

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4739 OF 2014

Kaushalyabai W/o Karbhari Bangar,
Age – 85 years, Occu. Household,
R/o. Bhayala (Karanjwan), Tq. Patoda,
District – Beed

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
General Administration Department,
(Freedom Fighter Division),
Mantralaya, Mumbai – 32.

2] The District Collector, Beed,
Dist. Beed

3] Freedom Fighter's High Power Committee,
Freedom Fighter's Division, Mantralaya,
Mumbai Through its Secretary

.. Respondents

...

Mr. A.N. Nagargoje, Advocate for petitioner
Mr. S.S. Dande, AGP for respondent-State
Respondent no. 3 served – absent

...

CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.

DATE : 02-04-2019

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned
counsel for appearing parties finally, by consent.

2. Petitioner is the widow of a freedom fighter. She had applied in 1995 for grant of freedom fighter's pension. The claim of petitioner has been supported by copies of documents including affidavits of freedom fighters as are required. After scrutinizing the claim initially at district level, then by the High Power Committee, the State government granted her claim on 23-09-2004 with effect from 18-08-1995. Accordingly, the petitioner had been receiving pension continuously since 2004.

3. Subsequently, petitioner had also lodged a claim for Central government pension by making an application therefor. A copy of warrant against her husband dated 10th *Isfandar* 1357 *Fasli* had also been enclosed. In the same, it appears that, some queries had been raised with the State government by the Central government. On verification, according to the respondents, it transpired that warrant issued against husband of petitioner dated 10th *Isfandar* 1357 *Fasli* is not a reliable document and had been considered so by Palkar Commission which had vitiated claims of as many as 355 persons.

As a fallout of the same, the matter appears to have been reconsidered by the State government and impugned order dated 22-05-2014 has been passed cancelling freedom fighter's certificate, benefit of freedom fighter's pension and certain other

directions as well have been given including withdrawal of benefits being given to the nominees and, thus, the petitioner is before this court.

4. Learned counsel for petitioner Mr. Nagargoje vehemently submits that the only reason for cancellation of freedom fighter's pension and other benefits to petitioner, is observations of Palkar Commission in respect of warrant issued against one Shamrao Yashwanta Kanthale of even date i.e. 10th *Isfandar* 1357 *Fasli*. Palkar Commission had considered several other aspects. Warrant of said date had been found to be unreliable by Palkar Commission and there is no other reason for which benefits of freedom fighter's scheme are being withdrawn from the petitioner.

5. He submits that impugned order has come as a severe jolt for the old woman, who is 90 year old. She has been put in dire straits with abrupt truncation of the aid being received by way of freedom fighter's pension.

6. Learned counsel for petitioner submits that due to this abrupt interception of benefit of freedom fighter's pension while already petitioner had been facing acute problems, her life has been reduced to misery. Learned counsel submits that petitioner had no idea whatsoever what is being considered by the State

government, no notice had ever been issued in respect of reconsideration of grant of freedom fighter's pension. The order passed is in stark breach of principles of natural justice.

7. So far as the consideration which has weighed with the State government while passing impugned order, according to learned counsel, apart from the same not being proper, it may also have to be considered, for grant of freedom fighter's pension, aforesaid warrant alone was not the only consideration. He submits that several other material had been available and is available in support of petitioner's claim.

8. He submits opportunity before cancellation was a *sine qua non*. Learned counsel for petitioner further purports to refer to various documents annexed along with petition. He submits, pertinently -two recognized freedom fighters who knew petitioner's husband personally, had, on affidavit stated that her husband had participated in the freedom movement as an underground freedom fighter. This primary requirement being satisfied, the reason being given for withdrawing and cancelling the pension is not proper and is illegal. He goes on to submit, as a matter of fact, outward number of warrant in respect of her husband is '204' and what had been considered by Palkar Commission is in respect of outward number '201'. While opinion of Palkar Commission has been

given, considering the case of Shamrao Yashwant Kanthale, it cannot be conclusively determined that in respect of other persons document with outward number would also be a forged document. He, therefore, submits that the impugned order is absolutely untenable, is devoid of any substance, is in breach of principles of natural justice and, thus, deserves to be set aside.

9. On the contrary, Mr. Dande, learned Assistant Government Pleader appearing for respondents no. 1 and 2 submits that the observations as have been referred to in the impugned order are relevant and pertinent. He submits that outward number 201 dated 10th *Isfandar* 1357 *Fasli* while considering case of Shamrao Yashwanta Kanthale, had been found by Palkar Commission, to be not only unreliable but according to learned Assistant Government Pleader, it appears to be a forged document of a non-subsisting record. Translation of Urdu warrant dated 10th *Isfandar* 1357 *Fasli* shows that outward number is 201 and the same being bogus, no fault can be found with impugned order. He refers to observations under clause 6 of the impugned order and submits action is mooted accordingly.

10. Having heard learned counsel as aforesaid, it is obvious that no notice of whatsoever nature had ever preceded before taking action of cancelling the freedom fighter's pension to

petitioner. Petitioner is stated to be 90 year old lady and had been receiving freedom fighter's pension since 2004. While cancelling the benefits singular reason which has apparently weighed is the suspicion in respect of warrant which had been submitted along with other material for consideration of grant of freedom fighter's pension. The claim had been confirmed at various levels, by district committee and High Power Committee.

11. Regard may also be had to observations of supreme court as are appearing in order dated 25-11-2013 in the case filed by *Ram Rao and others Vs. District Collector, Beed and others* whose benefit was sought to be taken away. Those observations as well may have to be taken into account. In the circumstances, we consider that impugned order drastically adversely affects an old woman, such an action is very difficult to be sustained in the facts and circumstances of the case, being in stark breach of principles of natural justice.

12. In view of above, impugned order dated 22-05-2014 passed by respondent no.1 is set aside. Matter is remitted to the State government for reconsideration giving adequate opportunity to petitioner.

13. We hope that hearing petitioner would be of a meaningful nature and not only an ostensible compliance of

principles of natural justice. Principles of natural justice be followed in its letter and spirit eschewing perfunctory consideration.

14. Writ petition is disposed of.

15. Rule is made absolute accordingly.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/