

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

WRIT PETITION NO. 1417 OF 2017

1. Smt. Sundrabai W/o. Ambadas Deshmukh,
Age-87 years, Occu-Nil **...PETITIONERS**
R/o. Massajob, Tq. Kaij, Dist. Beed.
2. Smt. Kerabai W/o. Bhimrao Chandne,
Age-85 years, Occu-Nil,
R/o. Beed, Tq. & Dist. Beed
3. Sitaram S/o. Eknath Kudke,
Age-86 years, Occu-Nil,
R/o. Village Pithi, Post Nirgudi,
Tq. Patoda, Dist. Beed
4. Radhakisan S/o. Dinaji Khape
Age-87 years, Occu-Nil,
R/o. Beed, Tq. & Dist. Beed.
5. Mohanlal S/o. Shrikishan Khotriya,
Age-86 years, Occu-Nil,
R/o. Devinimgaon, Tq. Ashti,
Dist. Beed
6. Shankar S/o. Tatyaba Phad,
Age-85 years, Occu- Nil,
R/o. Ghatsavali, Tq. & Dist. Beed
7. Smt. Saraswati W/o. Bankat Gawahane,
Age-86 years, Occu-Nil,
R/o. Ghatsavali, Tq. & Dist. Beed
8. Narayan S/o. Hari Garje,
Age-85 years, Occu-Nil,
R/o. Surdi, Tq. Ashti,
Dist. Beed
9. Bankat S/o. Pandurang Gawahane,

Age-87 years, Occu-Nil,
R/o. Borgaon, Tq. Kaij,
Dist. Beed

10. Smt. Putalabai W/o. Havasrao Kokate,
Age-85 years, Occu-Nil,
R/o. Daskhed, Tq. Patoda,
Dist. Beed
11. Sauda S/o. Naryan Taware,
Age-86 years, Occu-Nil,
R/o. Post Eat, Tq. Bhoom,
Dist. Osmanabad
12. Sripati S/o. Arjun Hadule,
Age-87 years, Occu-Nil,
R/o. Eat, Tq. Bhoom,
Dist. Osmanabad
13. Smt. Shantabai W/o. Sheshrao Bhore,
Age-85 years, Occu-Nil,
C/o. Raju Sudhkar Phate,
Jaising Nagar, Patoda, Tq. Patoda,
Dist. Beed
14. Sheshrao S/o. Eknath Bhore,
Age-85 years, Occu-Nil,
C/o. Raju Sudhakar Phate,
Jaising Nagar, Patoda, Tq. Patoda,
Dist. Beed
15. Smt. Sundarabai W/o. Maruti Murumkar,
Age-85 years, Occu- Nil,
R/o. Post Sakat, Tq. Patoda,
Dist. Ahmednagar

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
General Administration Department,

...RESPONDENTS

M.S. Mantralaya, Mumbai-32

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Collector, Beed
4. The Collector, Osmanabad
5. The Collector, Ahmednagar

Mr. N.B. Khandare, Advocate for the petitioners
Mr. G.O. Wattamwar, AGP for the respondents/State

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

DATE : 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 226 and 14 of the Constitution of India the petitioners have claimed reliefs in terms of prayer clauses (A) and (B) as follows:

A] By issue of writ of certiorari or orders or directions in the nature of writ of certiorari, the Hon'ble Court may call for record and proceedings of the decision in respect of Government Resolution dated 16th September, 2016, cancelling the freedom fighters pension granted in favour of the petitioners may be

called and after scrutiny of the same this Hon'ble Court may quashed and set aside the impugned Government Resolution dated 16th September, 2016.

B] This Hon'ble Court by issuing appropriate writ of mandamus or directions or orders in the nature of writ of mandamus issue directions to the Government and the respondents to restore the pension granted in favour of petitioners as freedom fighters pension as above, as per the orders dated 30th March, 2015 and 8th April, 2015 and continue to pay the said pension.

3. Facts relevant to decide the present petition are according to the petitioners, the petitioners are freedom fighters participated in Hyderabad Liberation Movement except petitioner Nos. 1, 2, 7, 10 and 13 who are widows and legal heirs claiming through deceased freedom fighters. Freedom fighters pension scheme is implemented by the Government of Maharashtra under which the petitioners were held to be entitled for grant of freedom fighters pension and accordingly orders were issued in favour of the petitioners.

4. It is the case of the petitioners that on a frivolous, forged and fabricated complaint in the name of one Satyawar Uttamrao Kudake received by the Hon'ble Chief Minister, the pension granted in favour of the petitioners was stayed by order dated 17th July, 2015. The Government based on such complaint

and without verifying its correctness and genuineness, asked the Divisional Commissioner, Aurangabad to hold an enquiry in the light of complaint in respect of grant of pension to the petitioners. The Divisional Commissioner appointed a squad of the officers from his office to hold an enquiry. The said squad submitted its report to the Commissioner on 21st October, 2015 and in turn the Commissioner submitted report to the Government and the Government said to have taken a decision in a meeting held on 5th July, 2016. According to the petitioners an enquiry report prepared by the squad appointed by the Commissioner is based on superficial enquiry and the officers did not go in detail in the records. The report submitted by the officers, Commissioner and ultimately order passed by the Government is considering only three aspects namely age of the freedom fighters, non availability of copies of warrants with respective Tahasil office to whom such copies were forwarded and cutting of "Sindi" trees. According to the Government, cutting of "Sindi" trees do not constitute participation in Liberation Movement.

5. It is contended that the Government vide Government Resolution dated 16th September, 2016, based on the reports issued orders, thereby cancelled the freedom fighters pension granted in favour of the petitioners. The Government also ordered recovery of amount which is received by the petitioners towards arrears of pension and the regular pension. In pursuance to the orders of the Government, notices of recovery have been served on the petitioners and petitioners are asked to re-deposit the amount,

failure to which the encumbrances will be placed on the properties of the petitioners.

6. Further it is the case of the petitioners that an enquiry held is superficial and not in accordance with the norms laid down by the Government. Pertinent evidence produced and considered by the Government while granting pension was the attachment warrants, the record of which is available in Tahasil Office, Ashti wherein the petitioners' names are appearing. Said attachment warrants were scrutinized by the Commission appointed by the Hon'ble Supreme Court namely "Justice Palkar Commission". Justice Palkar Commission had done scrutiny of the records and verified the original record from Ashti Tahasil and held that said warrant is true and correct. Other freedom fighters whose names are appearing in the record and as per the report of the Commission are getting freedom fighters pension and petitioners were denied, therefore, the impugned action is violative of Article 14 of the Constitution of India.

7. Mr. N. B. Khandare, learned counsel appearing for the petitioners made submissions in the light of aforesaid contentions of the petitioners. He submitted that the petitioners were granted pension after considering the attachment warrants and record which is available in Tahasil Office, Ashti wherein the petitioners' names are appearing. An enquiry conducted by the squad appointed by the Commissioner is superficial enquiry as the said committee has not considered the fact that Satyawar Uttamrao

Kudake in whose name the complaint was allegedly made that the freedom fighters are bogus, that said complainant is saying that he did not make such complaint. The Government has issued impugned order only on three aspects namely age of freedom fighters, non-availability of copies of warrants with respective Tahasil office and cutting of Sindi trees. The Committee did not give proper opportunity to the petitioners to put-forth their contention before it and to produce the documents. Learned counsel has taken us through various documents produced on record by the petitioners. It is submitted that the Committee did not consider said documents, therefore, decision / report of the Committee ought not to have been considered by the Government while issuing the impugned order/ Government Resolution dated 16th September, 2016 cancelling the pension awarded to 85 freedom fighters including the petitioners.

8. It is submitted that age of the petitioners on the date of participation in the movement is not material and therefore some of the freedom fighters ages between 8 to 10 years cannot be ground to cancel pension and to support his submission learned counsel has placed reliance in the case of *Bhalchandra S/o. Trimbakrao Vaidya Vs The Union of India, through the Secretary to Govt. of India and others 1995 (3) Bom. C.R. 370*. Learned counsel has thus claimed to quash and set aside the impugned order and prayed to grant reliefs as claimed by allowing the petition.

9. On the other hand learned AGP referring the reply

submitted on behalf of respondent Nos. 1, 3 and 5 submitted that the petitioners had been granted freedom fighters pension by the State Government and Government Resolution dated 30-03-2015 came to be published in this regard. However, on the basis of complaint received against these 85 freedom fighters, General Administrative Department of the State Government directed the Divisional Commissioner to make detail enquiry in all 85 cases. Therefore, the Committee under Chairmanship of Divisional Commissioner was constituted, who conducted the enquiry and report had been submitted to the State Government on 18-07-2016. It is submitted that said Committee had perused the birth register of freedom fighters and it was revealed that some of the freedom fighters were born after completion of Marathwada freedom movement and some of them were having their ages below 10 years at the relevant time. The names of above referred freedom fighters are mentioned in the warrants issued from Tahasil office, Ashti. Details of those warrants i.e. the date of receipt, inward number, file number of warrants are also not available. Therefore, the Committee concluded that warrants allegedly issued are bogus and the names mentioned in these warrants are also not reliable. Therefore, after considering the report of the Committee submitted by the Divisional Commissioner, Aurangabad, the Government has issued Government Resolution dated 16th September, 2016 and cancelled the pension of 85 persons including the petitioners. The State Government specifically directed to verify the genuineness of attachment warrants and the enquiry squad has verified the relevant documents submitted by the petitioners in

addition to the enquiry of attachment warrants. Therefore, the enquiry conducted is proper, legal and valid. In the above circumstances, impugned order is legal and proper. Learned AGP has relied upon the decision in the case of *West Bengal Freedom Fighters Organization Vs Union of India 2004 DGLS (soft.) (SC) 713* to support his submission that decision of the Committee cannot be said to be perverse as it is based on the basis of available material. He also relied upon the decision in the case of *Orissa Vs Chaudhari Nayak and others* citation while dealing with issue of freedom fighters pension based on false claim, fabricated documents held that any complacency on the part of Government in taking action against bogus claims under any scheme would encourage bogus claims under all schemes, by underserving candidates, who are well connected and influential.

10. Learned AGP has further submitted that as the petitioners have committed fraud to get freedom fighters pension, they are not eligible to get any equitable relief from this Court. Petitioner Nos. 13 and 14 are shown as resident of Patoda, Dist. Beed. However, office record available with the Tahasil Office Jamkhed, Dist. Ahmednagar shows that petitioner Nos. 13 and 14 are permanent resident of village Nannaj, Tq. Jamkhed, Dist. Ahmednagar. In the enquiry report dated 18-07-2016 the Divisional Commissioner observed that out of 85 freedom fighters, 13 freedom fighters were below the age of 8 to 10 years on the date of issuance of warrant. No office record of so called warrant found with the Tahasil, Ashti. According to learned AGP there is no illegality in

passing impugned order hence the petition deserves to be rejected.

11. There is no dispute that by separate orders dated 30.03.2015 and 08.04.2015 (page Nos. 24 to 441) the petitioners were granted freedom fighters pension after considering the several documents i.e. warrants, which shows that they are freedom fighters and that they are satisfying requirements as per Government Resolutions dated 10.08.1970 and 04.07.1995.

12. It appears that firstly scheme was announced by issuing Government Resolution dated 19.11.1965 and by Government Resolution dated 10.08.1970 and 04.07.1995 some changes were made for the purpose of considering the applications. Three types of committees have been constituted i.e. District Level Zilla Gaurav Samiti, State Level High Power Committee and Government Administrative Department (GAD) Freedom Fighter's Cell. It was necessary for the petitioners to submit proof of participation such as arrest warrant or attachment warrant or any other proof and affidavit of two freedom fighters who are already recognized as freedom fighter and receiving pension stating identity and participation in the liberation movement. As the petitioners had cleared all three stages referred to above they were granted freedom fighters pension after deep verification and scrutiny of proof.

13. It appears that applications for grant of pension were submitted some time in the year 1982 or even prior to that in some

cases in the year 1971-1972 and were kept pending without consideration. In some cases scrutiny was done and objections were raised for compliances and remained pending for want of genuine and sincere action. Some petitioners could not pursue due to old age and for some other reasons. In the meanwhile some 354 persons who did not have genuine claims and in connivance/collusion with Government officials filed applications and claimed pension based on fabricated copies of warrants their claims were promptly considered and in bulk pension was granted to all 354 persons. This led to file PIL before the High Court and all orders were set aside. Appeals were filed before Supreme Court. Supreme Court directed to set up a commission and the Government under orders of Supreme Court appointed one man commission Justice Palkar. Said commission examined all cases. During enquiry the commission recorded evidence and witnesses were also examined. Genuineness and authenticity of copies of warrants were examined and found that those were fabricated by making interpolation, introducing names therein etc. Commission found only 37 cases as genuine and rest of the claims held to be bogus and rejected. Out of 37 claims, claim of one Yashwant Kulkarni (wife Kaveri Kulkarni) based on attachment warrant from Ashti Tahesil held valid as the copy of said warrant was found to be genuine. The conclusion recorded by the said commission in respect of said Yashwant Kulkarni in report at page 405 is as under :

"Shri. Yeshwant Kulkarni (deceased) represented by wife Kaveribai. Kaveribai filed application, as by the time of filling

application her husband Yeshwant Kulkarni was no more. In the application she stated that her husband had cut shindi trees and he was convicted and sentenced, fine of Rs.500/- and there was order to attached his property for recovery of fine. The copy of order directing him to pay fine is produced. It is certified copy obtained by Kaveribai. She had filed WP in the High Court No. 1665/1995. There was an interim order of payment of provisional pension. The Zilla Gaurav Samiti in its meeting held on 20.02.1997 observed that the warrant was pertaining to attachment of property. The District Collector wrote to the Deputy Secretary on 10.02.1997 that the original record of the warrant is available with Tahasildar Patoda and copy has been issued by the Tahasil Office. The warrant mentions the name of Kaveriabai's husband. There was delay in establishment of Zilla Gaurav Samiti and time limit given by the Court is coming to an end and Government should therefore take a decision.

Thereafter, the High Power Committee sanctioned pension on 02.07.1997. While considering his case it has not been pointed out in the warrant that, the warrant was in respect of attachment of property because fine was not paid. It was not arrest warrant as required by the Government Resolution and there is no provision in the GR to grant pension to person who was fined for offences of cutting shindig tree.

Before the Mane Committee Kaveribai appeared. She has no personal knowledge. She has filed a detailed affidavit before the Commission stating that aforesaid facts and mentioning

various orders of the High Court passed in the petition.

She has produced a certified copy of panchanama in respect of attachment of property, in which four names of panchas are mentioned viz. Dattatraya, Waluba, Jamdarkha and Rangnath. It is stated that the Panchas appeared on being called by Police at the house of Yeshwantrao Kulkarni and police demanded an amount of Rs.500/-, which fine was imposed for cutting Shindi trees, etc. He refused to pay the fine but there was nothing in the house available for attachment, therefore, his house was attached. **The warrant was for attachment and not for arrest.** In view of the provisios of the Government Resolution No. POS-1270/L-1 dated 10.08.1970, he is entitled to pension as freedom fighter for the reason that he was sentenced to fine and in the recovery proceeding his property was attached. His case was rightly considered with reference to the provisions of Government Resolution dated 10.08.1970 and the Commission does not find it proper to interfere with the order.”

14. It appears that petitioners have participated in the movement and attachment warrants were issued against them. Their names are appearing in the said warrants examined by the commission. The petitioners' claims were pending since 1982 or prior to that. The petitioners thereafter pursued the application and made the Government to examine claims in the light of case of Yashwant Kulkarni. Detail enquiry was held to see that their names are appearing in the warrant. Detail enquiry was held by

Government. Documents at page Nos. 24 to 441 (except page Nos. 41, 42 and 48) are in respect of petitioners and they are copies of files of Mantralaya and the said documents *prima facie* show involvement of the petitioners in the movement.

15. Alongwith affidavit-in-rejoinder to reply filed by respondent No. 5 the petitioners have filed copies of school record of some of the petitioners, copies of affidavits of some of the petitioners and conclusion of Justice Palkar commission in respect of 37 freedom fighters whose pension was approved by the said commission.

16. Exhibit-S page No. 790 shows that original record directing the applicants Sampat Tukaram and Yeshwant Rangnath to pay fine was available in the Tahasil Office, Ashti. Letter dated 03.11.2015 addressed to Section Officer by Additional District Collector, Beed shows that arrest warrant was issued against Uttam Kudake resident of Pitti, Tq. Patoda, and this letter also shows that said Congressi Gunda was absconding and his property was ordered to be attached etc. Letter dated 20.08.2015 of Tahasildar, Ashti addressed to the District Collector, Beed shows that copies of original warrant are available in the record room. Letter dated 10.06.2015 addressed to the District Collector, Beed by Tahasildar, Ashti further shows that copies of attachment warrants were issued to freedom fighter Uttam Kudake from original urdu record in the office.

17. Mr. N. B. Khandare, learned counsel for the petitioners referring the rejoinder affidavit-to-reply filed by respondent No.5 submitted that in the enquiry held by committee appointed by the Divisional Commissioner consisting of Avval Karkun, Naib-Tahasildar, RDC, Beed and Deputy Commissioner, Aurangbad only questioner was provided to the petitioners and no further hearing was afforded. Said committee submitted vague report to the Commissioner and the same was forwarded to the Government. Nothing adverse was found by the said committee. It is submitted that again as per Government Resolution dated 14.06.2007 a committee was constituted consisting of the Divisional Commissioner being head, Collector, Beed as a member, Superintendent of Police, Beed as a Member and RDC, Beed as Member-Secretary. Said committee forwarded communication dated 18.07.2016 to the Government. Report of the said committee shows that no enquiry was held by the said committee and observations and conclusions mentioned in the said report are solely based on report submitted by the earlier committee. It is submitted that no hearing took place before the said committee and notices were never issued to the petitioners. However, incorrect statement is made in the report. According to the learned counsel for the petitioners committee did not verify the earlier correspondence and records which were submitted in support of the claim.

18. It appears that after the petitioners were granted freedom fighters pension as per the separate orders dated

30.03.2015 and 08.04.2015 the complaint was made by one Satyawar Kudke on 01.06.2015 (Exh.C) to the Hon'ble Chief Minister making grievances that warrants on the basis of which pension was granted by the Government, said original warrants are not with the Government and that the agents had prepared bogus attachment warrants and cheated the Government and that there is a racket in this respect and request was made to make an enquiry and to stay the pension. It appears that said complainant Satyawar Kudke gave statement (Page-445) that he did not give such application/complaint dated 01.06.2015 and he has no concern with the same and somebody has given said application in his name. It appears that he also filed an affidavit dated 18.08.2015 (Page-447) to stay decision dated 17.07.2015 of the Government granting stay to pay arrears of pension to 79 freedom fighters relying upon the false complaint misusing his name. Thus, it appears that person in whose name above said complaint making grievance about granting freedom fighters pension was not made by the person in whose name complaint was made. It also appears that after receipt of said complaint dated 01.06.2015 decision dated 17.07.2015 staying payment of arrears of freedom fighters pension was taken without hearing the freedom fighters named in the list attached to the said decision (Exh.D).

19. It appears that after aforesaid complaint the Government directed the Divisional Commissioner to make enquiry in the matter with a direction to the Residential Deputy Collector, Beed to make available 85 cases/proceedings with necessary

documents for verification and he was directed to submit report. It appears that the Divisional Commissioner, Aurangabad issued notice dated 31.08.2015 to the petitioners and they were asked to furnish information in the format which is at page 462 and further they were directed to remain present on 10.09.2015 between 12.00 to 05.00 pm in the office of Collector, Beed with documents in this respect, for the purpose of verification, as seen from copy of notice Exh.E (colly). It is submitted on behalf of the petitioners that petitioners were only asked to furnish information and no opportunity was given to them to place the documents on the basis of which the petitioners were granted pension. Report of the squad/committee at page 590 which was sent to the Divisional Commissioner on 21.10.2015 shows that information was taken from the petitioners and they were given reasonable opportunity, but said report does not show that said squad/committee had considered the documents referred earlier which were considered when the petitioners were granted pension by orders dated 30.03.2015 and 08.04.2015. Said report also shows that the complainant Satyawar Kudke in his statement dated 10.09.2015 mentioned that he did not give complaint/application dated 01.06.2015 to the Government. It appears that, thereafter, the committee consisting of the Divisional Commissioner as a President, District Collector, Beed as a member, Superintendent of Police, Beed as a member and Residential Deputy Collector, Beed as member-Secretary had meeting on 05.07.2016 in the matter of freedom fighters pension granted to 85 persons and it concluded that warrants are bogus. It is seen that said committee only considered

the ages of freedom fighters mentioned in the said decision of the said committee and it has not considered other documents which were earlier relied by the Government when the pension was granted to the petitioners. It appears that on the basis of decision of said committee the Government issued impugned order (Exh.J) dated 16.09.2016 cancelling the pension granted to 85 freedom fighters.

20. In view of above, we are of the view that squad/committee headed by the Deputy Commissioner as well as the committee headed by Divisional Commissioner, Aurangabad have not considered the documents referred earlier which were considered while granting freedom fighters pension to the petitioners and so also no proper opportunity of hearing was given to the petitioners before passing the impugned order and therefore, it is necessary to remand the matter to the respondents.

21. In view of above, impugned order is set aside. The matter is remanded to respondent No. 1 with a direction to decide the same afresh after giving full opportunity to the petitioners to produce the documents and hearing. All the points are kept open. Accordingly, rule is made absolute. Writ petition stands disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]