

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO. 4597 OF 2014

Mohanrao Bhoju Kadam,
Age; 85 years Occupation; Nil,
Resident of Wanjarwadi,
Taluka Biloli, District; Nanded.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
General Administration Department,
(Freedom Fighter's Section),
Mantralaya,
Mumbai-32.
2. Freedom Fighters' 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-32.
4. The Collector, Nanded
District Nanded.

RESPONDENTS

...
Shri. V.S. Panpatte, Advocate for Petitioner
Shri. P.N. Kutti, AGP for Respondents
...

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date of Reserving Judgment : 29.01.2019
Date of Pronouncing Judgment : 06.02.2019

JUDGMENT : (Per SUNIL K. KOTWAL, J]

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. This petition is filed for quashment of the order dated 19.1.2013 passed by respondent State Government of Maharashtra rejecting the application of the petitioner for grant of pension to the petitioner as 'Underground Freedom Fighter' in 'Marathwada Hyderabad Liberation Movement in 1947 to 1948', with consequential reliefs of grant of pension and other benefits available to the freedom fighters.

3. Facts, in nut shell, are that on 23.4.1999 the petitioner filed application to the Collector, Nanded for grant of pension as 'Underground Freedom

Fighter' in 'Hyderabad Liberation Movement' in 1947-1948, which was recommended by the District Scrutiny Committee. However, that proposal was rejected by the State Government on the ground of non fulfillment of criteria Nos. 1, 2, 3 and 4 of the Government Resolution dated 4.7.1995, wherein the criteria was fixed for grant of freedom fighter pension to the concerned. That order was communicated to the petitioner through the Collector, Nanded vide letter dated 16.4.2004. Against that order, the petitioner filed writ petition bearing No. 6121 of 2011 which was disposed of by this Court on 9.7.2012 and directed the State Government to take fresh decision within three months from the date of order. Liberty was given to hear the petitioner before passing any further orders. Accordingly the petitioner was heard through his Advocate Mr. V.S. Panpatte by the State Government and the application of the petitioner was rejected by the reasoned order dated 19.1.2013. Therefore, this writ petition arises.

4. Heard learned counsel Mr. V.S. Panpatte, learned counsel for the petitioner and the learned AGP for the State.

5. Preliminary objection raised by the learned counsel for the petitioner is that the petitioner was heard by the Principal Secretary of Government of Maharashtra and not by the High Power Committee. However, we do not find any substance in these objections, for the reason that the in writ petition No. 6121 of 2011 and 7081 of 2011, liberty was given to the Government to hear the petitioner before passing any order. No direction was given to hear the petitioner before the High Power Committee. The Principal Secretary to the State of Maharashtra represents the State Government and therefore the hearing given to the petitioner before him is sufficient compliance of the order passed by this Court.

6. In Writ Petition No. 6121 of 2011, the

matter was remanded for reconsideration of the order passed by the State Government rejecting the claim of the petitioner which was passed without application of mind to the specific facts of the case and without assigning reasons as to why two recommendations in favour of the petitioner could not have been accepted. However, now, after going through the impugned order dated 19.1.2013, it emerges that the well reasoned order is passed by the State Government assigning specific reasons for not accepting two affidavits filed by recommending freedom fighters and the certificates issued by them.

7. The learned counsel for the petitioner submits that for grant of pension to the claimant as 'Underground Freedom Fighters', all the criteria laid down in the Government Resolution dated 4.7.1995 need not be fulfilled and even the application of the petitioner supported by more than two affidavits of freedom fighters as well as recommendation of the District Screening Committee is sufficient compliance

of the requirement of Government Resolution dated 4.7.1995. He has placed reliance on :

- (1) "Mukundlal Bhandari Vs Union of India and others" [AIR 1993 (SC) 2127],
- (2) "Kisan Hanuji Jambhulkar vs The State of Maharashtra" 2004 (2) BCR 433,
- (3) "Gurdial Singh vs Union of India and aothers" [(2001) SCC 8],
- (4) "Kamlabai Sinkar vs State of Maharashtra and others" [(Civil Appeal No. 5344 of 2012 decided on 20th July, 2012) by Apex Court,
- (5) "Kishansinha S/o Tukaramsinha Candel Vs State of Maharashtra and others" [Writ Petition No. 2831 of 2000].

8. In reply, the learned AGP for the State of Maharashtra submits that many bogus Freedom Fighters' claim for pension were noticed by the Supreme Court, and therefore the Palkar Commissioner was appointed to inquire into the alleged bogus claims of freedom fighters'. He submits that Justice Palkar Commission

has noticed many proforma affidavits filed by the claimants in support of their claims, wherein certified freedom fighters' had only filled in blank form in hand writing, in the typed proforma affidavits. In some affidavits even blank spaces were not filled in. In my affidavits there was erasing by whitener and over writing was also found, which were not initiated by the concern freedom fighters. The learned AGP submits that therefore, considering previous experience regarding the certificates issued by the freedom fighters, it is highly risky to award pension to the claimants only on the basis of two certificates supported by the affidavits of two freedom fighters'. The learned AGP submits that in the case at hand, though the petitioner has filed affidavits of Shri Chintake, Shri Devghare, Shri Kadam and Shri Singane, no evidence is placed on record to show that those deponents had undergone the imprisonment for two years, or they were absconding for two years as required under the Government Resolution dated 4.7.1995. Therefore, they are not

qualified to make such affidavits. He has pointed out that even the affidavits of freedom fighters filed by the claimants are in conflict with the affidavits of the claimants regarding actual part played by the claimant in the 'Hyderabad Liberation Movement'. He submits that even the school leaving certificates filed by the claimant does not show that at the relevant time of 'Hyderabad Liberation Movement' in the year 1947-1948, the petitioner was compelled to leave his education or he was expelled from the school. The learned AGP submits that the claim of the petitioner is not corroborated by the authentic Government record to show that he has actually participated in 'Hyderabad Liberation Movement' in the year 1947-1948. In support of his contention, he has placed reliance on the Judgment delivered by the Apex Court in **"State of Maharashtra & Ors Vs Namdeo etc. etc."** [Civil Appeal No. 7899 – 7901 of 2013 decided on 9th September, 2013].

9. Un-disputedly, the State of Maharashtra came

out with pension scheme for under 'Underground Freedom Fighter' and participants in 'Hyderabad Liberation Movement' in the year 1982-1992, respectively. Thereafter, another specific scheme dated 4.7.1995 was framed, known as "Freedom Fighters Pension Scheme" which was issued vide Government Resolution of even date. Under these schemes, benefits were extended to the freedom fighters on different categories stipulated therein, one of which was 'Underground Freedom Fighters'. Since the petitioner has made the claim under this category, we reproduce herein below the said portion of Government Order dated 4.7.1995.

" (1) A certificate given type of difficulties and troubles of all sorts undergone during the agitation.

- (a) Living away from the house.
- (b) Expelled from the educational institute or leaving education.
- (c) Received beatings from police causing disabilities.

(2) Certificate to the effect that he was punished for minimum two years or declared and remained absconding for minimum of two years from two freedom fighters of that area, along with true copies of certificates of imprisonment undergone by that

freedom fighter of advertisement of declaration of absconding or Government orders. Also affidavit of the person who issued such certificate, shall be attached with the application.

(3) Certified copy of Government record of that time showing remained underground, if available.

(4) Original copy of newspaper of that time published giving information about having gone underground of the applicant and name etc. if available. "

10. However, the school leaving certificate filed by the petitioner shows that though he claims that he participated in 'Hyderabad Liberation Movement' in 1947-1948, he was admitted in Zilla Parishad School Kuntur, Taluka Naigaon (Kh.), District Nanded on 16.2.1942 and he was removed from the school in the month of October, 1942, due to continuous absence in the school. Thus, it emerges that the petitioner could not complete his education due to his absence from the school for the period of about 8 months for the year 1942 i.e. much prior to 'Hyderabad Liberation Movement'. In the circumstances, obviously on the basis of this school

leaving certificate the petitioner cannot prove that he was constrained to leave his education due to participation in 'Hyderabad Liberation Movement' .

11. No other substance is placed on record by the petitioner to prove that due to participation in the 'Hyderabad Liberation Movement' he was living away from his house or he has sustained disabilities due to beatings received from the police during any agitation of 'Hyderabad Liberation Movement' . The vague affidavit of the petitioner, without specifying any specific date of occurrence of such instance, is not sufficient to prove the ingredients of Clause (1) of the Scheme for 'Underground Freedom Fighter'. It is to be noted, as pointed out by the learned AGP, that the petitioner has not filed certified copy of the Government record of the period 1947-1948 to show that the petitioner was underground during the period of 'Hyderabad Liberation Movement'. Even the original copy of the news paper of that period is not filed on record to show that any news item was

published in the year 1947-1948 which shows that the petitioner had gone underground during the 'Hyderabad Liberation Movement'. Therefore, even Clauses (3) and (4) of the "Freedom Fighters Pension Scheme", Government Resolution dated 4.7.1995 are not duly fulfilled by the petitioner. Regarding two certificates and affidavits of two freedom fighters annexed with the application of the petitioner, the Officer concerned of the Government Department has pointed out that in (Exhibit 'O') certificate issued by Shri Nagorao Mungal dated 23.8.2001, initially blank space is left and thereafter the contents are typed. Initially 'Loha' was typed and subsequently in that place 'Naigaon' was typed. Over these changes, nobody had put his initial. For that reason, the affidavit sworn by Nagorao Mungal was not accepted. In the affidavit of second freedom fighter Shri Govindrao More dated 13.6.2001, initially blank space was left and thereafter in the hand writing contents were written. No initial was placed on this hand written contents. Therefore,

considering the objection raised by Justice Palkar Commission, the Government declined to accept these affidavit of freedom fighter. These findings are acceptable as the concern authorities have opportunity to examine original documents filed by the appellant. Even affidavit of freedom fighter, Shri Marotrao Siddram Potle is rejected by the Government for the reason that the affidavit of Shri Potle and affidavit of claimant/petitioner are in conflict with each other regarding the actual participation of the petitioner in 'Hyderabad Liberation Movement'.

12. Thus, it reveals that except the recommendation of the District Screening Committee, the petitioner cannot comply the criteria prescribed under the Government Resolution dated 4.7.1995. Assigning these specific reasons, the State Government has rejected the claim of the petitioner for pension as 'Underground Freedom Fighter' in 'Hyderabad Liberation Movement'. The impugned order

passed by the State Government is well reasoned order giving specific reasons for non acceptance of the claim of the petitioner, as well as non acceptance of affidavits of the freedom fighters relied on by the claimant/petitioner.

13. In **"State Government and Ors vs Namdeo and Ors"** (supra) and after considering various judgments of the Supreme Court, including case of **"Mukundlal Bhandari Vs Union of India and others"** (supra) & **"Gurdial Singh vs Union of India and others"** (supra) the Apex Court culled out following legal principles :

"(a) The claims of the freedom fighters are to be dealt with, with sympathy.

(b) The authorities are not to go by the test of "beyond reasonable doubt" and standard of proof based on this principle has to be discarded.

(c) On the contrary, the principle of probability is to be applied and eschewing the technicalities, the approach should be to uphold the entitlement.

(d) When scheme itself mentions the documents which are required to be produced by the applicant, normally those documents need to be produced to prove the claim.

(e) The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. The order of the State Government is to be examined applying the parameters of judicial review which are available in examining the validity of such orders.

(f) Even if order is found to be perverse or flawed, the High Court can, at the most, remit back to the State Government to reconsider the case.

However, this Court has also observed that there may be cases where because of long lapse of time or other circumstances beyond the control of the applicant, it is almost impossible or cumbersome to procure and produce all the stipulated documents. In such cases, the claim cannot be summarily rejected for want of documents, even though as per the Pension Scheme, such documents are to be provided. We are of the opinion that to meet such eventualities, following principle needs to be added:

(g) On the basis of evidence/documents/material submitted by the applicant, the Government should examine whether it is a genuine case and the documents produced establish that the applicant had participated in the freedom movement. It should be done applying the principle of probability. If the material/documents produced are otherwise convincing, the Government in appropriate

cases may not insist on strict compliance with all the requirements stated in the Scheme."

14. In the case "**State Government and Ors vs Namdeo and Ors**" (supra) in para Nos. 21 and 22 the Apex Court further observed that :

"21. In the present case, as already noted above, except the affidavits of the two freedom fighters, no other material is placed to substantiate the claims. Approach of the High Court accepting the version of the respondents merely on affidavits, ignoring the requirements of the Scheme altogether, is fraught with dangers and would be prove to misuse and abuse. We can appreciate that direct evidence of having participated in the freedom movement, which events occurred almost 70 years ago, may not be available and therefore it should not be deemed that this Court is insisting on such direct evidence in order to enable an applicant to succeed in his claim. At the same time, the Government Resolution dated 4.7.1995 enlists the documents, on the production of whereof, the respondents could substantiate their participation and involvement in the freedom movement. In a given case, if there is some cogent material on the basis of which satisfaction can be arrived at about the participation in the agitation, the

Government may relax the other requirements. However, it would be for the State Government to exercise such a discretion, in a given case, if it is otherwise fully satisfied that the material produced demonstrate that the applicant is a freedom fighter.

22. In the present case, the Government rejected the claim by passing speaking order to the effect that certain documents required under Government Order dated 4.7.1995 had not been furnished. Once, the claim is rejected on these grounds and such an order is in consonance with the requirement of Scheme dated 4.7.1995, no fault can be found with such an order particularly when no case for dispensation of these requirements was made out by the respondents. The claims were based only on the affidavits with no other material. We are of the opinion that if claims are allowed merely on such affidavits, that would amount to giving a complete go by to the requirements of the Scheme. This cannot be allowed. We are, therefore, of the opinion that High Court could not have invalidated the orders of the Government."

15. In view of the above discussed legal principles, if the case of the petitioner is examined carefully as observed above, except the affidavits of freedom fighters which are also found doubtful by the State Government and the recommendation of the

District Screening Committee, no reliable substance is available on record to indicate that the petitioner actually participated in 'Hyderabad Liberation Movement'. Therefore, the decision arrived at by the State Government rejecting the claim of the petitioner for "Freedom Fighters Pension Scheme" and other consequential benefits cannot be validated in any manner by invoking writ jurisdiction. In this circumstance, we hold that under above distinguishable facts and circumstances of the case, the ratio of authorities relied on by the petitioner is of no help to the petitioner to allow this petition. These all authorities are distinguishable on facts. We hold that this petition being devoid of merits, deserves to be rejected.

16. Accordingly, Writ Petition No. 4597 of 2014 is dismissed.

17. Parties to bear their respective costs.

18. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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