

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

WRIT PETITION NO.4633 OF 2016

Sarubai w/o Narayansinh Thakur
Age : 87 years, Occu : Household,
R/o. Sawargaon Mal, Tq. Hadgaon,
Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through it's Secretary,
General Administration Department,
(Freedom "Fighters Section),
Mantralaya, Mumbai - 32.
2. Freedom Fighters' High Power Committee,
New Administrative Building,
8th Floor, Mantralaya,
Mumbai -32, through it's
Membere Secretary.
3. The Desk Officer,
General Administration Department,
(Freedom Fighters Section),
Mantralaya, Mumbai-32.
4. The Collector,
Collector Office, Nanded

.. Respondents

....
Mr V.S. Panpatte, Advocate for the petitioner
Mr P.N. Kutti, AGP for Respondents No.1 & 4
....

**CORAM : SUNIL P. DESHMUKH &
B. U. DEBADWAR, JJ.**

Date : 04-03-2020

ORAL JUDGMENT (PER : B.U. DEBADWAR, J.) :

1. Rule. Rule made returnable forthwith and heard learned

counsel for appearing parties finally, by consent.

2. This is a petition under Article 226 of the Constitution of India for setting aside order dated 23-06-2000 passed by respondent no.1 whereunder claim for freedom fighters pension stands denied and for direction to respondents to award all the benefits to petitioner, applicable to the underground freedom fighters under the scheme '*Swatantrya Sainik Sanman Pension*' (hereinafter referred to as the 'Scheme') from 14-08-1995, declaring entitlement to the same being widow of underground freedom fighter.

3. Facts giving rise to petition, in nutshell are as under :

. Petitioner is widow of one *Narayansinh Kisansinh Thakur*, resident of village Sawargaon Mal, Tal. Hadgaon, District Nanded, who had been an underground freedom fighter in freedom struggle referred to as '*Hyderabad Mukti Sangram*', during 1947-1948.

4. Government of Maharashtra with a view to honour and assist persons, who had participated in the freedom struggle has framed a scheme referred to as '*Swatantrya Sainik Sanman*

Pension'. The object of the scheme is to provide economic help to freedom fighters and to pay tribute to persons, who had fought and struggled for independence.

5. Husband of the petitioner namely *Narayansinh Kisansinh Thakur* had actively participated in freedom struggle and had taken part in several activities including supply of weapons and secret information to the volunteers, attack on police and campaign against erstwhile *Nizam* government.

6. Husband of the petitioner had also been participant in awareness session at Sawargaon during *Razakar* movement, wherein *Nizam* Police suddenly made attack on people / freedom fighters and 12 people / freedom fighters were killed. He had worked as an underground volunteer under the leadership and guidance of veteran freedom fighters namely Swami Ramanand Tirth, Late G.R. Palkar, Govindrao Narsingrao More, Laxman Gaikwad, Nagorao Bhujangrao Mugal, Panchal, Vithal Nagoba Bhosale, Gangaprasad Gangaram Vetalkar etc. In the freedom struggle, alongwith him Punjabrao Masarao Wadkute, Narayan Ganpatrao Sawant, Ganpatrao alias Ganya Yadavrao Tagadpalle, Rathod and others had participated as underground freedom fighters. In addition to aforesaid

activities, *Narayansinh Kisansinh Thakur* had also engaged himself in distributing *Tiranga* flags, *Gandhi* caps and weapons. Besides, asked the people not to pay land revenue and other taxes to the government. So also, he had participated in *Dorli Satyagraha* under the instructions of Ganpatrao @ Ganya Yadavrao Tagadpalle. The *satyagrahis* had arranged for flag saluting programme at Sawargaon, in which near about four to five thousand *satyagrahis* had participated under the leadership of Jaiwantrao Waipankar, Yadavrao Master, Pawar, Bansilal Toishniwal. When flag saluting programme was going on, the *Nizam* police had suddenly attacked the gathering and number of persons were killed. The offence in respect of the flag saluting programme came to be registered against unknown 3000 freedom fighters including husband of the petitioner.

7. *Narayansinh Kisansinh Thakur* applied on 14-08-1995 claiming benefits of the Scheme extended to the underground freedom fighters. In support of the claim, he had submitted his affidavit in Form-'A' giving details of participation, in *Hyderabad Mukti Sangram* during the period 1947-1948, on stamp paper. In addition to his own affidavit, he had also filed affidavits of veteran freedom fighters namely Nagorao Bhujanga Mugal, Bhujanrao Panduji Panchal and Lalu Ratna Rathod along with

their imprisonment certificates and *Sanman Patraks*.

8. *Narayansinh Kisansinh Thakur* died on 19-07-1997. Upon that the petitioner being his widow submitted her affidavit on stamp paper to the Collector, Nanded on 24-07-1998 claiming the benefits of Scheme to which her husband was entitled.

9. After scrutinizing the documents annexed to the application, conducting the enquiry and interview of the petitioner, all the members of District Honour Committee on 30-09-1998 issued certificate expressing their satisfaction about the claim and entitlement of the petitioner for the pension on account of participation of her husband *Narayansinh Kisansinh Thakur* in freedom struggle. District Honour Committee (जिल्हा गौरव समिती) had issued the aforesaid certificate after passing the resolution to this effect in a meeting convened on 28-08-1998.

10. Respondent No.4 - Collector Nanded, after satisfying himself forwarded the claim of the petitioner along with recommendation of the District Honour Committee to respondent no.1 - State for consideration and passing necessary orders. Though much time elapsed, nobody from respondents communicated the petitioner about the decision taken in respect

of her claim. After waiting for a long, when petitioner realized that respondents are not paying heed to her claim, lastly vide application dated 01-07-2011, under Right to Information Act demanded copies of all the papers and documents from the file concerning her claim including decision taken by High Power Committee by paying requisite fees and following necessary procedure.

11. According to the petitioner, after getting all the papers and documents asked for including copy of the decision, for first time on 07-09-2011 she came to know that her claim for pension under Scheme had been purportedly rejected on 23-06-2000, whereas the claims of various underground freedom fighters similarly situated as her husband, came to be allowed.

12. Upon knowledge pertaining to the rejection of the claim, the petitioner rushed to this Court with present writ petition claiming aforesaid reliefs.

13. Respondent nos.1 to 4 resisted the claim by filing affidavit-in-reply of Snehalata Tryambakappa Swami, Naib Tahsildar attached to Collector Office Nanded, inter alia, denying

compliance of Government Resolution dated 04-07-1995 and entitlement of the petitioner to claim the pension under Scheme. According to the respondents, upon the scrutiny in the light of government resolution dated 04-07-1995 the proposal for pension under Scheme moved by the petitioner was found to be not tenable as it was not supported by evidence to satisfy the condition nos.1, 3 and 4 of the said Government Resolution. So also the claim was not supported by documentary evidence which was essential. Besides respondent nos.1 to 4 resisted the claim contending that, it is hit by Government Resolution dated 02-06-2016 which speaks that after the death of freedom fighter no pension shall be sanctioned to his / her spouse / heirs and accordingly prayed for dismissal of writ petition.

14. In view of aforesaid rival contentions in writ petition and affidavit-in-reply submitted by respondents there arise two issues, one is pertaining to sufficiency of material placed on record to substantiate the claim of pension and another is pertaining to effect of Government Resolution dated 02-06-2016 on the claim of pension to be granted under Scheme.

15. Mr V.S. Panpatte, learned counsel representing petitioner while taking us through averments made in the writ

petition, documents annexed thereto and various judgments of the Apex Court and this Court explaining object of Scheme submits that, the decision rejecting the claim of the petitioner is an example of non-application of mind to the material provided along with the application. The approach of the respondents is completely contrary to the intention underlying the provisions of the Scheme. The approach of the authority while scrutinizing the claim was not proper and analogous with object of the scheme. Mr Panpatte, learned counsel for the petitioner not only demonstrated as to how the material placed on record by the petitioner is sufficient to satisfy clause 'A' of condition no.1, but also demonstrated as to how certificates of freedom fighters namely Nagorao Mungal, Bhujangrao Pandoji Panchal and Lalu Ratna Rathod annexed to the petition would be in compliance of condition / requirement no.2 of the Government Resolution of 1995 which are self-speaking about the role played by *Narayansinh Kisansinh Thakur* in freedom struggle as an underground freedom fighter.

16. Learned counsel Mr Panpatte while diverting our attention towards the report of District Honour Committee recommending pension to applicant on account of contribution made by her husband *Narayansinh Kisansinh Thakur* in freedom

movement of 1947-48, as an underground freedom fighter and copy of report of High Power Committee, argued as to how recommendation made by District Honour Committee is clear, cogent and sufficient to establish genuineness of the claim of pension made by the petitioner and as to how the order rejecting the claim is not only cryptic, vague, but also contrary to the material placed on record. While highlighting the non-application of mind of the concerned authority, Mr Panpatte, learned counsel for the petitioner submitted that, clauses 'B' and 'C' of condition / requirement no.1 of Government Resolution of 1995 are of little significance as Mr *Narayansinh Kisansinh Thakur* had not joined any school and he had not been nabbed by police while extending services as an underground freedom fighter. Besides he demonstrates that affidavits of two supporting freedom fighters are not contrary with the affidavit of petitioner as observed by the authority in impugned order. In view of all these submissions, Mr Panpatte submitted that, material placed on record by the petitioner is clear, cogent and sufficient to prove the claim, therefore, prayed to direct respondent no.1 to issue or to grant pension under *Swatantray Sainik Sanman Pension Scheme* to the petitioner by allowing writ petition.

17. Per contra, Mr P.N. Kutti, learned Additional Government Pleader representing respondent nos.1 & 4 argued that, after scrutiny of proposal forwarded by collector Nanded, High Power Committee rightly rejected the same on realizing that, it does not fulfill conditions / requirements of Government Resolution dated 04-07-1995. There is no evidence to satisfy conditions / requirements nos.1, 3 and 4. In the absence of cogent evidence fulfilling all the conditions of the Government Resolution, pension under the *Swatantray Sainik Sanman Pension Scheme* cannot be granted. When there is no sufficient documentary evidence to prove the participation of late *Narayansinh Kisansinh Thakur* in freedom struggle, merely on the basis of the vague affidavit of the petitioner and affidavits of two supporting freedom fighters which are not consistent *inter se*, claim of the petitioner cannot be entertained and granted. The impugned order rejecting the claim based on record is correct and proper, therefore, petition is liable to be dismissed. In addition to that the petition is also liable to be dismissed as it is hit by Government Resolution dated 02-06-2016.

18. In light of aforesaid submissions made at bar by counsel representing both sides, now we turn towards evidence placed on record and various decisions rendered by the Apex

Court and this Court relied upon by learned counsel, Mr Panpatte.

19. It is revealed from record that, late *Narayansinh Kisansinh Thakur* had moved an application in prescribed form to the Collector, Nanded on 14.08.1995 for getting freedom fighters pension. During the pendency of that application, he died on 19.07.1997. Upon death of the husband petitioner submitted her affidavit before Collector, Nanded on 23.07.1998 and claimed pension being widow of late *Narayansinh Kisansinh Thakur*.

20. In addition to her own affidavit referred to above, petitioner has brought on record affidavits of three freedom fighters namely Nagorao Bhujangrao Mungal, R/o. Village Ijali, Tq. & Dist. Nanded, Bhujangrao Pandoji Panchal, R/o. Village Ijali, Tq. & Dist. Nanded and Lalu Ratna Rathod, R/o. Chikaltanda, Tq. & Dist. Nanded. In addition to affidavits of three freedom fighters, petitioner has also brought on record, copy of the news pertaining to the death of 12 freedom fighters caused in a firing made by villagers of the village Sawargaon, Tq. & Dist. Nanded, while they protecting tricolour flag hoisted for protesting *Nizam* rule published in a book of *Hyderabad*

Mukti Sangram (Hyderabad Liberation Movement) and copy of charge-sheet in respect of the incident took place at village Dorli, Tq. Hadgaon at Hadgaon Police Station against Jaywantrao Nagorao Yadavrao, Master Ganya and 3000 absconding accused.

21. In her affidavit dated 23.07.1998, petitioner has given full account of activities made by late *Narayansinh Kisansinh Thakur* in independence struggle of 1947-48 against *Nizam* rule as an underground freedom fighter. All the details of those activities find place in her affidavit. Petitioner states in her affidavit that, her husband late *Narayansinh Kisansinh Thakur* had participated in the programme of hoisting tricolour flag arranged by villagers of Sawargaon. Besides, he had joined the freedom fighters who had cut standing trees of Shindi, Moh from the forest to put the *Nizam* government in monetary loss. In addition to that, her husband along with other freedom fighters fought against soldiers of *Nizams (Razakars)*, who had suddenly committed attack on the villagers of village Sawargaon, so also her husband - late *Narayansinh Kisansinh Thakur* had active participation in Dorli Satyagrah, Patnoor Satyagrah, Rohi Pimpalgaon Satyagrah, Chikala Satyagrah. In addition to that, he had joined in tricolour flag hoisting at

Kolgaon-Nava, distributed pamphlets, passed secret information issued from Umarkhed Camp to various underground freedom fighters and also joined the group of freedom fighters in the foodgrains loot from kamari godown.

22. The affidavit of petitioner clearly depicts that names of veteran freedom fighters under the leadership of whom her husband participated in freedom movement as an underground freedom fighter including aforesaid three freedom fighters whose affidavits have been placed on record.

23. Out of the aforesaid three freedom fighters who have submitted their affidavits in support of the claim of the petitioner, Nagorao Bhujangrao Mungal and Bhujangrao Pandoji Panchal, both R/o. Ijali, Tq. & Dist. Nanded, are the freedom fighters who had undergone imprisonment for the period of two years. Whereas, Lalu Ratna Rathod was the freedom fighter who was declared as absconding and warrant was issued against him for the reason of his participation in freedom movement of 1947-48. Affidavits of first two freedom fighters are supported by true copies of extract of register of undertrials of Central Jail, Hyderabad and Certificate of Honour (*Sanmanpatra*) issued to them by the State of Maharashtra in

1984.

24. Respondents have not disputed genuineness of either true copies of extract of Central Jail, Hyderabad or Certificate of Honour. Both the true copies of extracts of register no. 4/undertrial Central Jail, Hyderabad, are clear enough to demonstrate that Nagorao Bhujangrao Mungal and Bhujangrao Pandoji Panchal were the freedom fighters who had undergone imprisonment for more than two years for acts committed by them in freedom movement for which they were charge-sheeted and tried. It is not in dispute that, *Swatantrya Sainik Sanman Pension* came to be granted to the aforesaid three freedom fighters, who have filed affidavits to support the claim of the petitioner.

25. The affidavits of Nagorao Bhujangrao Mungal, Bhujangrao Pandoji Panchal and Lalu Ratna Rathod appear to be supporting the affidavit of the petitioner in respect of participation of *Narayansingh Kishansingh Thakur* in freedom movement of 1947-48 as underground freedom fighter.

26. Neither affidavit-in-reply submitted by the State sets out alleged variance nor AGP could point out as to how those

are at variance. Affidavits on record seem to throw enough light on the various acts and deeds committed by late *Narayansinh Kisansinh Thakur*, in freedom movement of 1947-48, as an underground freedom fighter. There is no substance in main two grounds on the basis of which the State appears to have refused to grant pension to the petitioner going rigidly, perfunctorily and pedantically.

27. No due credence is given to affidavits of three freedom fighters out of which two freedom fighters have undergone sentence of more than two years, copy of news published in the book of *Hyderabad Mukti Sangram* and copy of charge-sheet no.2/Aajur 1357 fasli relied upon by the petitioner. Aforesaid documents pertain to participation of late *Narayansinh Kisansinh Thakur* in freedom movement of 1947-48, those would not be discarded outrightly. Three freedom fighters, who have filed affidavits in support of claim of the petitioner clearly state that, late *Narayansinh Kisansinh Thakur* participated in freedom movement as an underground freedom fighter. Insistence on specific documentary evidence pertaining to involvement of late *Narayansinh Kisansinh Thakur* about playing role, in view of aforesaid, is rather overbearing while to considerable extent his involvement in freedom struggle

appears to have ratification in the affidavits, contents of which primarily converge on his participation and this aspect would hardly be refutable. Pedantic strictness in such matters as referred under judgments of supreme court and high court would not subserve the laudable object under the Scheme.

28. Perusal of the Government Resolution dated 07-08-1992 would reveal that, for being eligible to the benefits of the freedom fighters' scheme, the name ought to have been recommended by the District Level Honour Committee. The recommendations of, at least, two freedom fighters, should have been held to be entitled under the said scheme and who were knowing person concerned, from the time of movement, should be annexed along with the application.

29. The Government Resolution dated 04-07-1995 provides for compliance of certain requirements in support of the claim of the person seeking benefit under the freedom fighters' scheme. It calls for that, the applicant concerned will have to substantiate as to what hardship he was required to suffer. He would be required to prove that, either he was compelled to leave his house, that he was required to leave his education, or that he was assaulted by police in such a manner, which resulted in his disability. However, on perusal of the

provisions under the scheme, it would reveal that any of these conditions is required to be fulfilled and not at all, all the three. A person could be entitled under the scheme if he was required to leave his house, or he was required to leave his education or he was assaulted in such a manner that he received physical disability. The said Government Resolution would further require that, the certificates of two freedom fighters, who were sentenced to suffer imprisonment for two years or who were underground for a period of two years. The said Government Resolution further provides that, if any official document in support of the claim is available or if a newspaper item reporting that the candidate concerned was absconding is available, the same should also be submitted.

30. In ***Kamalbai Shankar Vs. State of Maharashtra & Ors., Civil Appeal No.5344 of 2012 (@ SLP © No.8899 of 2010) decided on 20-07-2012***, the Apex Court after referring decision in ***Gurdial Singh Vs. Union of India & Ors., [2001] (8) SCC 81*** observed as under :

"7. *The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of*

a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence, it is probabalized that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle a presumption is required to be drawn in his favour, unless the same is rebutted by cogent, reasonable and reliable evidence."

31. Undoubtedly, in case in hand, the claim of the petitioner has been recommended by District Level Honour Committee and out of the three freedom fighters, two have undergone sentence of more than two years for their active participation in freedom struggle. It has been demonstrated in the three affidavits continuous participation of Late *Narayansinh Kisansinh Thakur* in freedom movement of 1947-48 as an underground fighter is clear and cogent.

32. The record reveals that after receiving the proposal along with affidavits of three freedom fighters and recommendation of District Honour Committee from the office of Collector, Nanded, it was placed before High Power Committee constituted by the Government. Upon perusal the check list

brought on record by the petitioner after obtaining the same from the Government under Right to Information Act, it can be gathered that, Desk Officer, Deputy Secretary, Principal Secretary and Member Secretary by their written note below check list have unanimously recommended the claim of the petitioner. However, subsequently the claim came to be rejected by Chairman and State Minister, General Administration with a very cryptic order stating that there is no compliance of clauses 'A' to 'C' of condition no.1 and there is variance between affidavit of applicant and affidavits of freedom fighters, while there does not appear to be any material inconsistency in affidavits of freedom fighters which are consistent with the affidavit of the petitioner. Affidavits to quite a large extent convey on *Narayansinh Kisansinh Thakur's* participation in freedom movement continuously as an underground freedom fighter, by remaining away from house. Therefore, the impugned order is not only vague, but also is cryptic, ambiguous and inconsistent with the recommendations of the members of High Power Committee, discussed in para supra.

33. In case at hand, on the basis of preponderance of probabilities, evidence discussed in para supra appears to be quite probable, sufficiently complying with the object of the

scheme discussed by the Hon'ble Supreme Court in para supra.

34. In **Kishansinha s/o Tukaramsinha Chandel Vs. The State of Maharashtra & Ors., (Writ Petition No.2831 of 2000) with connected writ petitions decided on 26-07-2010**, this Court observed as under :

"4. *Perusal of the Government Resolution dated 7th August 1992 would reveal that for being eligible to the benefits of the Freedom Fighters' Scheme, the name ought to have been recommended by the District Level Gaurav Samiti. The recommendations of, at least, two freedom fighters, who have been held to be entitled under the said scheme, and who were knowing the candidate concerned, from the time of movement, should be annexed along with the application.*

5. *The Government Resolution dated 4th July 1995 has provided the details regarding evidence which is to be submitted in support of the claim of the persons seeking benefit under the Freedom Fighters' Scheme. In so far as the claim under the category of underground Freedom Fighters is concerned, it is stipulated that the applicant concerned will have to substantiate as to what hardships he was required to suffer. He would be required to prove that either he was compelled to leave his house, that he was required to leave his education, or that he was assaulted by Police in such a manner, which resulted in his disability. However, on perusal of the provisions under the Scheme, it would reveal that either of these conditions is required to be fulfilled and not all the three. A person could be entitled under the scheme, if he was required to leave his house, or if he was required to leave his education or he was assaulted in such a manner, that he received physical disability. The said Government Resolution would further require that the certificate of two freedom fighters who were sentenced to suffer imprisonment for two years or who were underground for a period of two years, in support of the claim of the candidate should be submitted. The said Government Resolution further*

provides that if any official document in support of the claim is available or if any newspaper report, reporting that the candidate concerned was absconding, is available, the same should also be submitted."

35. In case at hand there is a clear and cogent evidence about fulfillment of clause 'A' of condition nos.1, 2 and 5 viz. remaining away from the house, affidavits of two freedom fighters who have undergone sentence of more than three years and clear recommendation of District Honour Committee, therefore, sufficiently complying with Government Resolution of 1995.

36. The petitioner has placed reliance on some of the orders granting pension demonstrating that claims of other similarly situated claimants i.e. Ramrao Namdeorao Pawar and Pandurang Chudaji Munde have been granted. This aspect cannot be overlooked while considering the case of the claimants.

37. It is true that by Government Resolution dated 02-06-2016 government has taken decision not to grant the pension to the freedom fighters, who died, when his claim was pending and his spouse will not be entitled to claim arrears of pension. The facts of the case at hand are somewhat different.

Initially, in the year 1995 late *Narayansinh Kisansinh Thakur* had moved the application for grant of pension under Scheme, but during the pendency of that application, he died. Thereafter, the petitioner being widow of late *Narayansinh Kisansinh Thakur*, as directed by respondent no.1, in the year 1998 submitted her fresh affidavit claiming pension giving details about the participation of her husband late *Narayansinh Kisansinh Thakur* in freedom struggle and claiming pension as a widow of late *Narayansinh Kisansinh Thakur*. Therefore, present claim would not be adversely affected aforesaid Government Resolution dated 02-06-2016.

38. Having regard to the totality of record discussed above in light of purpose and object underlying the freedom fighters scheme discussed by Hon'ble Apex Court in ***Gurdial Singh*** case (cited supra) and the age of the petitioner, we deem it appropriate to allow the writ petition. Accordingly, we set aside the impugned order and allow the writ petition in terms of prayer clause 'B' and respondents would grant to her benefits under the Scheme from 24-07-1998, the date of her application / affidavit. Rule made absolute in above terms.

(**B. U. DEBADWAR, J.)**

(**SUNIL P. DESHMUKH, J.)**