

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.21618 OF 2016

Date: 19.06.2019

Between:

Chilukuri Venkatram Reddy, s/o. late Narsimha Reddy,
Aged 85 years, occu: Freedom Fighter r/o. Motiapally (v),
Mogullapally (M), Warangal district.

.....Petitioner

and

The Union of India, rep.by its Under Secretary,
Ministry of Home Affairs, Freedom Fighters Division,
Hyderabad Cell, 2nd floor, NDCC-II Building,
Sansad Marg, New Delhi and another.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.21618 OF 2016

ORDER:

Heard learned counsel for petitioner Sri Kowturu Pavan Kumar, Sri A.Kranthi Kumar Reddy, learned standing counsel for respondent no.1, and learned Government Pleader for respondent No.2.

2. Petitioner claims that he participated in the freedom struggle against Nizam Regime for merger of erstwhile Hyderabad State into the Indian Union. He claimed to have gone underground and worked under the leadership of Sri Ranganayakulu of Venkatapur Camp. As a sufferer of freedom struggle he has applied to grant pension under 'the Swatantra Sainik Samman Pension Scheme, 1980' (Scheme, 1980). Application of petitioner was processed and recommended by State Government in Category-II on 03.02.2016. His request was rejected, which decision was communicated vide proceedings dated 12.05.2016, impugned in this Writ Petition.

3. According to learned counsel for petitioner, the reasons assigned to reject petitioner's claim is wholly illegal. According to learned counsel, as relevant records were not available in proof of his suffering during struggle against Nizam rule, the District Collector, Nalgonda issued Non-availability of Records Certificate (NARC) on 03.12.2012; that the District Collector was competent to issue such certificate and though such certificate was forming part of record, the same was not considered on erroneous ground that it was not issued by competent authority and that it did not specify reasons. According to learned counsel, this would clearly show total non-application of mind. As petitioner satisfied the

requirements to consider his claim for grant of pension, denial is illegal. He would further submit that two freedom fighters who have undergone imprisonment for more than six months and are receiving pension also certified his participation in freedom struggle. As per relaxed standards concerning struggle against Nizam rule, a pensioner who had undergone six months imprisonment is qualified to issue such certificate, whereas the same is not taken into consideration on the erroneous ground that minimum period of imprisonment is two years to qualify to issue such certificate.

4. Learned standing counsel justified the decision to reject the claim of petitioner. It is asserted that no material is produced to show that petitioner participated in the struggle to merge Hyderabad State into Indian Union. He would submit that the letter of District Collector dated 03.12.2012 is not in accordance with the guidelines stipulated by Government of India and, therefore, no credence can be given to his report. He would further submit that as per guidelines, only the State Government has to issue NARC, but in the instant case it was issued by the District Collector. Further, the report does not contain essential requirements. According to learned standing counsel, petitioner was not arrested nor was an arrest warrant issued. He would further submit that Personal Knowledge Certificate (PKC) relied by petitioner is also not valid as Sri Vytla Soma Narasaiah did not undergo two years imprisonment as required. The relaxation of this requirement is applicable only to Hyderabad Special Screening Committee (HSSC) cases.

5. With reference to the specific allegations made in paragraph-(n) of the counter-affidavit filed by the respondents on validity of NARC and the personal knowledge certificates stated to have issued by the freedom fighters were not enclosed, on 11.06.2019, learned counsel for petitioner was asked to clarify on the averments made in the counter-affidavit and also directed to place on record the personal knowledge certificate. Petitioner filed I.A.No.2 of 2019 enclosing the copy of the personal knowledge certificate issued by the freedom fighter along with identity cards of the said person and the certificate of imprisonment of that person. By a separate order, they are taken on record.

6. According to learned counsel for petitioner, the order impugned does not disclose the reasons, which are now sought to be raised in paragraph-(n) and it is not permissible to assign reasons in support of the decision by way of counter-affidavit. He further submitted that Sri Vytla Soma Narsaiah was sentenced to two years imprisonment, commencing from 01.11.1947 and underwent imprisonment for 11 months. He gave certificate of Personal Knowledge Certificate stating that petitioner remained underground and suffered for more than six months. That is sufficient to make the petitioner eligible.

7. According to learned standing counsel, the personal knowledge certificate claimed to have been issued by Vytla Soma Narsaiah is not valid. From the certificate, it is apparent that Sri Soma Narsaiah was in Central Jail at Aurangabad from 01.11.1947. If that is so, he would not have known that petitioner was underground and suffered for more than six months,

commencing from August, 1947. Therefore, no credence can be given to the said certificate. By referring to clause 2.3 of the scheme, 1980, he submitted that freedom fighter should be in imprisonment of minimum of two years and should belong to same administrative unit, whereas Sri Vytla Soma Narsaiah did not undergo two years imprisonment and did not belong to same administrative unit.

8. In response, learned counsel for petitioner submitted that as per the Circular dated 01.05.2001, the freedom fighter need not be from the same district and a freedom fighter from adjacent district can also give personal knowledge certificate.

9. I have carefully considered the submissions made and decisions cited at the bar. A person is entitled to ask for pension under the Scheme, 1980, if he had participated in freedom struggle and went underground for more than six months after he was proclaimed as an offender/on whom an award for arrest or on head was announced/detention order was issued, but was not served. The scheme does not recognize the claim of person, who voluntarily went underground or had self-exile suffering. To consider the claims of persons who have participated in the struggle against Nizam rule, the Central Government constituted HSSC. The committee was required to recommend the names of persons who fulfilled the parameters of the scheme. However, claims of persons were also considered even if there is no such recommendation, based on secondary evidence. Persons falling under this category have to obtain PKC from prominent freedom fighters, who suffered imprisonment and NARC. Initially the period

mentioned was five years, later reduced to two years. On account of peculiar circumstances in the struggle against erstwhile State of Hyderabad, period was further reduced to six months.

10. On scrutiny of claims, State Government has to recommend. If there is no material evidencing suffering, but individual claims to have suffered during freedom struggle, the designated authority has to enquire and issue NARC stating that no material is available on record to show that the claimant is proclaimed offender/award of arrest/head was announced/detention order was issued. Based on the secondary evidence, such applications can be considered to grant pension. In the instant case, petitioner claimed that he was underground for more than six months and Sri K.M.Thirupathi Reddy and Sri Vytla Soma Narasiaah, who were co-freedom fighters and undergone imprisonment for more than six months and who are receiving Central Samman Pension, have issued certificates evidencing participation of petitioner in freedom struggle. The District Collector, Nalgonda in his letter addressed to the District Collector, Warangal reported that matter has been enquired with all the concerned authorities of State Government and could not find relevant record in respect of claim of applicant and official records of the relevant time pertaining to the period of 6 Ashwandar 1355 Fasli were not available. Enclosing this certificate, the State Government made favourable recommendation to grant pension to the petitioner.

11. From the reading of the order impugned, it is clear that request of petitioner was rejected primarily on the ground that NARC was not issued by the State Government, but by the District

Collector, that the said proposals are not in accordance with true letter and spirit of the scheme, is vague and, therefore, no credence can be given. Further, the PKC issued by Sri K.M.Thirupathi Reddy and Soma Narsaiah are not admissible for non-HSSC cases. Further, even if it is assumed that for non-HSSC cases also, it is permissible to issue PKC, those two persons had undergone imprisonment only for six months, whereas minimum imprisonment period is two years and, therefore, their certificates are not valid.

12. Heavy reliance is placed by the learned counsel for petitioner on the letter of the District Collector, Warangal. It reads as under:

“GOVERNMENT OF ANDHRA PRADESH
OFFICE OF THE DISTRICT COLLECTOR::NALGONDA

From:
Sri N.Mukteswara Rao I.A.S.,
District Collector,
Nalgonda

To
The District Collector,
Warangal.

Lr.No.C3/6197/2011,

Dated 03.12.2012

Sir,

Sub: Freedom Fighter – Warangal District – A/o. Sri
Chilikuri Venkatram Reddy, s/o. Narsimha Reddy,
R/o. Motlapally village Mogulipally Mandal for
issuance of NARC –Report submitted – Reg.

- Ref: 1. NARC issued by this Court of Sub-Court of Senior
Civil Judge, Suryapet, Nalgonda district in
C.A.No.1411/20-3 filed in CC No.23 of 1355 Fasli.
2. Dist.Collector, Warangal Rc.No.A3/2010/2011,
Dated 24.05.2011.
3. Senior Civil Judge Lr.Dis.No.540/2011/Accounts,
Dated 23.11.2011.
4. Chairman L.R.A.T – cum- II Addl.District & Sessions
Judge, Nalgonda at Suryapet Lr.Dis.No.1071/2012/
Admn, dated 30.03.2012.
5. Superintendent of Police, Nalgonda C.No.1278/SB-
NGA/2012, dated 17.11.2012.

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With reference to the letter 2nd cited it is to inform that the matter has been enquired with the Sessions Judge at Suryapet, in the reference 4th cited (copy enclosed) the Chairman L.R.A.T. – cum-II Addl.District & Sessions Judge, Nalgonda at Suryapet, has informed that the copy of application in C.A.No.1411/2003, dated 25.08.2003 in C.A.No.23/1355 Fasli on the file of Judicial Fir 5st Class Magistrate Court, Suryapet, is filed in the Court of Senior Civil Judge Court, Suryapet and endorsement made on the copy application by the

Sarishtadar, Sub-Court, Suryapet who was copying Superintendent is correct on verification of copy application Register.

In the reference 5th cited (copy enclosed) the matter has been enquired it is found that all concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that, the official records of the relevant time i.e., pertaining to the period of 6 Ashwandar 1355 Fasli (1947-year) are not available.

This is for favour of information.

Encl... ()

Yours faithfully,
Sd/- R.Anjaiah
For Collector,
District Revenue Officer (I/c)
Nalgonda."

13. Union Government takes the stand that this letter is vague and is not in true letter and spirit of the scheme. According to the learned standing counsel for Central Government NARC has to be issued on due verification of the relevant record and has to be specific, whereas the report is vague. It is asserted in the counter-affidavit that there is vague reference to the copy application filed in the Court of Chairman, L.R.A.T-cum-II Additional District and Sessions Judge, Nalgonda at Suryapet and endorsement made by Sarishtadar of Sub-Court, Suryapet, without giving details of involvement of petitioner.

14. It is further asserted that the certificate refers to period as *6 Ashwandar (sic-isfandar) 1355 Fasli, which corresponds to 6th January, 1946*, whereas the same is contrary to the facts indicated in the NARC. It is pointed out that as per the claim of petitioner, he has undergone imprisonment from July, 1947 to September, 1948. It is further asserted that the alleged involvement of petitioner in C.C.No.23 of 1955 is not proved.

15. On a closer reading of the instructions issued by the Government of India dated 7th June, 1996, it is apparent that

concerned authority of the State Government can issue such certificate and it is not necessary that it should be issued by the State Government. This is clear from paragraph-3 of the said order, wherein it is stated that State Governments were requested to issue guidelines to the district authorities for compliance of the instructions. Thus, the reasons assigned by the Central Government to ignore NARC on the ground that it was issued by the District Collector and not by the State Government is not valid.

16. In the counter-affidavit, respondents sought to further justify their decision by pointing out discrepancies in the corresponding dates as per Fasli year calendar. However, as this was not the reason assigned in the order impugned herein, the said stand is stated to be rejected. In a counter affidavit deponent cannot seek to justify the decision by assigning new reasons which were not forming part of impugned decision and validity of decision has to be tested as it stands. Though learned counsel on either side made their respective submissions on this aspect, Court is not expressing opinion on this aspect as it was not the reason assigned to reject the claim of petitioner in the impugned order.

17. The PKCs issued in favour of petitioner are not disputed. The Central Government seeks to ignore the certificates on two grounds mentioned in paragraph-2 of the order impugned. Firstly, the Central Government contends that such certificates are relevant only in the case of recommendations by the HSSC. Secondly, those freedom fighters did not undergo imprisonment for two years. According to learned standing counsel, the relaxation of two years imprisonment to six months is available only in the case of

recommendation by the HSSC and apparently those two persons have undergone imprisonment only for six months.

18. This fact was considered by the State Government while making its recommendations. According to the State Government the struggle against Nizam had ended earlier than expected and, therefore, two years imprisonment condition is not attracted and accordingly relaxed. It is asserted by the learned counsel for petitioner that what is required is that freedom fighter should have been sentenced to two years imprisonment and period of actual sentence has no relevance and that two persons who issued PKC in his favour were sentenced to undergo two years imprisonment, but were released after the Hyderabad State was liberated and has become part of Indian Union even before the expiry of two years imprisonment period. According to learned counsel for petitioner the relaxed standard of six months imprisonment to make a freedom fighter eligible to issue PKC cannot be confined to HSSC cases and rejecting the claim of petitioner on that ground is not valid.

19. Pension Scheme by its very name is 'Samman' to the freedom fighters. The freedom fighters feel pride to get pension having sacrificed their prime life for liberation of Hyderabad State from Nizam rule and its integration into Indian Union. A person who claims to have participated in freedom struggle can apply to sanction pension under the scheme. The scheme prescribed parameters to identify persons entitled to receive pension. The scheme envisages different methods of identifying the persons to grant pension. If a person has direct proof of participation and

suffering he is entitled to set up claim straightaway. Even if such person has no direct proof, but can establish in the form of secondary evidence, his claim can be accepted. The freedom fighter who is receiving pension can certify (called PKC) that the person has participated in freedom struggle and suffered its consequences. Having regard to the objective of the scheme, requirements on eligibility have to be construed liberally with reference to the claims made. What is required by the competent authority is to eliminate false claims, but under the guise of scrutiny, genuine claims cannot be rejected by misinterpreting/narrow approach to the relevant clauses/circulars/ orders and deprive the pension. It is contrary to the spirit of the scheme. HSSC was appointed for convenience of processing the claims. It is also appropriate to note that HSSC was abandoned. Its recommendations were thoroughly scrutinized and reviewed. Claims without HSSC recommendations were also considered. Thus, the requirement of minimum period of imprisonment is nothing to do with HSSC processing the claims. It is an independent issue.

20. Having regard to the peculiar fact situation with reference to struggle against Nizam rule, there was merit in the proposals submitted by the State Government to accept the PKC issued by Sri Soma Narsaiah. It was erroneous to reject the said request on the ground that relaxation to six months imprisonment to a freedom fighter is available only to HSSC cases. No justification is shown as to why it is confined to HSSC cases. Ordinarily, two years imprisonment period was prescribed for a person to issue PKC. As two years limit for a freedom fighter to issue PKC to

another freedom fighter would create hurdles to process claims under secondary evidence, as many freedom fighters, who were sentenced to undergo two years imprisonment, were released even before they could complete major portion of the sentence, the State Government sought relaxation of two years sentence to six months. Thus, the relaxation of eligibility to six months is on account of the peculiar situation in Hyderabad State where struggle against Nizam did not last that long and all those persons who were sentenced to imprisonment beyond six months and were undergoing sentence, by the time the State of Hyderabad merged into Indian Union, were released un-conditionally. Thus, to issue PKC, freedom fighters cannot be classified into two groups based on HSSC recommendation and otherwise. It would be amounting to unreasonable classification, and classification without any nexus to the object sought to be achieved. In fact, it is contrary to the object sought to be achieved, i.e., to honour the freedom fighters by giving them monthly pension as a mark of respect to the sacrifices made by them. Thus, a freedom fighter, who had undergone imprisonment for six months or more and is receiving pension under the 1980 scheme, is entitled to issue PKC.

21. When the request of the State Government was accepted and two years condition was relaxed, there was a reference to the HSSC recommendations. From close reading of circular, dated 01.05.2001, it does not appear that the Government of India intended to confine the relaxation only to erstwhile HSSC recommended cases, more so when non HSSC recommended cases were also processed for grant of pension and pension was granted under the scheme. Having regard to the purpose of relaxing the

condition, it would make no sense to restrict relaxation only to HSSC cases. Further, it is a fact that the person, who gave PKC, was sentenced to undergo two years imprisonment by Nizam Government, but did not undergo full period of sentence as he was released from jail after Hyderabad State was liberated and merged with Indian Union. Thus, while assessing the eligibility of a person to issue PKC, what is required is to see whether he was sentenced to undergo two years or more imprisonment, and not so much about the actual period of imprisonment. More particularly having regard to the changed circumstances from the date of sentencing a freedom fighter to actual merger of the State of Hyderabad into Indian Union. Material on record would clearly disclose that Vytla Soma Narsaiah was sentenced to undergo two years imprisonment, was kept in jail, and released after the State of Hyderabad was liberated.

22. The further contention of the learned standing counsel that Sri Soma Narsaiah did not belong to same district and that as he was in imprisonment in Aurangabad Central Jail, he could not have asserted that petitioner was underground for six months, commencing from August, 1947. This contention is stated to be rejected. The requirement only talks about the knowledge of freedom fighter, who is sentenced for two years imprisonment. It does not speak about the period when the person was imprisoned and how he had the knowledge about another person going underground while fighting against Nizam rule. Be that as it may, the rejection is not on that ground. It was rejected solely on the ground that the person who issued PKC did not undergo two years imprisonment.

23. As the two reasons assigned to reject the request of petitioner are not validly made, I am of the considered opinion that the decision was not made in proper application of mind and on due consideration of material on record and thus order is not sustainable and is accordingly set aside, and the matter is remanded to the competent authority for reconsideration of the issue. Before taking decision, Central Government may call for additional information, if any required, from State Government and clarifications from the petitioner on any aspect relating to his claim. The entire exercise shall be completed and appropriate decision supported by reasons be made within twelve weeks from the date of receipt of copy of this order.

24. Writ Petition is accordingly allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 19.06.2019
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