

(2010) 05 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6022 of 2002

Baikuntha Nath Nayak

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 188, 283

Citation : (2010) 05 OHC CK 0006

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Mishra, J.—Heard. Admit.

2. Petitioner claiming to be a freedom fighter has filed this writ application assailing the action of the opposite parties in canceling his pension under the Swatantrata Sainik Samman Pension Scheme since 26.09.1986 on the ground that no proper enquiry/verification was made before granting such pension.

3. The case of the petitioner is that he was a resident of erstwhile princely State of "Nilgiri", at present a part of the Balasore district of Orissa. He further pleads that he participated in the Praja Andolana. On 09.08.1942, the National leaders were arrested for the AICC resolution, popularly known as the "Quit India Movement". Petitioner participated in the Praja Andolana since the year 1938 and he was instrumental in carrying out the freedom movement defying the king's order for which he was arrested, prosecuted and admitted to the State Jail, Nilgiri on 15.03.1942 having been sentenced to undergo rigorous imprisonment for six months and was released on 14.09.1942 being found guilty of the charges under Sections 188 and 283 of the Indian Penal Code by Dewan of Nilgiri. The main allegation was that he was instigating people against the ruler. To this effect, he has filed a true copy of the certificate dated 19.04.1985 issued by the Superintendent of Sub-Jail, Nilgiri.

After the Independence of India, the Government of India decided to honour the freedom fighters for which Scheme like Swatantrata Sainik Samman Pension Scheme, hereinafter referred to as the "Scheme", came into force on 01.08.1980.

4. Earlier an application was filed by the petitioner in the year 1981 but his application was rejected. It is submitted by the petitioner that all the supporting documents showing imprisonment of the petitioner was not available to the petitioner at the time of the application in the year 1981. However, after rejection of the application the petitioner collected the jail certificate and other documents and sent it to the opposite party nos. 1 and 3 for consideration.

The application of the petitioner being scrutinized by the State Administration in consultation with the State Advisory Committee, the State verification and entitlement to pension report was sent to the Central Government. The Central Government again scrutinized the same and finally finding the petitioner eligible granted the pension, sanction letter was issued and same conveyed to the Chief Secretary, Accountant General and the concerned Collector of the District.

The pension was available to the petitioner under the Scheme w.e.f. 22.09.1986 which continued till February, 2002 where after it was suspended. Subsequently, petitioner received a letter dated 14.03.2002 from the opposite party no. 1 wherein he was informed that on verification of jail certificate issued to the petitioner by the State Government, it reveals that the same is neither genuine nor based on any official record for which it has been provisionally decided" to cancel pension from the day it was sanctioned.

5. Petitioner filed a show cause to the opposite parties, inter alia, pleading that the jail records has not been verified by any lawful investigating agencies such as CBI, Vigilance or the Crime Branch nor the State Government has investigated and reported the certificate to be invalid. The petitioner further claims that the cancellation of the pension in his favour without giving him an opportunity to show cause is bad as it violates the principle of natural justice.

6. One R.S. Rawat, Under Secretary, Freedom Fighters Division, Ministry of Home Affairs, New Delhi filed a counter affidavit on behalf of opposite party no. 1. In the counter affidavit, the opposite party no. 1 pleaded that the petitioner had applied for grant of pension in July, 1981. In support of his claim, he furnished PKC filed Sri Dukhi Shyam Padhi, a prominent freedom fighter of district Balasore. The State Government did not recommend the case as he did not furnish any official document except the certificate issued by Sri D.S. Padhi. Accordingly, his case was rejected by the Ministry on 28.09.1983.

Thereafter, the State Government as per the letter dated 16.09.1986 stated that Sri Nayak has furnished one copy of the jail certificate issued by the Superintendent of Nilgiri Sub-Jail for his imprisonment. The certificate reveals that Sri Nayak was actually imprisoned in the jail from 15.03.1942 to 14.09.1942. The freedom fighters Committee recommended his case for grant of Swatantrata Sainik Samman Pension, hereinafter referred to as the "SSS

Pension". On the basis of the State Government's recommendations, pension was sanctioned in his favour. A copy of the same was forwarded to the State Government. The condition of the sanction order, inter alia, clearly stated that the sanction was subject to the review by the President. In particular, it is liable to cancellation/modification without a notice, if it is found that it was sanctioned on mistaken ground/false information.

In December 2001, the State Government in their letter stated that they have not received letter from the Ministry regarding sanction of SSS Pension to Sri Nayak and as per the report of District Treasury, Balasore it is confirmed that he is receiving pension from the Sub-Treasure, Balasore. They further stated that it was detected that the jail certificate submitted by Sri Nayak in support of his sufferings was not genuine and that accordingly the State Freedom Fighters Pension was suspended by them on 19.06.1993. Lastly in pursuance of the directions of Hon'ble High Court of Orissa in Order No. 9 in OJC No. 5783 of 1993 filed by Sri Nayak and others, the payment of State Pension was cancelled by them on 19.01.1999.

On 15.01.2002 the Ministry of home affairs provided a copy of the sanction order of 24.10.1989 to the State Government and requested them to send the enquiry report based on official records in case to facilitate action at their end. The State Government furnished the enquiry report on 15.02.2002, wherein it was clearly mentioned that on receipt of several allegation, the State Government constituted a sub-Committee and the Sub-Committee in course of their enquiry verified the available record of the jail record room. The State Government conducted the verification and found that the jail certificate submitted by Shri Nayak was not found to be genuine and based on false paper and fraudulent entries,. As such the recommendation of the State Government the pension of Sri Nayak was suspended and show cause noticed was served to him. The specific case of the opposite party no. 1 is that on enquiry of the Committee constituted by the State Government, it was found that the jail certificate was not found to be genuine and based on false paper and fraudulent entries. On the basis of such recommendation his pension has been cancelled.

7. The opposite party no. 2 representing the State Government has filed counter affidavit, inter alia, pleading that on the basis of some allegations the State Government constituted a sub-committee in the year 1991 to look into the irregularities committed in the matter of freedom fighters" pension. As per the recommendation of the Sub-Committee, the case of the petitioner was referred to the I.G. of Prisons for detailed verification and with regard to the genuineness of the certificate issued by the jail Authority, Sub-Jail, Nilgiri by virtue of which the petitioner was availing the pension from the freedom fighters" pension. It was found by the Committee that the certificate issued by the Jail Authority, Sub-jail, Nilgiri was not genuine and based on falsehood. The report further suggests that on verification of jail office record along with challan register of Nilgiri State now available at Dist. Record room, Balasore and filed enquiry, it was found that

113 certificates issued to different persons claiming to have participated in the Freedom Fighting Movement and Praja Andolana Movement in the year 1928 to 1949 are fake and liable for cancellation. Therefore, the opposite party no. 2 submitted that the report itself reveals that the petitioner by obtaining and manufacturing a false certificate from the jail authority was availing the freedom fighter's Pension.

The opposite party no. 2 admits that the petitioner was availing Central Swatantrata Sainik Samman Pension till February, 2002. Being recommending and verifying authority, the State Government on being satisfied with regard to the ineligibility of the case and in view of forged and unfair documents produced by the petitioner directed the Sub-Treasury Officer, Nilgiri to withhold the pension of the petitioner with due intimation to Government of India for taking necessary action at their end.

The opposite parties further pleaded that the cancellation of the pension to the petitioner was legal and justified.

8. Opposite party no. 6 has filed a counter affidavit indicating that the pension to the petitioner was stopped on the basis of a telegraphic message received from the Finance Department along with the confirmation letter.

9. At the outset, it is seen that the petitioner has not annexed a xerox copy of the certificate issued by the jail authority as Annexure-1. Rather he has submitted a type copy, which has been attested by his advocates. Furthermore, it is seen that, on an earlier occasion, a writ petition was disposed of by this Hon''ble Court bearing OJC No. 5783 of 1993. Petitioner's writ application does not reveal that any such petition had been filed and in fact a certificate has been given that the matter was never before this Court in any forum whatsoever.

10. The enquiry report, Annexure-A/2 reveals that on different time period certificates has been issued by the jail authorities, which were found to be fake. The petitioner's certificate was allegedly issued in 1985. Hence, the 3rd paragraph of page-3 of the report is relevant, as far as the case of the petitioner is concerned for better appreciation. It is re-produced below:

Similarly during the incumbency of Sri B.K. Ojha from 1985 to 1987 as Assistant Jailor and Jailor of Nilgiri subjail he had issued sixty number of certificates to the freedom fighters of Nilgiri subjail. He has stated in his statement recorded by me that on verification of office Records and convict admission Register he has issued the certificates but it is found from the convict Register that 15 numbers of certificates have been issued to different numbers of persons whose names are not found to have entered into the convict Admission Registrar as follows.

Name

Sl. No. of the list.

1.

Sudarsan Sa

5

2.

Aparti Nayak

49

3.

Dhirendra Nayak

69

4.

Harekrushna Pradhan

70

5.

Maheswar Dalei

71

6.

Ratnakar Choudhury

81

7.

Madhusudan Behera

82

8.

Narendra Mohan Nayak

91

9.

Panu Barik

103

10.

Lamobodar Panda

17

11.

Narendra Nath Mandal

107

12.

Keshan Ch. Barik

108

13.

Achutananda Dhamudia

110

14.

Bhima Mallik

111

15.

Maheswar Sahu

113

It is seen that the enquiry report has also mentioned the names of several other persons at pages 4, 5 and 6. However, the case of the petitioner was not verified in any of the list in which fake certificates were issued in favour of some persons who had not taken part in the freedom struggle. At the end, the Committee came to the conclusion that 113 certificates issued to different persons claiming to have participated in the freedom fighting movement and Praja Andolona Movement from 1928 to 1944 are fake and liable for cancellation.

11. Thus, there is no specific finding against the petitioner. In fact, it has not given a specific finding that the petitioner has also obtained a fake certificate by influencing the jail officials.

Another aspect which comes to notice is that on 02.07.2002 the Under Secretary to the Government of India wrote a letter to the Deputy Secretary, Finance Department, Government of Orissa, Bhubaneswar bearing Memo No.126/1165/82-FF.EZ.II, wherein the Under Secretary to Government of India has specifically mentioned that the enquiry report of the AIG of Prisons, Orissa furnished by the State Government the name of Shri Nayak is not listed. Therefore, the Under Secretary requested the Deputy Secretary of the Finance Department to clarify the decision as to why Sri Nayak's case is found to be false when the AIG, Prison's report does not particularly mentioned the name of Sri Nayak in its report. This document has been submitted in the rejoinder filed by the petitioner. It is submitted by learned counsel for the petitioner that no communication has been made by the State Government to the Under Secretary

to the Government of India.

12. The Supreme Court while dealing with the issue similar to the present one has observed in *Gurdial Singh Vs. Union of India and Others*, , that the standard of proof required in such cases is not such standard which is required in criminal case. It is further observed that as the object of the scheme is to honour and to mitigate the suffering of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. The case of the claimants to the scheme is required to be determined on the basis of probabilities and not on the touch-stone of the test of beyond reasonable doubt. It is further observed that on the basis of the evidence it is probabilised that the claimant has suffered imprisonment for the cause of the country and during freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence, therefore, rejection of claim on the basis of discrepancies and contradictions which are not material, is not proper.

13. The Supreme Court in case of *C. Venkat Reddy and Others Vs. Union of India (UOI) and Others*, took note of the view referred by the Supreme Court in *Mukund Lal Bhandari and others Vs. Union of India and others*, and *Gurdial Singh's case (supra)* and observed as follows:

We are in respectful agreement with the view expressed in *Mukund Lal Bhandari's* and *Gurdial Singh's* cases (supra). Genuine freedom fighters deserve to be treated with reference, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians.

14. Apparently in this case, there is no clear, reasonable and cogent material in the report submitted by the AIG Prisons that the certificate submitted by the petitioner was also fake. However, in exercising writ jurisdiction, this Court is not sitting in appeal over the orders passed by the opposite party no. 2. The State Government should reconsider the material on record and decide the case of the petitioner afresh after giving adequate opportunity of personal hearing to the petitioner in the light of the observations made in this judgment.

The Writ petition is allowed. Communicate the order to the opposite parties. Petitioners are directed to file the requisites within two weeks.