

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 188 OF 2020
WITH
MISC. CIVIL APPLICATION NO. 1932 OF 2021 (F)

NAKUL NARULKAR (Since Deceased Through
the Legal Representative) (A)
SHUBHANGI NARULKAR
W/o Late Nakul Narulkar, 71 years of age,
Indian National, R/o Hali-Chandel
Village, P.O. Kasarwarne, Pernem, Goa .

... Petitioner.

Versus

1. UNION OF INDIA
Through Under Secretary, Ministry of Home
Affairs, (Freedom Fighters Division),
2nd Floor, NDCC-II Building, Jai Singh Marg,
New Delhi — 110001

2. STATE OF GOA Through Under Secretary,
Home Department (General) Secretariat,
Porvorim, Goa-403521

... Respondents.

Mr Shivan Desai, Advocate for the Petitioners.

**Mr Raviraj Chodankar, Central Govt. Standing Counsel for
Respondent No.1.**

**Ms Sapna Mordekar, Addl. Govt. Advocate for Respondent
No.2.**

**CORAM : M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

**Reserved on : 5th APRIL 2023
Pronounced on : 10th APRIL 2023**

JUDGMENT : (Per M.S. Sonak, J.)

1. Heard Mr Shivan Desai for the Petitioner, Mr Chodankar, Central Government Standing Counsel for the Union of India, and Ms Sapna Mordekar, Additional Govt. Advocate for Respondent No.2.

2. Nakul Narulkar initially instituted this Petition to challenge the rejection of his pension claimed under the Swatantrata Sainik Samman Pension Scheme, 1980 (1980 Scheme). However, during the pendency of this Petition, Nakul Narulkar expired. Therefore, leave was granted to bring on record his widow Smt. Shubhangi Narulkar because, in terms of the 1980 Scheme, she could be regarded as an "eligible dependant". Therefore, though the Petition is now pursued by Shubhangi, both Nakul and Shubhangi would be collectively referred to as the "Petitioner".

3. The Petitioner is already recognized as a Freedom Fighter by the State of Goa under the Swatantrata Sainik Samman Pension Scheme (State Scheme). However, his Application for pension under the 1980 Scheme was rejected by the Central Government relying upon the administrative instructions dated 06/10/2009, which had provided that only the claimant above 15 years of age at the time of their participation in the freedom movement would be eligible for the

pension under the 1980 Scheme. The Petitioner was about 12 years old at the time of his involvement in the freedom movement.

4. The Petitioner challenged the above rejection by instituting Writ Petition No. 264/2019. This Petition was disposed of on 14/10/2019. Accordingly, the impugned Communication was set aside, and the Central Government was directed to reconsider the Petitioner's case following the law and, by taking into account the observations made in the Judgment and Order, as expeditiously as possible.

5. This Court, relying upon the decision of the Hon'ble Supreme Court in the *State of Orissa vs Choudhuri Nayak (dead) through Lrs. and Ors.* (2010) 8 SCC 796 held that the main criteria under the Scheme is not age but participation in the freedom struggle. The freedom fighter's pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle if the evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the Scheme.

6. The Petitioner had applied for a pension based upon his participation in the Goa Liberation Movement (GLM) during the first phase from 1946-1953 and the second phase from 1954-1955.

7. In terms of the 1980 Scheme, one of the eligibility conditions was incarceration in jail for participation in the GLM. This condition

applied to participants in Phases I and II. However, this eligibility criterion of actual imprisonment was relaxed for the participants of GLM Phase II.

8. Thus, to consider the Petitioner's case under GLM Phase II, the eligibility criterion of actual incarceration did not apply. This position is admitted in the impugned Communication dated 24/12/2019, by which the Central Government once again rejected the Petitioner's case.

9. The Central Government communicated the above-referred relaxation for GLM Phase II to the Chief Secretary, State of Goa, by Communication dated 16/19th August 2002. This Communication is transcribed below for the convenience of reference :

*"Secret Urgent -
By Regd Post*

No.8/10/99-FF(P)

*Government of India/Bharat Sarkar
Ministry of Home Affairs/Girh Mantralaya
Freedom Fighters Division*

*Lok Nayak Bhawan Khan Market,
Date, New Delhi, the 16/19 August 2002*

To,

*The Chief Secretary,
Government of Maharashtra/Rajasthan/Haryana/Goa/Madhya
Pradesh/ Uttar Pradesh.*

Subject: Grant of Freedom Fighters Pension to the participants of Goa Liberation Movement under the "Swatantrata Sainik Samman Pension Scheme,1980.

Sir,

I am directed to say that the participants of Goa Liberation Movement who fulfilled the eligibility criteria of "Swatantrata Sainik Samman Pension Scheme,1980" have been sanctioned freedom fighters pension by the Central Government however representations/requests have been received from various quarters including VIPs for grant of pension to all the participants of Goa Liberation Movement particularly to those who participated in the second phase of the Movement (1954-55). This issue is under examination of this Ministry for quite long time.

2. You may be aware that the Second phase of the movement was organized in 1954-55. It is said that Portuguese Military authorities shot dead various Satyagrahis including some batch leaders and a large number of participants were physically pushed back into the adjoining territories. Thus the participants of this movement were never arrested, tried and punished by the Portuguese Government and/or by the Martial Law Court but physically thrown back out of Goa. There is no authenticated record as to how many satyagrahis were thrown back primarily because no such records were maintained. In the absence of any records of the sufferings of the participants, they could not be sanctioned FF pension as they do not fulfill the eligibility criteria laid down under the Scheme.

3. Ministry of Home Affairs is considering that the eligibility criteria may be relaxed to provide pension under the "SSSP SCHEME 1980" to the freedom fighters of 'Goa Liberation Movement, Phase II (1954-55) who have already been sanctioned pension by the State Government by 1.8.2002. To examine this proposed further, it is requested that the authenticated list of all those freedom fighters (indicating details of their names, father's name, addresses, and date of sanction of pension by the State Government) who have been sanctioned freedom fighters pension

by State Government up to 1.8.2002 for their taking part in the above movement may be sent to the Ministry of Home Affairs (Freedom Fighters Division) urgently so that the proposal may be processed further.

*Yours faithfully
Sd/-"*

10. The impugned Communication dated 24/12/2019 rejects the Petitioner's case qua his involvement in the first phase, i.e. 1946-1953, by pointing out that no relaxation from eligibility criteria of actual incarceration was granted in respect of the GLM first phase, and the relaxation was only in respect of GLM second phase (1954-55). This appears to be the correct position; therefore, there is no error in declining the Petitioner pension qua GLM Phase I (1946-1953).

11. The impugned Communication dated 24/12/2019 denies the Petitioner the pension qua GLM second phase (1954-55) even though relaxation from the eligibility criterion of actual incarceration was already granted by the Central Government vide the above-referred Communication dated 16/19th August 2002. The Central Government, after acknowledging the fact that such a relaxation had been granted, has still rejected pension qua GLM Phase II (1954-55) by recording the following observations :

"... But in your case, no proof of suffering like jail certificate or arrest warrant is available. Your case was forwardmost by the Government of Goa for SSS pension on account of

participation in GLM Phase-II (1954-55). Hence attaining the age of 15 years on 06.09.1957 does not make you eligible for SSS pension.

... In this regard, it may please be noted that in this observation, the Apex Court has directed that pension may be granted to minors if the evidence clearly shows that they had participated in the freedom struggle, But the participants of GILM Phase-II (1954-55) do not have any records like jail certificate or arrest warrant which may be considered as record clearly showing participation in freedom movement. In your case also, no such record has been furnished. Hence the above mentioned observation of Apex Court is not relevant in your case.

... In regard to this, it may please be noted that no record like jail certificate or arrest warrant is available in your case. Moreover the Apex Court in this observation has not made any comment on age criteria..."

12. In our judgment, based upon the above observations, and without considering the other material placed on record by the Petitioner, the Petitioner's case for pension under the 1980 Scheme could not have been rejected after the Central Government admitted that the eligibility criterion of actual incarceration was relaxed for the participants of GLM Phase II (1954-55). Moreover, once this criterion was relaxed, the Central Government could not have placed reliance on the same criterion to hold that there was no proof of the Petitioner's involvement in GLM Phase II (1954-55) only on the ground of non-production of jail certificate or arrest warrant.

13. The Central Government had relaxed the eligibility criterion of actual incarceration. This relaxation was granted after the Central

Government took cognizance of the circumstance that several Freedom Fighters who participated in GLM Phase II (1954-55) may not have been arrested, tried, or punished by the Portuguese Government. Instead, such Freedom Fighters were thrown out of Goa. Further, for granting relaxation, the Central Government took cognizance of the fact that no authenticated records showed how many satyagrahis were thrown back primarily because no such records were maintained. Accordingly, the decision was taken to relax the eligibility criteria for the Freedom Fighters of GLM, Phase II (1954-55), who had already been sanctioned pension by the State Government by 1.8.2002.

14. There is no dispute that the Petitioner was sanctioned a Freedom Fighter pension by the State of Goa sometime in 1989. Thus, the relaxation in terms of the Central Government communication dated 16/19th August 2002 fully applied to the Petitioner. Despite the relaxation, the Central Government could not have insisted upon a jail certificate or a warrant of arrest from the Petitioner. Based upon the non-production of such documents, the Petitioner's case, at least qua GLM Phase II (1954-55), could not have been rejected.

15. On the above ground, the impugned order dated 24/12/2019, to the extent it rejects the Petitioner's case for Freedom Fighter

pension qua GLM Phase II (1954-55), must be quashed and set aside.

16. Mr Desai submitted that this Court must issue a mandamus to the Central Government to grant the Petitioner the Freedom Fighters pension under the 1980 Scheme instead of once again remanding the matter to the Central Government. He referred to the Central Government communication dated 10/02/2003 in which it is stated that the Central Government had decided recently to grant pension to the participants of the second phase of GLM (1954-55) to the persons who have been granted Freedom Fighters pension by the State Government by 1/8/2002. He submitted that since the Petitioner was granted such a pension by the State Government in 1989, no further proof was necessary about the Petitioner's participation in GLM Phase II (1954-55). He submitted that the Petitioner had already died, and now his widow was almost 72. He submitted that on two occasions, the Central Government had, on incorrect grounds, declined to grant the Petitioner Freedom Fighters pension.

17. However, Mr Chodankar learned Central Government Standing Counsel for the Central Government relied on a decision of the Hon'ble Supreme Court in *Government of India and Ors vs Sitakant S. Dubhashi and Ors*. MANU/SC/0164/2020. He submitted that the Hon'ble Supreme Court in *Sitakant S. Dubhashi*

(supra) held that the Central Government was entitled to impose conditions like a cut-off date. He pointed out that the Hon'ble Supreme Court had clarified that mere eligibility under the State's Scheme was insufficient to obtain the Freedom Fighters pension under the 1980 Scheme.

18. Mr Chodankar also pointed out that the Hon'ble Supreme Court in *Union of India vs A. Alagam Perumal Kone and ors.* 2021 4 SCC 535 had held that when the claim is under a particular scheme unless one fulfils the eligibility criteria for the grant of pension as mentioned in the Scheme, no applicant can claim such pensions as a matter of right. He pointed out that in this case, the Hon'ble Supreme Court did not approve the High Court's action of issuing a mandamus to the Central Government to grant the pension.

19. Mr Chodankar pointed out that since the Petitioner had claimed participation in the freedom movement even before he had attained the age of 15 years, in the absence of any clear proof, there was no obligation to grant of pension under the 1980 Scheme.

20. Upon considering Mr Chodankar's submission, we are not convinced that the Central Government could have rejected the Petitioner's case by insisting upon proof of incarceration when the Central Government relaxed the condition of imprisonment for the grant of pension to the participants of GLM Phase II (1954-55).

Such a relaxation and the reasons why such a relaxation was granted could not have been ignored while making the impugned order.

21. However, we agree with Mr Chodankar that this might not be a fit case for directing the issuance of a writ of mandamus to pay the Petitioner's pension for his participation in GLM Phase II (1954-55). While the Hon'ble Supreme Court's decision in the case of *Sitakant S. Dubhashi* (supra) may not come in the Petitioner's way, indeed, the observations in *A. Alagam Perumal Kone* (supra) suggests that such matters be best left to the authorities, at least in the first instance.

22. In *Sitakant S. Dubhashi* (supra), the Hon'ble Supreme Court upheld the cut-off date of 1/8/2002 for implementing the decision of granting a pension to the participants of GLM Phase II (1954-55) provided such persons had been given Freedom Fighters pension by the State Government by the cut-off date of 1/8/2002. The State Government granted the Petitioner a Freedom Fighters pension in 1989. Therefore, the cut-off date of 1/8/2002 did not affect the Petitioner's case.

23. However, in *A. Alagam Perumal Kone* (supra), the Hon'ble Supreme Court has held that whether a claimant fulfils eligibility criteria or not, proof and sufficiency of the evidence are for the competent authority to examine. Therefore, the High Court should

not have issued any direction for the grant of pension, meaning the High Court should have remanded the matter to the competent authority for examination of documents submitted by the Petitioner. The Court also held that the eligibility under the State's Scheme does not obviate the necessity of granting eligibility under the 1980 Scheme by the Central Government.

24. As noted earlier, the Petitioner has claimed participation in GLM Phase II (1954-55) at 11-12 years old. The 1980 Scheme had not prescribed any age criteria. However, this criterion was sought to be introduced by the Communication dated 6/10/2009, which the Petitioner also challenges in the present Petition. However, examining this challenge at this stage would not be appropriate because the Hon'ble Supreme Court in *Choudhuri Nayak (dead) through Lrs. and Ors.* (supra) has already clarified that the criteria for pension under the Scheme is not age but participation in the freedom struggle. The freedom fighters' pension can, therefore, in exceptional cases, be granted even to those who were minor at the time of struggle if the evidence clearly shows that they had participated in the freedom struggle and fulfilled the requirements of the Scheme.

25. Therefore, the Central Government was duty-bound to examine whether the evidence in the Petitioner's case established that he had participated in the freedom struggle even though he was 11-12 years at the time of his participation in GLM Phase II (1954-55). The

Central Government never considered the material produced on record by the Petitioner despite the directions in our earlier judgment and order dated 14/10/2019. Instead, the Petitioner was non-suited only because the Petitioner was not in a position to produce any proof of incarceration by documents like a jail certificate or arrest warrant, etc.

26. As noted earlier, this requirement was relaxed explicitly by the Central Government. Therefore, the Central Government was not justified in insisting upon such a requirement or proof of such requirement. Instead, the Central Government was duty bound to consider other material produced on record by the Petitioner and decide the Petitioner's case for granting Freedom Fighters pension for participation in GLM Phase II (1954-55).

27. The Central Government was duty-bound to consider that the State Government granted the Petitioner a Freedom Fighters pension in 1989. However, this material has not at all been considered by the Central Government.

28. Therefore, we quash and set aside the impugned Communication dated 24/12/2019 to the extent the same denies the Petitioner Freedom Fighters pension for participation in GLM Phase II (1954-55). Further, we direct the Central Government to once again reconsider the Petitioner's case in accordance with the law and

by taking into account the observations made in the judgment and order dated 14/10/2019 in Writ Petition No. 264/2019 and the observations made in this judgment and order. The Central Government should decide the Petitioner's case as expeditiously as possible and, in any case, within three months from today. The Central Government must communicate its decision to the Petitioner within three months from today.

29. The Petitioner's challenge to the Communication dated 6/10/2009 is not considered in the present Petition, and the same is left open for consideration if and when an occasion arises.

30. Accordingly, the Rule is made absolute in the above terms, without any cost order. Misc. Civil Application also stands disposed of.

31. Mr Chodankar learned Central Government Standing Counsel is requested to immediately communicate this order to the Central Government so that direction for expeditious disposal of the Petitioner's Application for pension can be complied with.

32. All concerned to act on an authenticated copy of this judgment and order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.