

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 1901 of 2022

with

CAN 2 of 2022

Reserved on : 02.02.2023

Pronounced on: 23.03.2023

Union of India & Ors.

...Appellants

-Vs-

Narayan Chandra Maiti & Ors.

...Respondents

Present:-

Mr. Asok Chakraborty, learned ASG,

Mr. Avinash Kankani, Advocate

... for the Appellants.

Mr. Ramdulal Manna,

Ms. Manju Manna (Dey),

Mr. Sabyasachi Mondal,

Mr. Sayan Mukherjee, Advocates

... for the Private Respondent.

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. In the instant appeal the appellants sought to challenge the correctness of the judgment dated 17.05.2022 given by the Learned Single Judge in WPA No. 6286 of 2016 (Narayan Chandra Maiti vs. Union of India & Ors.)
2. The facts of the case are that Freedom Fighters' Pension Scheme, 1972 was introduced by the Central Government of India (herein appellant No. 1) to grant pension to living freedom fighters and their family members. As per the scheme, a minimum amount of Rs.200/- per month will be given to the freedom fighters. In case of families, the amount will vary from Rs.100/- to Rs.200/- per month depending on the number of dependent family members. Only those who had gross annual income of Rs.5000/- or less were eligible for this scheme. Subsequently, this scheme was replaced by Swatantra Sainik Samman Pension Scheme (hereinafter referred to as Scheme) 1980, as a token of samman to all freedom fighters effective from 01.08.1980.
3. The Deputy Secretary to the Government of India herein appellant No.2 in the appeal consolidated the guidelines regarding grant of pension to freedom fighters and their families. For the purpose of grant of samman pension under the Scheme provided by clause 4, a freedom fighter is a person who had suffered a minimum imprisonment of six months in jail before independence or who remained underground for more than six months provided that he was a proclaimed offender, on whom an award for arrest/head was announced or detention order was issued but not served. Clause 9 prescribes that in case of non-availability of official records, Personal Knowledge Certificate (PKC) issued by a veteran freedom fighter who had himself been imprisoned for a minimum of five years for his/her connection with the Freedom Movement of India, will be adequate to substantiate the claim of abscondence. Prior to relying upon the same, the Government should verify the genuineness of the applicant and whether the official records of the said time period is available or not. It is further elucidated that the authenticity of the certificate has to be corroborated by referring to the jail sufferings of those five years, claimed by the certifier and

there is no objection about indiscriminate certificate against him/her. In the event of underground sufferings which do not have the backing of official records, certificates from veteran freedom fighters should be placed before the State Advisory Committee and the extracts of its proceedings along with the State Government's suggestions should be redirected to the Ministry of Home Affairs for further rumination. The time of imprisonment of the certifier was subsequently reduced from five years to two years effective from 21.08.1984.

4. Narayan Chandra Maity (herein, respondent no.1 and previously the petitioner in WPA 6286 of 2016) was a freedom fighter and worked in Tamluk Subdivision under the leadership of one Sri Sushil Kumar Dhara (Certifier), Ajay Kumar Mukherjee and others. He claimed to have remained underground from August, 1942 to September, 1944, to evade arrest as detention order were issued against him. Through a letter dated 14.07.1981, respondent No. 1 applied under the Scheme for freedom fighter pension along with Non-Availability of Record Certificate (NARC) issued by the District Magistrate of Medinipur (herein respondent No. 4) and PKC issued by the Certifier.

5. Through a letter dated 14. 04.1983 the Assistant Secretary to the Government of West Bengal (herein respondent No. 2) sought for confirmation of the credibility of the PKC from the Certifier and at the same time informed the respondent No. 1/petitioner that his application was under consideration.

6. Through a letter dated 15/28.06.1984, respondent No.2 refused to recommend the case for pension to appellant No.1 on the ground that the certificate of abscondence submitted by the respondent/petitioner is unacceptable as the Certifier had suffered actual imprisonment for less than five years.

7. The respondent No.1 through a letter dated 10.12.1984 prayed for consideration of his application and presented that the jail-time for any certifier was reduced from five years to two years and with a letter dated 05.09.1986 requested the Under Secretary to the Government of India (herein appellant

No. 3) for consideration of the application for grant of pension in accordance with the Scheme.

8. With a letter dated 08.05.2015, respondent No.2 directed the Additional Secretary to the Government of West Bengal to furnish report as to the jail sufferings of the respondent/petitioner and co-prisoners' certificate (CPC) etc. In compliance with the said letter, respondent No.4 was directed to inquire into the matter and to make a report in respect of the respondent/petitioner's jail sufferings, if any, and the CPC, etc. Such reports established that respondent No. 1 was never imprisoned.

9. The respondent No.1/petitioner had made a representation on 23.11.2015 to the Deputy Secretary to the Government of India, Ministry of Home Affairs (herein appellant No.2) requesting for disposal of the application filed by him taking into note of the report as submitted by the Government agencies. This matter is still pending before the authorities. Thereafter, the writ petition (WPA 6286 of 2016) was filed wherein the Single Judge directed the appellant/respondent authorities to pay the respondent No. 1/petitioner his entitled pension with effect from the date when the respondent/petitioner made an application for grant of pension.

10. Being aggrieved by the impugned judgment dated 17.05.2022 the appellants, pleaded before this Court for the impugned judgment to be set aside.

11. The Submissions of the Learned Council for the appellant/respondent are:

I. The PKC produced to claim benefits under the Scheme is incorrect and cannot be accepted. The certificate issued by the Certifier having once certified to respondent No. 1 on one ground subsequently changed it showing that he had no exact knowledge about the reasons that led to respondent No. 1 going underground. The Certifier is alleged to issue more than fifty certificates of the same kind hereby questioning the genuineness of the certificate issued in favour of respondent No. 1/ writ petitioner.

- II. PKCs are only valid and acceptable when the same are accompanied with a valid NARC and duly verified and recommended by the concerned authorities of the State Government having such relevant records. In the present case, no exact date, year of detention period or name of respondent No. 1 is found in the Registers and the State Advisory Committee did not recommend the case of respondent No. 1 to the appellant No. 1. Pension should be sanctioned only after the proof must be as provided in the Pension Scheme itself.
 - III. The Scheme is only a 'Samman' and not a welfare scheme or service pension scheme which shall only be sanctioned after observing all the prescribed eligibility criteria. If the pension is granted to respondent No. 1, it may amount to undue burden to appellant/respondent by opening floodgates for other similar disqualified persons.
12. Submissions of the Learned Council for respondent/writ petitioner are:
- I. Case of Respondent No. 1 squarely falls within the guidelines of the Scheme. Due to absence of records, registers, documents, proceedings etc for the period from 1930 to 1946, respondent No. 1/ writ petitioner placed reliance on a NARC issued by respondent No. 4 in the appeal, prepared on the basis of Village Crime Note Book (VCNB) with regard to the cases at Tamluk Police Station in respect of sixteen villages of Tamluk Police Station including the village resided by respondent No. 1.
 - II. The respondent No.1/ writ petitioner applied to the Scheme through a proper channel with a PKC issued by the Certifier, an ex-MLA, Ex Minister (West Bengal), renowned freedom fighter and eligible certifier of Medinipur district who suffered total imprisonment for five years and seven months during the freedom struggle. It was certified that respondent No. 1 was a bona fide freedom fighter who used to keep contact with the Certifier during the Quit India Movement, was a worker of the 'Tamralipta Jatiya Sarkar', soldier of its militia 'Bidyutnahini-o-baghini sena' and for whom detention orders were issued but he evaded arrest. Issuing of PKC is one

of the modes of approving the claim of being a freedom fighter envisaged by the Scheme and the authenticity of the certificate issued by the Certifier in favour of the respondent No. 1 is undisputed.

III. The purpose of the Scheme is to honour freedom fighters who took part in the freedom struggle of India. The claimants under the Scheme are required to be examined in the basis of probabilities and not on the basis of test of beyond reasonable doubt.

13. Having heard the learned counsel for the parties and perusal of the records, it is observed that in *Gurdial Singh v. Union of India & Ors* reported in 2001(7) SCC 216, the Supreme Court held that the claimants of the pension scheme of freedom fighters are supposed to be persons who had given the best part of their life for the country therefore the standard of proof of eligibility of such persons required is not of such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of parties. A rationale and not a technical approach is required to be adopted while determining the merits of the case of a person seeking pension under the scheme. A hyper- technical approach cannot be adopted while dealing with the case of a freedom fighter thereby depriving the sufferer in the freedom movement of his right to get pension.

14. It is categorically stated in the scheme that if official records are not forthcoming due to their non-availability, certificate from veteran freedom fighters who had themselves undergone imprisonment is adequate to claim for pension. The Non Availability of Record Certificate issued by respondent No.4, subsequent report of the Superintendent, Tamluk Subsidiary Correctional Home and report of Superintendent of Police, DIB, Purba Medinipur elucidates the lack of primary evidence of record of jail sufferings. Hence, the Personal Knowledge Certificate may be accepted as a secondary evidence in absence of official records as primary evidence. Further, as per the report of the Superintendent, Tamluk Subsidiary Correctional Home and the Officer-in-Charge , D.I.B, Purba Medinipur, it is learnt that the respondent No.1 is a

bonafide freedom fighter, however no exact date or year of detention is available. It is not possible for this Court to scrutinize or verify the documents produced by respondent No.1 in support of claim and pronouncement of genuineness of such certificates. Thus, the Deputy/Assistant Secretary, Home Poll (P.S.P) Department, State of West Bengal being the respondent No.2 is requested to consider the application and all the certificates of the respondent No.1, afresh, regarding his eligibility in Swatantra Sainik Samman Pension Scheme. If the State Government is satisfied, recommendation shall be made by the State Government to the Competent Authority *i.e.* the appellant No.2 who will consider the recommendation of the State Government and all necessary certificates and pass a reasoned order within three (03) months from the date of recommendation by the State Government, regarding the eligibility of the respondent No.1 /writ petitioner to receive pension under the scheme.

15. For the above mentioned reasons, the order passed by the Learned Single Judge is accordingly modified and therefore, the appeal is disposed of with the above modification. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
23.03.2023
PA(BS)