier enquiry committee and without affording any opportunity to the petitioner held that the warrant dated 14th

Ajur 1357 Fasli is bogus. Therefore, impugned Government Resolution dated 16-09-2016 cancelling the orders sanctioning pension to 85 freedom fighters including petitioner and directing recovery of pension amount is liable to be set aside. It is submitted that there were several documents which were considered when the petitioner was granted pension but said documents were not considered by the committee referred earlier.

8. On the other hand Mr. Wattamwar, learned AGP referring the reply affidavit submitted on behalf of respondents No.1, 2 and 4 submitted that petitioner had been granted freedom fighters pension by the State Government and Government Resolution dated 30-03-2015 came to be published, however on the basis of complaints received against 85 freedom fighters General Administrative Department directed Divisional Commissioner to make detail enquiry of all 85 cases. It is submitted that the committee constituted under the chairmanship of Divisional commissioner Aurangabad conducted enquiry and said committee perused the birth registers of the freedom fighters and it was revealed that some of the freedom fighters are born after completion of Marathwada Freedom Movement and some of them are below the age of 10 years at the relevant time. The names of above referred freedom fighters are mentioned in the warrants issued from Tashil Office Ashti, details of those warrants are not available with the office of Tashil Ashti. Therefore committee had arrived at a conclusion that the warrants allegedly issued are bogus and the names of freedom fighters mentioned in said warrants are also not reliable. Therefore, order granting pension to 79

freedom fighters was stayed by the General Administrative Department of State Government by its order dated 17-07-2015. It is further submitted that notices were issued to all 85 applicants directing them to remain present on 10-09-2015 at Collector office, Beed and they were given sufficient time for hearing. Then committee submitted report to the Divisional Commissioner on 21-10-2015. Thereafter, Government issued Government Resolution dated 16-09-2016 cancelling the pension of the petitioner which is legal and proper.

9. Learned AGP has relying upon the decision of the Supreme Court in the case of *West Bengal Freedom Fighters Organization Vs. Union of India (2004 D.S.L.S.) (soft.) 562* submitted that decision of the committee which is based on the available material cannot be said to be perverse. Learned AGP further relying upon decision in the case of *State of Orissa Vs Chaudhari Nayak and Others* reported in *(2010) 8 Supreme Court Cases 796* submitted that Apex Court while dealing with the issue of freedom fighters pension based on false claim, fabricated documents held that any complacency on part of Government in taking action against bogus claims under any scheme would encourage bogus claims under all schemes, by undeserving candidates, who are well connected and influential. It is submitted that as the claim of the petitioner is based on bogus and fabricated documents she is not entitled to any relief. It is submitted that in Government Resolution dated 18-04-2015 of General Administrative Department it is mentioned that whenever it is found that the pension sanctioned on the basis of fake documents submitted by the applicant, pension should be stopped immediately and pension drawn by the

applicant should be recovered. Thus, learned AGP has claimed to dismiss the petition.

10. We have carefully considered the submissions made by the learned counsel for the petitioner and learned AGP and with their assistance we have perused the impugned order/Government Resolution and the copies of documents relied upon by the petitioner.

11. Some of the facts in respect of which there is no dispute are that the petitioner had applied for freedom fighters pension on 08-01-1985. After calling report from respondent No.4-Collector and by following due procedure petitioner was granted pension from the date of her application vide Government Resolution/order dated 08-04-2015. By the impugned Government Resolution/order dated 16-09-2016 earlier orders dated 30-03-2015 and 08-04-2015 sanctioning pension to the 85 freedom fighters including petitioner were cancelled and directions to recover pension were issued.

12. By order dated 01st February, 2017, notice before admission was issued to the the respondents, returnable on 01-03-2017 and interim relief that in the mean time, no coercive action be taken against the petitioner was granted. Said interim relief was continued till 19-06-2018 as per order dated 19-04-2018.

13. There is no dispute that the petitioner had applied for freedom fighters pension by application dated 25-07-2005 (Exhibit 'B') and alongwith the said application affidavits of two freedom fighters were attached with the application addressed to the District Collector, Beed. The affidavits of said two freedom fighters show that the petitioner had worked with the said freedom fighters in the movement in the year 1942-44 and in Hyderabad Liberation Movement in 1947-48. It appears that Tahsildar, Patoda had verified six copies of warrants in Urdu language received from the District Collector, Beed. Marathi translation (Exhibit 'E') of the said Urdu warrant of 1356 Fasli shows involvement of the petitioner in providing food to the Congressi Gundas who were giving slogans against the Nizam Government. It is further seen that there was involvement of the petitioner in the activity of the cutting shindi trees as per action report made by Tahasildar, Ashti on 14-01-1957 Fasli and said report further shows that directions were issued to attach property of Congressi Gundas including the petitioner. Exhibit 'M' letter of the Collector, Beed dated 28-06-2012 to the Deputy Secretary, General Administration Department, Mantralaya, Mumbai shows that all the three copies of arrest warrants were verified from original Urdu warrant and there was no difference between original warrants and the copies of arrest warrant and Tahasildar, Patoda had made report in that respect. Exhibit 'N' noting made after receipt of above said report of the Collector shows that there was no objection to grant freedom fighters pension to the petitioner. It appears that thereafter as per Government Resolution dated 30th March, 2015 freedom fighters pension was sanctioned to the petitioner. It appears that petitioner was granted

freedom fighters pension from her new application dated 09-12-2014 and subsequently, by Government Resolution dated 08-04-2015 (corrigendum) she was granted pension from the date of her first application dated 08-01-1985. There was also report dated 24-02-2012 of the District Collector, Beed that the original warrants were with the Central Government and that in all 15 persons including the petitioner were eligible for freedom fighters pension as seen from the report Exhibit 'K' dated 24-02-2012.

14. It appears that there was complaint dated 01-06-2015 made by one Satyawan Uttamrao Kudke who is stated to be government employee in Tahasil, Patoda, addressed to the Hon'ble Chief Minister complaining that warrants on the basis of which pension was granted are bogus and said original warrants are not with the Government and therefore request was made to make inquiry. It appears that said complainant Satyawan Kudke filed affidavit (Exhibit 'T') stating that so called false complaint was made in his name and his affidavit shows that his name was misused for giving false complaint and that enquiry be made in the matter. His statement dated 10-09-2015 also shows that he has not made complaint/application dated 01-06-2015 and contents of his affidavit dated 11-08-2015 are correct. Thus, *prima facie* it appears that complaint was not made by Satyawan Uttamrao Kudke which has given rise to the enquiry.

15. It appears that after receipt of the above said complaint committee was constituted to make enquiry under the Chairmanship of the

Divisional Commissioner, District Collector, Beed and District Superintendent of Police were the members of the said committee and they have made enquiry. Report of the said committee Exhibit 'Z' shows that the said committee felt that warrants were bogus. The name of the present petitioner is not mentioned in the report of the said committee. It appears that on the basis of aforesaid report which was submitted to the Government with letter dated 18-07-2016 the Government by impugned Order dated 16-09-2016 cancelled the pension granted to the 85 freedom fighters including the petitioner. It appears that the aforementioned committee has not considered the documents referred to above in paragraphs No. 13 and 14 relied upon by the petitioner before making report to the Government on the basis of which the impugned order/resolution was passed. Therefore, considering said aspect and the submissions made by the learned counsel for the petitioner, we deem it appropriate to set aside the impugned order/resolution and remit the matter to the Government for fresh consideration.

16. It appears that before submitting report to the Government the committee did not give opportunity to the petitioner and so also, the Government it appears that passed impugned order without giving an opportunity to the petitioner.

17. In view of the above impugned order is set aside. The matter is remanded to respondents No. 1 and 2 with a direction to decide the same afresh after giving full opportunity to the petitioner to produce the documents

and hearing. All the points are kept open. Rule is made absolute in said terms.

Writ petition is accordingly disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]