

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

WRIT PETITION NO. 2925 OF 2016

Shri Kanhuji S/o Satwaji Hivrale,
Age 78 years, Occu : Nil,
R/o. Kokanwadi, Tq and
District : Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Freedom Fighter Section,
Mantralaya, Mumbai-32.

2. The Section/Desk Officer,
General Administrative Department,
Freedom Fighter Section,
19th Floor, Opposite,
Mantralaya, Mumbai-32.

3. The Collector, Aurangabad,
District : Aurangabad.

...Respondents

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Mr. V.S. Panpatte, advocate for the Petitioner.

Mr. A.S. Shinde, A.G.P for respondent no.3/State.

Mr. B.B. Kulkarni, advocate for respondents nos.1 & 2 (Absent).

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**CORAM : R.D. DHANUKA &
S.G. MEHARE, J.J.**

**RESERVED ON : 11th APRIL, 2022
PRONOUNCED ON : 06th May, 2022**

JUDGMENT (PER S. G. MEHARE, J.) :-

1. Rule. Learned A.G.P. waives service of notice for respondent no. 3 and learned counsel Shri. B. B. Kulkarni waives service of notice for respondents nos. 1 and 2.

2. Rule made returnable forthwith. By consent of the parties, heard finally.

3. Petitioner, under article 226 of the Constitution of India, has prayed for a writ of certiorari for quashing and setting aside the communication of respondent no.2 dated 19.11.2015 rejecting his claim of Sanman pension and a writ of mandamus directing respondent no.2 to grant him underground freedom fighter Sanman Pension from 19.11.2015.

4. The case of the Petitioner, in a nutshell, is that he participated in the "Hyderabad Mukti Sangram" and worked as an underground freedom fighter. He struggled for freedom. He was campaigning against the erstwhile Nizam Government, collecting the funds for the movement, supplying the arms and weapons to the workers, supplying the information about police movements, arranging for attacks on the police and other allied activities. He worked under the leadership of veteran freedom fighters Shri Nivruttirao Dadarao Raut, Kashinath Rustam Lokhande, Bansilal Tuljiram Patel, Sevadas Kisandas Vaishnav, Shri Lala Laxminarayan Jaiswal, the camp in charge and at village Kolte Takli, Gilda Camp etc. He participated in the freedom fight between 1947 to 1948. Shri Lala Jaiswal has issued him a certificate of his participation in freedom fighting. Since he is

eligible, he applied for the Maharashtra Government's "Swatantraya Sainik Sanman Pension". He fulfils the conditions for the entitlement of the said Scheme. The District level Gaurav Committee to its satisfaction, had recommended the proposal of the Petitioner to the State Government for Pension.

5. The State Government had rejected his claim by communication dated 10.03.2010. Petitioner had impugned the said communication by Writ Petition No. 11223 of 2010. This Court, by its order dated 10.06.2010, set aside the impugned communication dated 10.03.2010 and issued the directions to the High Power Committee to consider the Petitioner's claim afresh. Petitioner personally visited the office of the High Power Committee and asked the concerned whether any document was required. The concerned replied that no documents were needed. However, the High Power Committee has assigned the reasons in the impugned order that the Petitioner has not submitted any other evidence of hardship or problems he suffered as prescribed in clauses A, B and C of condition no.1 and conditions nos.3 and 4 of the Government Resolution dated 04.07.1995. He also submitted that the impugned communication is against the requisite norms and the earlier judgments of the High Court and Supreme Court on the issue involved in the case at hand. Hence the petition deserves to be allowed.

6. Respondent No.3 filed her affidavit in reply dated 31.01.2020 and opposed the petition and supported the impugned communication. She has stated that the High Power Committee has considered the ratio laid down by the Hon'ble Apex Court in the case of The State of Maharashtra vs Namdeo Sopan Zavare and others (Civil Appeal No. 789-7901/2013 arising out of S.L.P (Civil) No. 26441-26443/2012 decided on 09.09.2013). The High power committee has examined the documents placed with the application and considered the recommendations. Considering the material on record, the High Power Committer has correctly rejected the Petitioner's claim.

7. Learned counsel Shri Panpatte for the Petitioner has vehemently argued that the impugned order is erroneous on the face of the record and without valid reasons. Petitioner has complied with all conditions envisaged in the Government Resolution. The Petitioner was an underground freedom fighter; therefore, the police could not catch him. He played a crucial role in the freedom movement, and he worked with and under the renowned freedom fighters who had undergone imprisonment. The Petitioner had annexed the certificate issued by colleague freedom fighters to prove his participation. The High Power Committee ought not to have rejected the Petitioner's claim when the District Gaurav Committee, after a thorough inquiry, has recommended the Petitioner's proposal.

8. In addition to the above arguments, the learned counsel Shri Panpatte for the Petitioner relied on many case laws and would argue that by these series of judgments, the courts have accepted the claims of the freedom fighters. He also submitted that those case laws are squarely applicable to this case.

9. Per contra, the learned A.G.P. for the State submits that the High Power Committee has considered the facts minutely. The recommendation of the District Honour Committee is not binding on the State. The Petitioner could not submit the required document as prescribed in the Government Resolution dated 04.07.1995 and prove his participation in the "Hyderabad Mukti Sangram". He also argued that the recommendations made by the District Honour committee were not clear. The impugned order is legally correct and proper; hence, the petition is devoid of merit.

10. The learned counsel for the Petitioner also argued that the facts of the case of State of Maharashtra Vs. Namdeo etc., etc., in Civil Appeal No.7899-7901/2013 decided by the Supreme Court, do not apply to this case.

11. The Government has resolved to grant the pension to the freedom fighters way back in 1970 and from time to time issued many

Government Resolutions to resolve the challenges that came in the way to grant the pension to the freedom fighters. Pursuant to the observations recorded by the Hon'ble Apex Court and the High Court, the Government Resolutions are also issued.

12. The Government Resolution dated 04.07.1995 prescribes the documents required for the underground freedom fighter pension in clause (E). The said clause (E). is reproduced as follows:

“UNDERGROUND FREEDOM FIGHTERS :

E. The freedom fighters who were working as underground fighters in the "Bharat Chhodo" movement between 1942-44 and "Hyderabad Mukti Sangram" in the year 1947-48 have necessarily to submit the following documents.

- 1) The claimant should produce a certificate of a given type of difficulties and troubles he suffered due to participation in the freedom movement.
 - a) He had to leave home and stay away from his home.
 - b) He had to leave his education or was expelled from the educational institution.
 - c) Police hit him in such a way that caused him disabilities.
- 2) He must attach the certificates of two freedom fighters from his area who were convicted, declared and absconded at least for two years, copies of their certificate of imprisonment or absconding proclamation, the copies of the Government orders, and the affidavits of such persons giving certificates.

3) A certified copy of a Government record of that time showing remained underground, if available.

4) The original copy of the newspaper of that time giving information about having gone underground of the applicant with name, if available.

13. In the case of Kishan Hanuji Jambhulkar (Dr.) Vs. State of Maharashtra and Others, 2004 (2) Bom. C.R. 433, relied upon by the Petitioner, the Union of India had declined the claim of underground freedom fighter because the documentary evidence does not prove the claim of suffering. The Hon'ble Division Bench of this Court at Nagpur has observed in Paragraph 12 in subparagraph thus :

"The Apex Court in the above case specifically ruled that 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. It further observed that looking to the object of the Scheme, the approach should be to honour and mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach should be taken while determining the case of the person seeking pension under the Scheme. The Apex Court further observed that it should not be forgotten that the persons intended to be covered by the Scheme have 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 cases of the claimants under this

Scheme are required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of evidence it is probabalised 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."

14. The learned counsel Shri Panpatte for the Petitioner relied on paragraph no. 15 of the above case. In the said paragraph, the observations have been recorded by the High Court that the benefit of the pension scheme could not have been denied to him merely because in the opinion of the Government of India, he was not a eminent person, especially in the absence of any criteria laid down by the Government of India in this behalf. Having regard to the facts of this case, we are of the opinion that the above case is based on the different facts and hence inapplicable here.

15. The facts of the case of State of Tamil Nadu and Another Vs. A. Manickam Pillai, 2010 A.I.R. (SC) 670, were that the claim of the Petitioner was rejected by Government on the ground that in the face of the Government Order No.30 dated 07.02.1996, such an application had to be supported by a certificate of a co-prisoner who was a government approved certifier. The certificate appended had been issued by one Mayandi Bharathi, who was not a government-approved certifier. Then the Petitioner has appended another

certificate issued by one Karuppan Chettiar. The claim of the Petitioner was rejected by the Single Bench and the Division Bench of the High Court of Madras, however, the Hon'ble Apex Court observed that the condition of the evidence of suffering difficulty by the applicants for freedom fighters pension in producing co-prisoner certificates from two of the persons mentioned in the Government Order dated 16.11.1998 was modified and simplified the procedure by the State Government by its order dated 07.02.1996, for grant of certificates with effect from that date.

16. It has been further observed in para 5 of the said judgment that a perusal of this government order would reveal that freedom fighter certificates could now be issued by approved certifiers and these were held as sufficient evidence for grant of pension. The Government Order further set out the constitution of the District Level Screening Committees to be nominated by the Government in consultation with the Collectors concerned and these committees were required to personally examine the documents produced and decide as to the entitlement of the applicant to grant of pension and refer the matter for formal approval to the State Government.

17. In para 6, the Hon'ble Apex Court, in the last few lines, observed that the matter was recommended by two Collectors and District Level Screening Committees, and this was sufficient

compliance with the Government Order dated 07.02.1996. On this factum, the petition was dismissed.

18. This is the second round of litigation by the Petitioner claiming freedom fighter pension. The District Honour Committee had recommended the Petitioner's claim on 04.03.2008. However, by letter dated 04.07.2008, the Collector, while referring recommendation of the District Honour Committee, has pointed out that the applicant has not complied with the documents as required in Government Resolution dated 04.07.1995. Thereafter, the High Power Committee, by its order dated 10.03.2010, had rejected the claim of the Petitioner. The Petitioner had challenged the said order before the Division Bench at Aurangabad vide Writ Petition No.11233 of 2010. The Hon'ble Apex Court, by its order dated 02.09.2013, quashed and set aside the order dated 10.03.2010 and remitted the matter to the High Power Committee for due consideration. The High Court also directed that the High Power Committee should apply its mind and complete the process within three months from the date of the order. Thereafter, the State Government shall pass appropriate orders in accordance with law within further period of two months. In pursuance of the above directions, the High Power Committee reconsidered the claim of the Petitioner, discussed the evidence produced before it in detail and passed the impugned communication observing that the evidence as required as per the Government

Resolution dated 04.07.1995 has not been produced. The norms of Government Resolution dated 04.07.1995 have not been complied with; hence he is not entitled to a freedom fighter pension.

19. The Petitioner applied for the freedom fighter pension to the Collector of Aurangabad on 06.03.2003. He has submitted the application in the prescribed form and attached the certificate issued by veteran freedom fighter Shri Kashinath Rustom Lokhande, who has certified that the Petitioner had worked under his leadership and also participated in Takli Kolte Camp and was an active participant in Hyderabad Mukti Sangram. He has filed his affidavit along with the application. Petitioner also submitted an affidavit of the veteran freedom fighters, namely Nivrutii Dadarao Raut, Kashinath Rustom Lokhande, Bansilal Tuljiram Patel and Sevadas Kisandas Vaishnav and Shri Lala Laxminarayan Mohan Jaiswal. Based on these documents, the Petitioner has claimed that he has complied with the required conditions prescribed in Government Resolution dated 04.07.1995. Petitioner has also complied with the conditions laid in Government Resolution dated 05.09.1992 and 04.07.1995. However, none of the persons giving him the certificate and swearing in the affidavits as required has narrated the role played as pleaded by the Petitioner in his petition. It is not disputed that the claim of the Petitioner is solely based on the affidavits of the other freedom fighters and certificates issued by them.

20. The elaborate argument advanced by the learned counsel Shri Panpatte, supported by the case laws discussed above, would reveal that he wanted to press into service that once the co-freedom fighter recognizes the participation, it is sufficient evidence to believe the bonafide of the claimant. He also added that the strict Rule of evidence would not apply to such cases, and the Government should have considered the claims on the preponderance of probability. There is prima facie evidence, at least probable evidence, to believe that the Petitioner had participated in the Hyderabad Freedom Movement. He also argued that all documents enlisted in the Government Resolution are not required to be produced with the application. Therefore, impugned communication is erroneous.

21. The State of Maharashtra, in the case of Namdeo etc., had taken the issue before the Hon'ble Apex Court, that, for the entitlement of the underground freedom fighter pension, contending that the claimant shall produce all the documents enlisted in the Government Resolution dated 04.07.1995. The Hon'ble Apex Court in the case of State of Maharashtra and Others Vs. Namdeo etc. in Civil Appeal No.7899-7901/2013 (arising out of S.L.P. (Civil) Nos.26441-26443 of 2012), in paragraphs 19, 20,21 and 22 sum up the legal positions as under :

"(a) The claims of the freedom fighters are to be dealt

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. "

"20. These principles show a clear path as to how the claims under the Freedom Fighters Scheme are to be examined".

"21. In the present case, as already noted above, except the affidavit 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".

In the middle of paragraph no. 22, it has explicitly been observed by the Hon'ble Apex court in the above case, thus,

"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".

22. In the above case, the State Government had rejected the claim of the Petitioner on the ground that certain documents required under Government Resolution dated 4.7.1995 had not been furnished. The case in hand is also rejected on similar grounds.

23. In the absence of the documents required under the Government Resolution dated 4.7.1995, the claimant shall make out a case that there are reasons to dispense with such documents. The discretion lies with the Government to relax the other requirements of

the documents enlisted in the Government Resolution dated 4.7.1995. No discretion can be exercised unless the material and circumstances are brought before the authority exercising the discretion by the party expecting discretion. Petitioner nowhere brought any such circumstances before the High Power Committee to exercise the discretion and relax the requirements of other documents enlisted in the Government Resolution dated 4.7.1995.

24. It is also the argument of learned counsel for the Petitioner that the Court should adopt a liberal approach and discard a technical approach while dealing with the beneficial legislation. We comment on this aspect in the following paragraph.

25. Whenever there is a conflict between substantial justice and hyper technicality, then substantial justice should be preferred to avoid defeat for the ends of justice. Technicality normally relates to the procedural aspects. Some compliances often have to be done in legal proceedings to run a substantial law. Wherever the technical compliances in the proceedings are immaterial and conflict with the substantial rights / justice, then such technicality should be brushed aside, and substantial justice is to be made. In a case where the production of a document of formal nature is required under the procedural law, and if a party fails to produce such document, then the suit shall not be declined merely for failure to produce such

document. Against this, a liberal approach is an approach of the Court of law that focuses on the rights guaranteed under the law. No person should be deprived of the substantial justice for want of some technical compliances having no bearing on the remedy claimed by a person. However, where certain acts are the basis for substantial rights, those acts must be done by such a person, and no court can dispense with such acts. In the case of *Namdeo etc*, cited *supra*, the Hon'ble Apex Court has specifically observed that in the case of Freedom fighters Pension, there shall be a case of the dispensation of the required documents, and the authority should believe that the claim is genuine on the basis of other material available. In the facts situation, we do not find force in the submissions of the learned counsel Shri Panpatte, that the theory of liberal approach is applicable in this case.

26. So far as the exercise of the powers under Article 226 of the Constitution of India in such a case, the learned counsel correctly pointed out that the writ court cannot sit in appeal and can not interfere with the orders like in this case because a decision is not perfect. It has been observed by the Hon'ble Apex Court in *Namdeo etc.*, case cited *supra*, that once the claim is rejected on the grounds of absence of the required documents enlisted in the Government Resolution dated 4.7.1995, such an order is in consonance with the requirement of the said Scheme, no fault can be found with such

order when the claimant made out no case for dispensation of these requirements.

27. The High Power Committee, after the first remand, appears to have gone through the Scheme and expressly rejected the claim for want of the documents required in the Scheme, which clearly indicates that it did not find it fit to dispense with the required documents and did not feel appropriate to exercise the discretion.

28. We have gone through the facts of the case and the case laws relied upon by the Petitioner and find it not fit to discuss each case for the reasons that the issue was correctly covered under the case of Namdeo etc, cited supra and were distinguishable on facts. We do not find any infirmity in the impugned communication. The decision against the Petitioner is not arbitrary or biased.

29. In view of the aforesaid, we do not find any reason to interfere with the impugned communication.

30. The Writ Petitions stand dismissed. The Rule is discharged.

31. No orders as to costs.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)