

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.6570 OF 2019
WITH WP/6577/2019

DAMU PUNJAJI SHEJUL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.V.S.Panpatte, Advocate for the petitioner.
Mr.P.S.Patil, AGP for State.

(CORAM : RAVINDRA V. GHUGE AND
S.G. MEHARE, JJ.)

DATE : MARCH 3, 2022

PER COURT : (Ravindra V.Ghuge, J.)

1. In these 2 matters wherein the petitioners have made claims for freedom fighter's pension, our conscience is disturbed while considering the factors that emerged. It would therefore be apposite to begin this judgment with the observations of the Hon'ble Supreme Court in **Bhaurao Dagadu Paralkar Vs. State of Maharashtra and others [2005 AIR SCW 4094]**. The Hon'ble Court has recorded in paragraph No.2 as under :-

"When one talks of freedom fighters the normal image that comes to one's mind is a person who had suffered physically and mentally for unshackling chains of foreign rule in our

country. The normal reaction when one sees such person is one of reverence, regard and respect. The brave courageous deeds of these persons is a distinctive part of India's fight for freedom. Many persons lost their lives, many were injured and large number of such persons had languished in jails for various periods. The common thread which must have passed through the minds of these people is their sole objective to see that their motherland has a government of its own, free from foreign rule. But these images get shattered when one hears that with a view to gain financially, vague documents have been produced, false claims of participation in the freedom movement have been made. It is a sad reflection on the moral values of the citizens of our country that a large number of cases have surfaced where it has been established that people who were not even born when the freedom fight was on or the country got independence or were toddlers when the country got independence have applied for and managed to get "Sammanpatra", pensionary and other allied benefits. The appeals at hand deal with such allegations. This is "Asanman" (disrespect) to the whole country and such dishonourable ventures have to be dealt with strenness to send out a message that they are not freedom fighters, but are traitors sullyng the name of freedom fight."

2. The Policy of the State Government brought into effect through the Government Resolution dated 04.07.1995 thereby introducing freedom fighter's pension scheme, is undoubtedly a laudable scheme

with the object of honouring those persons who have sacrificed their lives or their freedom and liberty and have suffered atrocities at the hands of the oppressors. In this context, the Hon'ble Supreme Court has observed in *Gurdial Singh Vs. Union of India* [2001 AIR SC 3883] as under :-

"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 bureaucrat entrusted with the object of examining the cases of such freedom fighters, are expected to keep in mind the purpose and object of the scheme."

3. It goes without saying that such schemes are aimed to reward genuine freedom fighters who deserved to be treated with respect, honour and reverence. At the same time, as has been held in *Bhaurao* (supra), it cannot be ignored that people who had not played any role in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in granting freedom fighters pension, most of whom in the normal course are in their late 70's or 80's. It baffles one, beyond comprehension, when claims are made by the persons who were not even born during the freedom struggle, under

the pretense of being freedom fighters. The persons who are masquerading as freedom fighters, are actually traitors.

4. With regard to such bogus freedom fighters committing fraud on the system, the Hon'ble Apex Court has held in paragraph Nos.10 to 20 in Bhaurao (supra) as under :-

"10. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See Dr. Vimala v. Delhi Administration (1963 Supp 2 SCR 585) and Indian Bank v. Satyam Febres (India) Pvt. Ltd. (1996 (5) SCC 550).

11. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get and advantage. (See S. P. Changalvaraya Naidu v. Jagannath (1994(1) SCC 1).

12. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent

misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).

13. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he

succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1, what constitutes "fraud" was described thus : (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983)1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. If a statute has been passed for some one particular purpose, a Court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain". In public law the duty is not to deceive. (See Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers, (1992 (1) SCC 534).

14. In that case it was observed as follows :

"Fraud and collusion vitiate even the most solemn proceedings in any

civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of the fact with knowledge that it was false. In a leading English case Derry v. Peek, ((1886-90) All ER Rep 1 : (1889) 14 AC 337 (HL)) what constitutes fraud was described thus : (All ER p. 22 B-C)

'Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false'."

15. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal, 2002 (1) SCC 100); Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education, (2003 (8) SCC 311); Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T. N. and another, (2004 (3) SCC 1).

16. Suppression of a material document would also amount to a fraud

on the Court. (See Gowrishankar v. Joshi Amba Shankar Family Trust, (1996 (3) SCC 310) and S. P. Chengalvaraya Naidu's case (supra).

17. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav's case (supra).

18. In Lazarus Estate Ltd. v. Beasley, (1956) 1 QB 702, Lord Denning observed at pages 712 and 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722).

19. These aspects were recently highlighted in the State of Andhra Pradesh and another v. T. Suryachandra Rao, (2005 (5) Scale 21).

20. To give finality to the controversy, we appoint Mr. Justice A. B. Palkar, a retired Judge of the Bombay High Court to examine the 354 cases. The relevant files shall be handed over to the Commission immediately. The Commission is requested to complete the verification within four months and submit its report to the State Government for necessary action. The claimants whose cases are to be examined shall be given opportunity to have their say before the Commission. The records of the Zilla Gaurav Samittee, High Power Committee and the Committee appointed by the High Court shall be examined by the Commission before issuing notice to the individual applicants to decide the acceptability or otherwise of the claims for freedom fighters' pension. On getting report of the Commission, the State Government shall take necessary action. We make it clear that we have not expressed any opinion on the acceptability or otherwise of the claims as the commission appointed by this Court shall examine those aspects."

WRIT PETITION NO.6577 OF 2019

5. By this petition, the petitioner who claims to be 89 years of age in

2019 (today 92 years of age), has put forth prayer clause B, C and D as under :-

"B. By issuing a writ of mandamus, or any other appropriate writ, order or directions of like nature, the decision contained in order dated 10th December, 2008 (Exhibit J) confirmed by order dated 17.8.2015 (Exhibit M), issued by respondent No.3, rejecting the claim of petitioner for grant underground Freedom Fighters Sanman Pension to the petitioner, may please be quashed and set aside.

C. By issuing writ of mandamus, or any other appropriate writ, order or directions in the like nature the respondent Nos. 1 to 3 may please be directed to hold and declare that, petitioner is underground freedom fighter and to grant sanman pension from the date of original application dated 08.06.1996 and further direct respondents to pay the petitioner monthly regular pension and to extend all the consequential benefits due and payable to him within a period of two months.

D. Pending hearing and final disposal of this writ petition, the respondents may please be directed to pay the provisional pension as underground Freedom Fighter @ Rs.10,000/- per month and continue to pay the said amount during the pendency of writ petition."

6. This petition was filed on 22/05/2019. Therefore, while issuing notice on 10/06/2019, this Court has recorded as under :-

" *Petitioners will have to explain about delay and laches. Prima facie, it appears that there is inordinate delay in filing the petitions.*

Learned AGP appears on behalf of respondents.

So as to give one more opportunity to the petitioners to convince on the point of delay and laches, stand over to 05.08.2019."

7. We have considered the submissions of the learned Advocate for the petitioner, who has repeated his arguments atleast 4 times. We have also considered the submissions of the learned AGP on behalf of the respondents. With their assistance, we have gone through the petition paper book.

8. The learned Advocate for the petitioner has relied upon the following judgments :-

"[a] Mukund Lal Bhandari Vs. Union of India [1993 AIR (SC) 2127]

[b] Kishan Hanuji Jambhulkar (Dr.) Vs. State of Maharashtra and others [2004(2) Bom.C.R. 433]

[c] Chhodtubhai H.L.Patel Vs. State of Gujarat and others [AIR 1996 Gujarat 201]

[d] Gurdial Singh Vs. Union of India and others [(2001) 8 SCC 8]

[e] State of Tamil Nadu and another Vs. A.Manickam Pillai [2010(2) SCC 669]

[f] Kamalbai Sinkar Vs. The State of Maharashtra and others, in Civil Appeal No.5344/2012 dated 20.07.2012.

[g] Kishansinha s/o Tukaramsinha Chandel Vs. The State of Maharashtra and others in WP No.2831/2000 dtd.26/07/2010.

[h] Kalidas Nivrutti Dhale Vs. State of Maharashtra and others [2014(4) Bom.C.R. 397]

[i] Punjaram s/o Madhav Indewad Vs. The State of Maharashtra and others in WP NO.2632/2011, dated 28/08/2013.

[j] Rajabai w/o Pandoji Kshirsagar Vs. The State of Maharashtra and others, in WP No.3087/2013 and other connected matters dtd. 04/02/2016.

[k] Tulshiram s/o Eknathrao Kolhe Vs. The State of Maharashtra and others in WP NO.6730/2014, dated 20/03/2018."

9. The State of Maharashtra introduced a Government Resolution dated 04/07/1995 introducing "Sanman Pension", granting pension by way of honouring those freedom fighters who have actually taken part in the Hyderabad Liberation Movement, which was prevalent in this part of the State considering the rule of the erstwhile Nizam and the Razakars. In order to be eligible for such pension, following were the documents which were required to be produced by the applicant with reference to the Marathwada Liberation Movement :-

[a] Imprisonment as a freedom fighter for atleast 2 years as a sentence.

[b] Original certificate issued by the Jail Superintendent on the basis of

the records, to indicate the imprisonment in a particular jail.

[c] The arrest warrant of a freedom fighter due to which the freedom fighter had to flee and remain underground for atleast 2 years.

[d] The certificate of the Officer with regard to the issuance of the arrest warrant.

[e] The certificate from the Court which declared the freedom fighter as an absconder.

[f] The original copy of the news paper which published the news of the freedom fighter going underground/absconding.

[g] Underground freedom fighter.

10. The sufferings of the freedom fighter due to his participation in the freedom struggle for being eligible are described as under :-

[a] Had to leave his home and stay away from home.

[b] Had to quit education or was rusticated by an Educational Institution.

[c] Suffered beating by the police, which resulted in a physical disability.

[d] If the freedom fighter was behind bars, he should have suffered at least two years of imprisonment and if he was absconding, he should be

absconding for at least a period of two years.

11. The issue relevant to this case is the claim of the petitioner that he was an underground freedom fighter. There is no dispute that the petitioner has not put forth any other ground for seeking freedom fighter's pension. In fact, it is mentioned in the memo of the petition that the petitioner has put forth a representation dated 10/11/2008 stating therein that the Police could not beat him during the movement because they could not catch hold of him and therefore he has neither suffered any injury nor a disability nor any imprisonment. The whole case of the petitioner is based on the contention that he had left his home and was living away from home.

12. The petitioner put forth his first claim for pension vide application dated 02/08/1996. The petitioner has executed an affidavit on 02/08/1996 wherein he himself has stated his age to be of 67 years. It is a short affidavit which indicates his contention that he had disappeared, was an underground freedom fighter, used to carry the Indian Tricolor, used to move around in villages, used to shout slogans, used to distribute handbills and posters and used to keep a watch on the movement of the Razakars, the members of the Nizam's Army, who

were commonly known as the Razakars. The Badnapur, Dist.Jalna Police had caught hold of him and had beaten him. Since he did not reveal any information and the Police could not extract any information from him, he was released. He has stated that if this information turns out to be false, he should be punished.

13. His subsequent affidavit dated 12/03/1999 indicates that he had joined the Congress Party and was opposing the Nizam regime. He used to shout slogans and used to travel to various villages. He used to carry the Indian Tricolour and used to meet people in the middle of the night. He used to accompany freedom fighters like Shri.Sampat Naik, Shri Laxminarayan Lala, Shri Khanderao, Shri Shekaji, Shri Kondiba and Shri Rambhau Kisanrao Salunke. He was also associated with Shri Ganpatrao, Shri Motilal, Shri Laxmichand Sharma. He was at camp Takali Kolte. The Police had registered an offence against him. Since he had disappeared, the Police could not catch hold of him. This is an affidavit which the petitioner has executed on 12/03/1999.

14. Comparing the above two affidavits of the petitioner himself, clearly brings out a discrepancy between the first affidavit wherein he

submits that he was caught by Badnapur police and beaten up and the second affidavit, wherein he deletes that portion and restricts his claim for pension only on the ground that he was staying away from his home. In the second affidavit also he averred that if the information is false, he should be punished. A look at these two affidavits indicates that the petitioner himself is changing his stand so as to suit the claim for freedom fighter's pension and for this purpose, he has chosen the easiest ground to support his claim which is "I stayed away from my home".

15. The petitioner's claim is supported by the affidavit of a Freedom Fighter namely Shekaji Kondiba Patil dated 01/08/1996 wherein he repeats the first paragraph of the affidavit to the extent of carrying the Indian Tricolour, roaming about in villages, distributing posters etc. He then adds that the Badnapur Police had arrested the petitioner and had beaten him up. Since there was no information which could be extracted from him, he was released and the police action ended in September 1948. This statement is identical to the statement made by the petitioner in the first affidavit dated 02/08/1996. It is sworn one day after the affidavit of Shekaji Kondiba Patil.

16. The above stated freedom fighter Shekaji Kondiba Patil has then given a declaration in Annexure "B", which is a certificate to the petitioner wherein he once again repeats the same contents set out in his affidavit and further makes an addition that he knows the petitioner for 50 years. He has read his affidavit and he adds that the petitioner was also involved in burning of the Village Patil/Patwari's records and he was caught hold of by Badnapur Police while he was doing so, he was in a lock up for 2 days and was beaten up and later on released. This aspect has been given up by the petitioner and he consistently contends that he was never caught hold of by the police, was never put in the lock up and was never beaten up and therefore did not suffer any injury. This is evident from his own statement dated 10/11/2008 when he addressed the Deputy Secretary, Maharashtra State, Mantralaya on the 4 queries, which are as under :-

[a] Whether you were any time in the prison ?

Answer : I was underground and was never required to go to prison.

[b] Was any arrest warrant issued against you ?

Answer : I was underground and I was not caught. Therefore no warrant was issued.

[c] Was your name published in any newspaper as an absconder ?

Answer : In those days, a Weekly used to be published once in six months by name "Marathwada" and that was not delivered at villages, therefore no news report.

[d] Did you suffer any disability ?

Answer : I was not apprehended and therefore I had no reason to be beaten up and therefore have not suffered any disability.

17. The petitioner has relied upon an affidavit of another freedom fighter namely Khanderao Khalse, who was 71 years of age on 02/08/1996. He has stated in the affidavit that he knows this petitioner. He was underground. He used to roam around in villages with the Indian Tricolour, he used to carry posters and deliver them at different places, he participated in the burning of the records of the Village Patil / Patwari, he was arrested by the Badnapur Police and was beaten up. However, he did not reveal any information and was released. These last two sentences are also identical to the affidavit of the petitioner which was sworn on the same day 02/08/1996. He has also issued a certificate by way of Annexure "B" repeating the same story.

18. The petitioner then collected an affidavit from Motilal Laxmichand Sharma on 03/02/1999, who has repeated in the exact language and the contents of the affidavit of the earlier freedom fighters. He has then added a new aspect in his affidavit stating that at the border of Deulgaon Raja, Dist. Jalna, near Waghrul Naka, the petitioner was caught hold of by the Razakar Police and he was beaten up the whole night. After he did not reveal any information, he was released the next date. The petitioner used to throw stones on the Razakar Police and had to remain away from home for 7-8 months. This freedom fighter has also issued a certificate in Form "B". In the said certificate, the said freedom fighter has given up the ground that the police caught hold the petitioner at Deulgaon Raja and beat him the whole night and released him on the next day.

19. There is no dispute that the claim of the petitioner was rejected on 29/01/1999 and was returned to the Office of the District Collector, Jalna. Two freedom fighters who executed an affidavit, have stated that the Badnapur Police have caught hold of him. One freedom fighter has stated in his affidavit that he was caught hold of near

Deulgaon Raja which surely falls within the Badnapur Taluka and was beaten up the whole night. This event would require atleast some evidence and probably as the petitioner does not have it, he has given up that ground and has taken the stand that he was never ever caught by the police. Since his proposal was returned by order dated 29/01/1999, he executed a fresh affidavit on 12/03/1999 and also got one affidavit from the freedom fighter Motilal Sharma on 03/02/1999. Since the claim was returned and the petitioner added certain documents to his claim by placing on record his newly sworn affidavit and the affidavit of Mr.Sharma, his proposal was once again considered by the Higher Power Committee and was rejected on 10/02/2008. The petitioner has not challenged this order before this Court.

20. The petitioner had pursued his application for the second time between 1999-2008. The District Collector has specifically marked his disapproval after perusing the record placed before him, on 01/04/1999, below the recommendation of the District Honour Committee, that he does not agree with the recommendations of the Committee. It is in this backdrop that his claim was rejected on 10/02/2008.

21. On 09/04/2017, the S.D.P.O. Bhokardan prepared a report and addressed it to the Police Supdt. Jalna with regard to whether there is any report pertaining to certain freedom fighters, by relying upon the crime report 1357/Fasli which was a document maintained by the Razakars with regard to those persons who used to participate in the Marathwada Liberation Movement. Several names were mentioned in the said report which are full names of the persons so as to identify them. There is one surname written as Shirsath. The learned AGP points out that it is not a surname in isolation, but it is a full name of a person as Trambak Lahanu Shirsath which is also found in the translated portion of the criminal record register indicating Trambak Lahanu Shirsath. The name of the present petitioner is not mentioned in the said report. This document was on account of the exercise undertaken by the Authorities to verify certain names.

22. On 10/12/2008, the Desk Officer, State of Maharashtra addressed the District Collector, Jalna with regard to the claim of the petitioner and sought details as there was no material before the Higher Power Committee except the affidavits of freedom fighters. Therefore, 4 questions were posed by the competent authority, in pursuance to

which the petitioner tendered his answers addressed to the Deputy Secretary, Government of Maharashtra, reproduced in paragraph No.16 hereinabove.

23. Pursuant to the above, the petitioner again changed his stand and directly addressed the Chief Minister of the State of Maharashtra vide his letter dated 25/11/2009 stating therein that his application for pension should be considered, not under the Government Resolution dated 04/07/1995, but by the norms made applicable in 1991. He also prayed for all the arrears of pensionary benefits. On the very next day 26/11/2019, he again forwarded a representation directly to the Hon'ble Chief Minister stating therein that his claim should be considered as per the 1992 norms. One Sonaji Sakharam, who is also said to be a freedom fighter, addressed the Hon'ble Chief Minister directly by letter dated 04/02/2010, stating that the petitioner be given the pension on the basis of the 1992 norms.

24. Mr.Panpatte very boldly canvassed before us that he has filed hundreds of such petitions seeking freedom fighters pension and all his petitions have been allowed. The petitioner has the audacity to claim

freedom fighter's pension by contending that this court should not inquire into the claim made by the petitioner and that this Court should only see the two affidavits that are issued by two freedom fighters in support of the claim of the petitioner and once such affidavits are on record, this Court should blindly allow such petitions. To say the least, we are not only astonished, but shocked by such contentions advanced before us.

25. Considering the record before us, it is apparent that this is a case wherein we do not have an iota of confidence in the claim put forth by the petitioner. Different statements are made by the freedom fighters. He himself initially claimed that he was beaten up by the Police. Having realized that he has no evidence, he gave up the stand and insisted that he had to run away from home and was underground and was never caught hold of by the Police. Per contra, two freedom fighters have stated that he was caught hold of by the Badnapur Police, kept in the prison and beaten up for two days. One freedom fighter says that he was caught at the border of Deulgaon Raja and was beaten up the whole night in the Police Station. In the report drawn on the basis of old Urdu record of the said district and the claim register with

regard to the Marathwada Liberation Movement, the name of the petitioner is nowhere found.

26. The learned Advocate for the petitioner has strenuously canvassed upon the law laid down in the above cited judgments. We are in respectful agreement with the view expressed by the Hon'ble Apex Court as well as by our esteemed brothers in the judgments cited. However, the facts of this case, as have been analyzed hereinabove, indicate not only that the petitioner attempted to create a record and extract affidavits of the freedom fighters in 1996 and then again in 1999, when his proposal was rejected, he himself brought out a new affidavit in 1999. This clearly indicates that this is not a case which can be considered on the principles of probabilities as is the law laid down by the Hon'ble Apex Court.

27. It is true that two affidavits of freedom fighters, who themselves have been given freedom fighters' pension, should be considered and due weightage should be given. However, the question is as to whether different stands taken by such freedom fighters in their affidavits and the petitioner himself declaring that he was never arrested, never

caught hold of by the Police, never beaten up in any lock up, would render such affidavits given by these freedom fighters, to say the least, manipulated.

28. The judgment delivered by the learned Division Bench of this Court to which one of us is a party (Coram : Ravindra V.Ghuge, J.) in *Kalidas Nivrutti* (supra) is cited. This Court had referred to the judgments of the Hon'ble Apex Court in several matters and has considered the object of the scheme. It would be apposite to reproduce paragraph No.19 hereunder :-

"19. In the case of State of Orissa Vs.Choudhuri Nayak (Dead) [(2010) 8 SCC 796, the Hon'ble Apex Court has held as follows :-

*"10. This Court in [Mukund Lal Bhandari V.Union of India](#) (1993 Supp.(3) SCC 2], [Gurdial Singh V. Union of India](#) [(2001) 8 SCC 8] and *State of M.P. Vs.Devkinandan Maheshwari* [(2003) 3 SCC 183], considered the object of the Freedom (10) Writ Petition No.3447 of 2011 Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme as follows :-*

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and

courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications (11) Writ Petition No.3447 of 2011 are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme.

The above principles were spelt out to ensure that no genuine freedom fighter was denied pension under the scheme.

11. Grant of freedom fighters' pension to bogus claimants producing false and fabricated documents is as bad as genuine freedom fighters being denied pension. The only way to respect the sacrifices of freedom fighters is to ensure that only genuine freedom fighters get the pension. This means that the Government should weed out false and fabricated claims and cancel the grant when the bogus nature of the claim comes to light.

29. Considering the record before us, we are of the view that, by entertaining applications like the one presented by the petitioner, which has been rejected on 2 occasions and he has approached this Court after

11 years of the rejection, the scheme would be converted into a bounty and those who have actually rendered valuable sacrifices, may remain deprived. This would amount to an abuse of the scheme. The principles carved out by the Hon'ble Supreme Court were to ensure that no genuine freedom fighter should be denied the pension. If the claim of the present petitioner is accepted, less said the better, it would amount to an abuse of the scheme.

30. The learned Advocate for the petitioner has submitted that the freedom fighters, who have given a certificate to this petitioner, have also been given affidavits to several freedom fighters.

31. The learned AGP has placed before us a GR dated 18/04/2015 introduced by the Government in redefining the norms for granting freedom fighters pension and making them very strict in view of the report of the Justice Palkar Commission and by virtue of the said Government Resolution, the conditions have been made more stringent so as to empower not only the District Collector, but also the Higher Power Committee, to carefully consider such proposals, at least so as to be convinced that there is merit in the proposal put forth for grant of

freedom fighters pension.

32. This petition is, therefore, dismissed.

WRIT PETITION NO.6570/2019

33. In the second petition, the petitioner has put forth prayer clause B,C and D which read as under :-

"B. By issuing a writ of mandamus, or any other appropriate writ, order or directions in the like nature, the decision/order dated 13.10.2015 (Exh.'E') issued by respondent No.3, rejecting the claim of petitioner for grant underground Freedom Fighters Sanman Pension to the petitioner, may please be quashed and set aside.

C. By issuing writ of mandamus, or any other appropriate writ, order or directions in the like nature the respondent No.1 to 3 may please be directed to hold and declare that, petitioner is underground Freedom Fighter and to grant sanman pension from the date of his original application dated 21.08.1995 and to grant all the consequential benefits due and payable to the petitioner within a period of two months.

D. Pending hearing and final disposal of this writ petition, the respondents may please be directed to pay the provisional pension as underground Freedom Fighter @ Rs.10,000/- per

month and continue to pay the said amount during the pendency of writ petition."

34. We find from the record that the impugned order dated 13/10/2015 is not an order and there is no question of impugning the same. It is a mere communication to the petitioner, since he was constantly pursuing the Government, though his application dated 02/08/1996 has already been rejected on 15/01/2003 and this fact has been communicated to him through a letter issued by the State Government. The District Collector is also informed about the same. That order dated 15/01/2003 is actually the order which has been passed and which the petitioner now claims in 2019, to have never received it. This petition is filed on 31/05/1999.

35. The petitioner has also filed an application under the RTI Act on 31/07/2018 for seeking the copy of the file that he had put up way back in 1999. He already had those papers. This application is apparently a pretense so as to put forth a contention that the petitioner became aware of his rejection only after he moved an application under the RTI Act on 31/07/2018 and, therefore, this petition is filed after receiving those documents after 31/05/1999. In fact the documents

that he received under the RTI Act were all in his possession and it is only that the Government has officially given him a copy of his own papers because he moved an application under the RTI Act. This petition is filed after 16 years of the rejection and, therefore, we are unable to condone the delay.

36. The learned Advocate for the petitioner has extensively canvassed as like in the earlier petition that only 2 affidavits of 2 freedom fighters are enough and the Government should not look into any document or cause an enquiry or should not even suspect the application of the petitioner. At this stage, with almost 27 years that have lapsed post the introduction of the scheme, we cannot ignore the report of Justice Palkar Commission, which was under the orders of the Hon'ble Supreme Court since it was found that number of persons were given freedom fighters pension solely on the basis of two affidavits issued by two freedom fighters. The said Commission report revealed many infirmities and even a fraud on the part of several persons in some cases. Criminal offences have been registered for playing a fraud on the State Government.

37. Therefore, from this point of view, we have considered the affidavits that were placed on record by the petitioner. The first affidavit is by a underground freedom fighter Kishan Parbat Tambe who has stated that the petitioner was a part of a group of 3000 freedom fighters in the Taluka Sillod, Dist. Aurangabad region. They were involved in hoisting the National Flag, distributing posters, moving through villages, supplying arms and food and therefore the petitioner be granted a pension.

38. We find from the GR dated 04/07/1995 that the Government has prescribed a condition as to which freedom fighter is to issue a certificate for recommending them for the freedom fighters pension. In clause 2 below "E", it is stated that a freedom fighter, who has suffered 2 years of imprisonment as punishment or who has been officially declared as an absconder for the period of atleast 2 years, can issue certificates to the claimants, through affidavits, from their own region. Certain more documents are to be annexed alongwith such affidavit in favour of the claimants.

39. We find that the first affiant Kishor Tambe was in prison for

around 7 months and therefore he was not competent to issue an affidavit. The second affiant Shri Nivrutti Raut, who claimed to have suffered imprisonment for 2 years and 5 months by way of punishment, was expected to place the documents as prescribed by the Government Resolution alongwith his affidavit. No such document has been placed on record by Shri Nivrutti Dadarao Raut and therefore the said affidavit also cannot be considered. Moreover, the said affidavit has been filed on 03/12/1999 whereas the application of the petitioner is dated 16/08/1995, after 4 years.

40. The petitioner has then annexed an affidavit of another freedom fighter namely Shekaji Kondiba, who has put forth an interesting story. He says that on 18/06/1948, there was an attack at Savarkheda by the Razakars and this group repelled the attack. On 20/06/1948, there was an another attack on Pimpalgaon by the Razakars. One Keshavrao suffered a bullet injury. On 24/06/1948, the Razakars resorted to a massive firing of volley of bullets, at Nandkhed, on the said affiant alongwith 3000 persons, the petitioner being a part of the said group. One lady died because of the firing and these 3000 persons were arrested. The petitioner before us tells us that he was never arrested,

never taken into custody by the Police, apparently he did not suffer any bullet injury and though 3000 persons were arrested and he is said to be a part of them, there is no record of he being arrested.

41. The third affiant Pundlik only submits that there were 3000 freedom fighters who suffered the Razakars Police Attack and the petitioner was one of them. He does not state whether he is competent to swear the affidavit since he has not stated whether he had undergone imprisonment as punishment for 2 years or was declared officially as an absconder for two years. The affidavit of Pundlik Salunke is dated 12/01/2016. The 4th freedom fighter Lala Jaiswal has issued a certificate dated 11/09/1995 and not an affidavit. The said certificate therefore is inconsequential.

42. In view of the above, even on the merits of the case, we find that a fictitious claim has been put forth by the petitioner. As such, this petition is dismissed.

43. In view of the above, we deem it appropriate to direct the District Collector, Jalna to prepare a compilation of the affidavits issued by the

freedom fighters namely Shekaji Kondiba Patil, Khanderao Ganpatrao Khalse, Motilal Laxmichand Sharma, Kishor Tambe, Nivrutti Dadarao Raut, Pundlik Salunke and Lala Jaiswal for the perusal of the Court and shall submit a report through the learned Registrar (Judicial) of this Court, on or before 30/04/2022. The said report shall be placed before us on 04/05/2022.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)