

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8029 OF 2021

Smt. Rukhminbai wd/o Asaram Kale,
Age 81 years, Occu. Nil,
R/o. Sambhaji Chowk, Behind Hotel Sagar,
towards North Bus-stand,
Khalwadi, Paithan, Tq. Paithan,
Dist. Aurangabad. **...Petitioner.**

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
2. The High Power Committee,
Freedom Fighters Cell,
19th Floor, General Administration
Department, Mantralaya, Mumbai-32,
Through its Member Secretary.
3. The Desk Officer,
General Administration Department,
New Administrative Building,
Freedom Fighters Cell,
19th Floor, Mantralaya, Mumbai-32.
4. The Collector,
Aurangabad, Dist. Aurangabad. **...Respondents.**

Mr. V. S. Panpatte, Advocate for petitioner.

Mr. P. K. Lakhotiya, A.G.P. for respondents.

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

RESERVED ON : 02/08/2021

PRONOUNCED ON : 13/08/2021

JUDGMENT : [PER R.N. LADDHA, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the Parties.

2. By this writ petition the petitioner Smt. Rukhminbai, widow of Asaram Daulatrao Kale who died on 5 April 2017, claims to have been entitled to be conferred with benefits of Pension which, according to her, should have lawfully accrued to her deceased husband Asaram, during his life time, under the “Swatantrya Sainik Sanman Pension Scheme, 1980” (the ‘Scheme’ for short).

3. The material averments in the petition may be summarized as under:

(a) The petitioner is the widow of Asaram Kale, who had been claiming himself to be a freedom fighter. This Asaram Kale is claimed to have made an application to the District Collector, Aurangabad on November 24, 1994 which was accompanied by the requisite documentary evidence, for grant of pension under the Scheme. The petitioner claims that her husband and upon his death, she herself is

entitled to the benefit of the Scheme. According to the petitioner, her husband had actively participated in the Hyderabad Liberation Movement and as a consequence thereof had suffered various losses and hardships. Moreover, he had to remain underground during the period 1947-48.

(b) The petitioner says that on the eve of the Silver Jubilee of the Independence of the Country, in the year 1972, a Central Scheme was introduced which provided for grant of pension to freedom fighters and their eligible dependents if the said freedom fighters had died. Later, in the year 1980, with certain modifications, this Scheme was renamed the “Swatantrya Sainik Sanman Pension Scheme, 1980”.

(c) The monthly pension was considered a token of respect for the contribution of freedom fighters in the freedom struggle. The Scheme as well as the Government Resolution dated 4 July, 1995 prescribed the Eligibility Criteria for grant of pension, under which, her husband and upon his death, the petitioner was entitled to receive pension under the Scheme. It is the case of the petitioner that though the District Gaurav Committee had forwarded the application made by her deceased husband to the concerned Authority, there was no further action taken on it. He had, therefore, made a Representation dated

February 16, 2011 to the Deputy Secretary, GAD, Government of Maharashtra, requesting grant of pension. However, nothing was conveyed to him. According to the petitioner, for the first time in the month of January 2014, her husband came to know that his claim for pension under the Scheme was rejected on 12 May 1999. Upon learning of the rejection, he made a representation dated 17 February 2014 and also submitted Commendatory Affidavits of veteran freedom fighters. Again, on 22 April 2015 he sent a detailed representation to the Deputy Secretary, GAD, (Freedom Fighters Cell), Government of Maharashtra. It is claimed by the petitioner that by letters dated 10 September 1998, 10 April 2008 and 21 June 2015; the Members of the Parliament and Member of Legislative Assembly respectively had also recommended the claim of her husband. Unfortunately, on 5 April, 2017 her husband died. The petitioner then obtained all relevant documents, sought legal advice and made an application dated 9 October, 2020 to the respondent No 3, appending therewith a Certificate purportedly issued by Police Patil of village Nandar, Taluqa Paithan dated 7 June 1996, which was available with her and also submitted the Commendatory Affidavits of veteran freedom fighters with their Certificates of imprisonment.

(d) However, her claim for pension came to be turned down

by relying on Govt Resolution dated 2 June 2016, by the order dated 4 November, 2020. According to the petitioner, the decision taken by the State Govt was erroneous as it failed to consider the material placed on record.

4. We have heard Mr. V. S. Panpatte, learned counsel for the petitioner and Mr. P. K. Lakhotiya, learned A.G.P for the respondents.

5. Mr. Panpatte, learned counsel for the petitioner submits that late Asaram Kale had participated in Hyderabad Liberation Movement and on account of such participation, he had to suffer various losses and hardships. Necessary documentary evidence in proof thereof had been furnished along with the application. The concerned Authority, however, did not appreciate the documents produced on record in their proper perspective. Since the deceased husband of petitioner met the criteria laid down in the Government Resolution dated July 4, 1995, the District Gaurav Committee had also recommended the proposal. The case of the petitioner's husband under the Scheme was required to be determined on the basis of probabilities. He further submits that the case of the petitioner has been disposed of by ignoring the mandate of law and the Scheme. The impugned orders are grossly desultory and hence not compatible with

various decisions. He relied on the following cases:

- (i) *Mukund Lal Bhandari and Ors. Vs. Union of India and Ors., AIR 1993 SC 2127;*
- (ii) *Gurdial Singh Vs. Union of India and Ors., (2001) 8 SCC 8;*
- (iii) *State of Tamil Nadu and Anr. Vs. A. Manickam Pillai, AIR 2010 SC 670;*
- (iv) *Judgment in Writ Petition No.7189/2014, Smt. Laxmibai wd/o. Baburao Kadam Vs. The State of Maharashtra and Ors., dated 26.3.2019;*
- (v) *Judgment in Writ Petition No. 2632/2011, Punjaram s/o. Madhav Indewad Vs. The State of Maharashtra, dated 28.8.2013;*
- (vi) *Judgment in Writ Petition No. 2831/2000 along with connected Writ Petitions Kishansinha s/o. Tukaramsinha Chandel Vs. The State of Maharashtra and Ors., dated 26.7.2010;*
- (vii) *Tukaram Ramji Koli Vs State of Maharashtra & Ors., 1999(3) Mh.L.J. 735; and*
- (viii) *Judgement in Writ Petition no. 4633 of 2016, Sarubai w/o Narayansinh Thakur Vs The State of Maharashtra & Ors., Dated 04.3.2020.*

6. In the above premise, the learned counsel for the petitioner prayed for quashing and setting aside the impugned orders/communications dated 12 May, 1999 and 04 November, 2020 respectively, further prayed for grant of pensionary benefits under the

Scheme to the petitioner.

7. Mr. P. K. Lakhotiya, learned A. G. P. appearing for the respondents, on the other hand, submitted that the husband of the petitioner had applied for grant of pension in the year 1994; the claim was considered and rejected by the concerned Authority. It was communicated to him on 12 May 1999 and the said order had become final. The order was not challenged. After an enormous delay of 22 years of the rejection of deceased Asaram's claim, this petition is filed. According to him, the petition suffers from delay and latches. Again, the documentary evidence filed by the husband of the petitioner did not meet the conditions laid down in the Scheme and Government Resolution dated July 4, 1995. The mere fact that some certificates had been submitted or recommendations had been made would not entitle the husband of the petitioner to pensionary benefits. The benefit accorded by the said Government Resolution was circumscribed by the conditions laid down in the said Scheme and the Government Resolution dated July 4, 1995.

8. As a second limb, the learned A. G. P. invited our attention to the Government Resolution dated June 2, 2016 and submitted that the Government has taken a decision, not to sanction the pensionary

benefits to a freedom fighter after his death, even if his proposal was under consideration, at the time of his death.

9. Before adverting to the submissions canvassed across the Bar, it would be appropriate to have a look at the Government Resolution dated July 4, 1995. The said Government Resolution enlists the documents on the production of which a person could substantiate his participation and involvement in the freedom movement. The conditions enumerated in the said Government Resolution are as under :

“(1) The applicant should submit a certificate stating as to what type of problems and hardships he had undergone following his participation in the freedom movement:

(a) He had to remain away from his house or family.

(b) He had to give up education or had been expelled from the educational institution.

(c) He was so severely beaten up by the police that he suffered a disability.

(2) The certificates of two freedom fighters of the area who were convicted for a minimum of two years or who were declared absconding or who remained absconding for at least two years. These certificates should be accompanied

with the copies of Jail Certificates showing incarceration or proclamation of absconding as well as duly verified affidavits of the freedom fighters issuing the certificates.

(3) Certified copy of the Government record of that period, if any, available regarding the fact that he remained underground.

(4) A copy of the newspaper in which the news item was published containing information about the name of the applicant being an underground freedom fighter.

(5) While submitting their opinion, the District Gaurav Committee shall clearly mention the criteria in respect of the said opinion.”

10. The aforesaid Government Resolution itself mentions the documents which are required to be produced along with the application. Upon perusal of record it is seen that the documentary evidence filed by the husband of the petitioner did not meet any of the criteria prescribed by the said Government Resolution. It is the case of the petitioner that her deceased husband had made an application on November 24, 1994 for grant of pension under the Scheme and had also appended therewith a certificate of Camp Incharge Pralhadrao Kulkarni and affidavits of veteran freedom fighters Keshav Ware and Gopalrao Chavan, respectively. However, upon perusal of letter dated

October 17, 1997 addressed to the Deputy Secretary, GAD, Mumbai by the office of the Collector, Aurangabad, it is seen that deceased Asaram had submitted two applications dated November 24, 1994 and December 6, 1994, which were in the prescribed format for grant of pension. The said applications were accompanied by a photocopy of his own affidavit dated October 26, 1994; his Age Certificate issued by the Civil Surgeon and a photocopy of affidavit of veteran freedom fighter Keshav Tulshiram Ware only. Prior to rejection of his pension claim vide communication dated December 30, 1994, respondent No.4 had called upon Asaram to submit the following documents:

- (a) Proof of declaration regarding proclaimed offender under Cr.P.C.;
- (b) Proof of seizure warrant of property;
- (c) Proof from the record of police or Magistrate about having his absconded;
- (d) Age proof from Civil Surgeon or school;
- (e) Affidavits of two freedom fighters attested by the Resident Deputy Collector; and
- (f) Original certificate of the Camp Leader.

From this, it is crystal clear that deceased Asaram did not file original documents. He chose to file only a photocopy of his own affidavit as well as a photocopy of an affidavit of freedom fighter Keshav Ware.

Thereafter, on September 16, 1997 as well, he was asked to submit original documents. However, he did not submit the same till his application was rejected as communicated by the letter dated 12 May, 1999. We find photocopies of some affidavits, on record, namely that of Khanderao Khalse dated 04 April, 2008, Babanrao alias Kashinathrao Kulkarni dated 20 January, 2010 and Nivrutti Raut dated 16 September, 2004. It is obvious that these were submitted long after his application was rejected. Further, he failed to submit the certificate of the problems and hardships faced or undergone by him following his participation in the freedom movement nor had he filed proof that he had to remain away from the house or that he had to quit education or that he was expelled from the educational institution or that he was so severely beaten up by the police that he suffered a disability. He further failed to produce any newspaper containing a news item that he was reported to be an underground freedom fighter nor did he produce any Government Record stating or even suggesting that he was an underground freedom fighter. Though he claimed to have remained underground, he was not declared a proclaimed offender, nor any award for his arrest was announced. There is no material available on record to show that any detention order was ever issued but was not served upon him. In short, the husband of the petitioner did not furnish the required proof as contemplated under

the Scheme and the Government Resolution dated July 4, 1995. On the contrary, by his communication dated 17 February, 2014, he almost admitted that he did not possess nor could he produce the mandatorily required supporting documents. On the contrary, he made an attempt to argue that in the circumstances of his case, these documents were not required at all. While so arguing, he made a clear reference to the letter dated 12 May, 1999 whereby he was communicated the rejection of his application as aforesaid.

11. Again, even if deceased Asaram had submitted such affidavits to the concerned Authority before rejection of his application, his claim to pension could not have been considered. In the case of ***Ramkishan s/o. Narhari Sangewar Vs. State of Maharashtra and Ors., 2016 (5) Mh.L.J. 195***, a Division Bench of this Court to which one of us (S.V. Gangapurwala, J.) was a party, had refused to place implicit reliance on bare affidavits. In this context, useful reference may also be made to the Judgement of the Hon'ble Supreme Court in the case of ***State of Maharashtra Vs. Namdeo, (2013) 14 SCC 225***, wherein the Hon'ble Supreme Court in paragraphs 20 and 21 observed as under :

"20. 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 prone 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 materials produced demonstrate that the applicant is a freedom fighter.

21. *In the present case, the Government rejected the claim by passing a speaking order to the effect that certain documents required under the 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 the 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 the High Court could not have invalidated the orders of the Government.”

12. It is therefore, clear that pension under the Scheme can only be sanctioned upon proof as prescribed by the Scheme and in no other manner. As long as such proof is not available, the benefit of the Scheme cannot be conferred upon the applicant. This aspect is highlighted in the cases of *West Bengal Freedom Fighters' Organization Vs. Union of India and Ors.*, AIR 2004 SC 5143; *Union of India Vs. Bikash R. Bhowmik and Ors.*, (2004) 7 SCC 722; and *Union of India Vs. A. Alagam Perumal Kone and Ors.*, AIR 2021 SC 1212. In the instant case, the concerned Competent Authority had rejected the claim of the husband of the petitioner on the ground that the application was not supported by the requisite documents.

13. It further appears from the record that the husband of the petitioner made an application for grant of pension as far back as in the year 1994. His claim under the Scheme was however, rejected in the year 1999. Thereafter, for about a period of 18 long years he was simply content with forwarding a communication dated 16 February 2011 threatening to undertake fast unto death in front of the

Mantralaya. Again, on 17 February 2014 & 22 April 2015 he made written representations to buttress his claim by attempting to furnish reasons for non compliance of conditions prescribed by the Government Resolution dated 4 July 1995. We are of the firm view that the reasons which had been put forth by deceased Asaram, the original claimant, for non-compliance of the mandatory requirements as laid down by the Government Resolution dated 4 July 1995 were not valid and adequate to exempt him from the said conditions. Moreover, there is no such provision of exemption in the said Government Resolution. On the contrary, to claim pension under the Scheme, one has to furnish the required proof as contemplated by the Scheme & unless a person fulfills the eligibility criteria as prescribed in the Scheme, he or she cannot claim such pension as a matter of right.

14. There is yet another vulnerability in the claim of the present petitioner in that according to her the fact of rejection of the application for pension made by her deceased husband Asaram, was learnt by him in the year 2014. In the first place, there is nothing in the entire petition to explain as to how and in what manner deceased Asaram came to know in the year 2014 that his application dated 24 November, 1994 was rejected in the year 1999. His representations dated 17 February, 2014 and 22 April, 2015, do not even contain a

whisper that he had come to know of the rejection of his application of the year 1994 for the first time in the year 2014. This contention of the petitioner thus has no legs to stand upon.

15. Furthermore, the submission is required to be appreciated in the backdrop of the fact that the impugned order dated 12 May, 1999 came to be challenged after an inordinate delay of 22 long years of rejection of the claim of the petitioner's husband, who, incidentally, during his life time did not choose to challenge the same before this Court. In any case, the petitioner herein has no *locus standi* to lay a claim to pension under the Scheme once her deceased husband's claim to the same was rejected by the concerned Authority.

16. Again, the Government Resolution dated June 2, 2016 extinguishes the claim of a dead Applicant and his or her spouse or heirs. The relevant portion of the aforesaid Government Resolution reads thus:

“1. In a case, sanction of Freedom Fighter pension is under consideration of State Government and a decision as to sanction or rejection of the pension is not taken and the applicant dies pending such decision, his application shall not be considered. On the death of the applicant, the spouse or heirs shall not be entitled to

arrears in his name.

2. In a case, the State Government has taken a decision to reject the Freedom Fighter Pension and thereafter the applicant dies, then the spouse (husband or wife) of the applicant cannot apply for review of the decision (though the evidence of participation in freedom struggle is available after death of the applicant). Such application, if made, shall not be considered.”

It is pertinent that this Government Resolution is not under challenge in the present petition. In the circumstances, the petitioner’s claim cannot be countenanced.

17. We have gone through the Judgments relied upon by the learned counsel for the petitioner. After referring to the various Judgments, cited above, the learned counsel for the petitioner submitted that a strict interpretation is not called for while considering the grant of pension under the Scheme and a liberal approach should be adopted. Further, according to him, the facts in the present petition, are quite similar to the facts obtaining in an *unreported Judgment of this Court dated March 4, 2020 in Sarubai Narayansingh Thakur Vs. The State of Maharashtra and others, W.P. No.4633 of 2016*. In that

case, the claim for the grant of pension was pending and was not decided during the lifetime of the applicant, who died on 19 July, 1997, long before the Government Resolution dated 02 June, 2016 was brought into effect. However, in the present case, the facts are totally different. The claim for pension made by deceased Asaram was rejected during his lifetime in the year 1999. This Asaram, as stated above, died on 05 April, 2017, long after his claim for the grant of pension under the Scheme was rejected. Thus, the aforesaid unreported ruling cited by the learned counsel for the petitioner, is clearly distinguishable.

18. Importance of the role of freedom fighters in the movement for independence of the country is highly appreciated. India's freedom movement against the foreign yoke was witness to an overwhelming participation of people throughout the country. While many selflessly gave their lives to protect the dignity of their motherland, others got injured and embraced imprisonment. They have made the highest sacrifice at the altar of the freedom struggle and for that reason, deserve the highest respect. The Scheme for grant of pension to the freedom fighters is a benevolent gesture and deserves to be considered liberally, but the same cannot be construed in such a manner that the requirements prescribed for the grant thereof are

rendered a dead letter.

19. Resultantly, we find no substance in the petition & accordingly the same stands dismissed.

Rule is discharged. There shall be no order as to costs.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

ssc/