

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

F.M.A. 3594 of 2014

Shri Motilal Pradhan
versus
The Union of India & Others

For the Appellant : *Mr. Ramdulal Manna,*
Mr. Swapan Kumar Mallick,
Ms. Manju Manna,
Mr. Sabyasachi Mondal,
Mr. Sayan Mukherjee,
Mr. Urfan Ali Mandal.

For the Union of India : *Mr. M. M. Verma.*

For the State : *Mr. Sudipta Panda,*
Ms. Munmun Tewary.

Hearing is concluded on : *24th June, 2022.*

Judgment On : **4th July, 2022.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging a judgment dated 9th July, 2010 passed in WP No.26738 (W) of 2008.

2. This case has a chequered history. The appellant/writ petitioner applied for freedom fighter's pension under the Swatantrata Sainik Samman Pension Scheme (hereinafter referred to as the said Scheme) on 14th August, 1981 on the strength of a personal knowledge certificate (hereinafter referred to as PKC) issued by an eminent freedom fighter, namely, Hiralal Maiti. As the application was not considered, the appellant along with others preferred a writ petition being Civil Order No.15982 (W) of 1991 which was disposed of by an order dated 26th May, 1992 directing the State Government to consider and recommend the appellant's claim. Pursuant to such direction, the appellant's claim was considered but recommendation was denied by an order dated 9th April, 1992 passed by the respondent no.3. Upon communication of the said order, the respondent no.2 rejected the appellant's claim by an order dated 24th September, 1992. Aggrieved by the said orders, the appellant again preferred a writ petition being CO 2401(W) of 1993. The same was heard along with other similar matters and finally disposed of by a judgment dated 14th February, 2002 laying down specific guidelines towards consideration of claims under the said Scheme and observing *inter alia* that certificate of an eminent certifier is an alternative mode of proof of evidence. Pursuant to the said order, the appellant's claim was considered afresh and the respondent no.3 passed an order on 24th September, 2002 observing *inter alia* that the appellant's claim cannot be recommended. Subsequent thereto, the respondent no.2 passed an order on 5th November, 2002 refusing to admit the appellant's claim. The said orders dated 24th September, 2002 and 5th November, 2002 were again

challenged in a writ petition being WP No.26738 (W) of 2008 and the same was dismissed by the judgment impugned in the present appeal.

3. Mr. Manna, learned advocate appearing for the appellant submits that the appellant was a proclaimed offender and he remained underground for a period of one year from September, 1942 to September, 1943. However, official record relevant to the appellant's claim was not available and he applied for pension under the said Scheme on the strength of the certificate issued by an eminent freedom fighter, namely, Hiralal Maiti.

4. Drawing our attention to Clause 9(b) of the said Scheme, he argues that in the admitted absence of official records, the authorities ought to have granted pension in favour of the appellant on the basis of the PKC issued by an eminent certifier. No weightage was granted to the said PKC on a purported plea that Hiralal Maiti himself was in jail during the period from September, 1942 to September, 1943 and that as such, he could not have certified as true to his knowledge that the appellant at that point of time was underground. The veracity of such certificate was never challenged by the authorities in the previous proceedings and as such the appellant's claim could not have been turned down doubting the genuineness of the PKC.

5. Mr. Manna further submits that while rejecting the appellant's claim no weightage was granted to the guidelines specified in the judgment dated 14th February, 2002 passed CO 2401(W) of 1993. The PKC cannot be challenged simply because the certifier was in jail at the relevant period. Such proposition stands reflected in the order dated 24th September, 2002

passed by the respondent no.3. The said issues were not addressed though argued before the learned Single Judge.

6. He argues that the appellant could not be in any way responsible for misplacement of any record. It was for the concerned authorities to maintain such documents and records. Non-availability of the same could not have disentitled the appellant. In view of such absence of records, the PKC entitles the appellant to pension under the said Scheme.

7. In support of his arguments, Mr. Manna has placed reliance upon the judgments delivered in *Union of India & Ors. –vs- Smt. Sadhana Bala Dhara & Ors.*, reported in (2017) 4 WBLR(Cal) 491, *Gokul Chandra Panja –vs- Union of India & Ors.*, reported in 1999 (1) CalLT(HC) 241, *Lichu Bala Ghara –vs- Union of India*, reported in 2017 (5) CHN (Cal) 464 and in the case of *Union of India and Others –vs- Indu Bhusan Jana*.

8. *Per contra*, Mr. Verma, learned advocate appearing for the Union of India submits that the arguments as advanced on behalf of the appellant/writ petitioner were duly considered by the learned Single Judge. Upon dealing with all the factual issues, the learned Judge arrived at specific findings and there is no error in the same, least to say any patent error warranting any interference in the present intra-Court mandamus appeal. That apart, the impugned judgment has been rendered with cogent and justifiable reasons.

9. Drawing our attention to the PKC, as annexed to the stay application, Mr. Verma submits that through the said document it was certified that the appellant remained underground for one year from the period from September, 1942 to September, 1943 as he was a proclaimed offender. However, during the self-same period the certifier was in jail and as such he could not have certified as true to his knowledge that the appellant went underground during the period from September, 1942 to September, 1943.

10. He further argues that the appellant did not submit either any documentary evidence based on official records or the NARC from the competent authority. He failed to furnish the details of any case in connection with which a warrant of arrest might have been issued on account of which he went underground. His case was also not recommended for pension by the DLAC, Midnapur. There are no records which would be material to the question of the appellant's political suffering. In view thereof, the appellant's claim for pension under the said Scheme was rightly refused.

11. Mr. Panda, learned advocate appearing for the State adopts the submissions of Mr. Verma and submits that there was nothing recorded in the Village Crime Note Book about the appellant. The appellant also could not produce any supporting documents to substantiate his claim and as such the State Government rightly did not recommend his claim.

12. He argues that the PKC upon which reliance has been placed by the appellant would reveal that the certifier was in jail on and from 5th

September, 1942 to 4th September, 1945. Being under detention during the said period, he could not have certified as true to his knowledge that the appellant remained underground for the period from September, 1942 to September, 1943.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record.

14. The argument advanced on behalf of the writ petitioner that the PKC issued in favour of the appellant could not have been doubted on a purported plea that as Hiralal Maiti himself was in jail during the period from September, 1942 to September, 1943, he could not have certified as true to his knowledge that the appellant at that point of time remained underground, was rightly discounted by the learned Single Judge in view of the judgment delivered in the case of *Union of India & Ors. –vs- Smt. Suwadra Bala Pal & Ors.* wherein it was observed *inter alia* that ‘a person who himself is in Jail, he cannot certify true to his knowledge whether another person at that point of time was really absconding or not. If any such certificate is given, the same is either a false one or based on hearsay evidence’.

15. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in the decision making process. In the case of *Indu Bhusan Jana* (supra) the writ petitioner’s claim was recommended by the State Government. In the cases of *Gokul Chandra Panja* (supra), *Lichu Bala Ghara* (supra) and *Sadhana Bala*

Dhara (supra), the veracity of the personal knowledge certificates was not in doubt. The said judgments, upon which reliance has been placed by the appellant, are thus distinguishable on facts and are not applicable to the facts of the present case.

16. The dispute as regards availability/non-availability of relevant official records is strictly fact oriented. The appellant alleged that no official records relevant to his sufferings were forthcoming, however, he could not furnish the NARC from the competent authority. On the other hand it was the contention of the authorities that official records including the village crime note book were available and such fact had been reflected in the orders dated 24th September, 2002 and 5th November, 2002. In the backdrop of such sequence, the learned Single Judge refused to embark upon an enquiry. We do not find any infirmity in such decision since the Writ Court cannot take upon itself an investigative mantle to decide disputed questions of fact.

17. The key to unravel the complexities of the problem posed lies in the pleadings. Upon scrutinising the same, the learned Single Judge has arrived at specific findings and there is no error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. It is also not a case that the learned Single Judge has glossed over and has not returned a finding on the issues argued by the writ petitioner.

18. For the reasons discussed above, we are not inclined to interfere with the judgment impugned.

19. The appeal and the connected application are dismissed.

20. There shall, however, be no order as to costs.

21. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)