

**(2014) 08 GUJ CK 0104**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 10518 of 2004**

Balvantrai Manishanker Vyas

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

**Date of Decision : 22-08-2014**

**Acts Referred:**

**Citation : (2015) 1 GLR 119**

**Hon'ble Judges : Sonia Gokani, J**

**Bench : Single Bench**

**Advocate : Utpal M. Panchal, Advocates for the Appellant; Jaimin Gandhi, A.G.P, Advocates for the Respondent**

## **Judgement**

Sonia Gokani, J.—Petitioners herein are the heirs of original petitioner who passed away during the course of pendency of this petition. By way of this petition, this writ petition challenged the order of the State Government, rejecting his application for grant of pension to the original petitioner as freedom-fighter on account of his contribution during the "Independence Movement". Father of the petitioner was born on 8th March, 1930 and he was the resident of Dhrangadhra. It is averred that the petitioner actively participated in the "Quit India Movement" from the year 1942 onwards. He organized a Students' Association and participated in the various underground activities. Ex-ruler of Dhrangadhra State Rajsaheshri Meghrajji was in favour of the independence, and therefore, he held Kathiawad Political Conference at Dhrangadhra and the petitioner also got the training under the leadership of Shri Gordia Ranchhodbhai of Savarkundla. In the said conference, Shri Gopaldas Desai and Late Shri Rasikbhai Parikh were respectively the President and Secretary of the conference.

2. It is also say of the petitioner that the father of the petitioner actively participated in the year 1947 when the country was partitioned and he also wholeheartedly acted for rehabilitation of the refugees at Navlakhi Bandar, Bantwa, Kutiyana etc. When Junagadh State declared its intention to merge with the neighbouring country, under the leadership of Shri Shamaldas Gandhi, a

march was joined by the petitioner from Bombay to Junagadh.

3. It is also his say that after the independence when the State of Saurashtra came into existence and late Shri Dhebarbhai had become the first Chief Minister and along with other freedom-fighters, petitioner also was the victim of Bhupat Baharvatiya. He also actively participated in the merger of small States of Kathiawad when State of Saurashtra was formed. He continued to be active from his native. He got elected in the election of Nagar Panchayat and District Gram Panchayat etc. It is his say that he had undergone imprisonment for total period of 1 and 1/2 years at Viramgam, however, since the record of the Viramgam Court had been burnt, and therefore, no record is available. He also has urged that freedom-fighter Shri Mahipatram Jivanlal had also suffered imprisonment for 18 months but the said punishment was imposed at Karachi, and therefore, he could not have certificate for obvious reasons. But, when he was certified by his co-prisoner, he was allowed pension. Rest of his colleagues and co-travellers received pension from the Government. However, his request has been turned down, therefore, following prayers has been sought in this petition:

"(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to sanction the freedom-fighter pension to the petitioner and further to pay the arrears of pension from the date as may be fixed by this Hon"ble Court and further be pleased to direct the respondents to give all other consequential benefits which are extended to the freedom-fighters;

(B) Pending admission, hearing and final disposal of this writ petition. Your Lordships may be pleased to direct the respondents to pay the freedom-fighter pension to the petitioner forthwith, every month regularly;

(C) Be pleased to pass such other and further reliefs as may be deemed just and proper by Your Lordships in the facts and circumstances of the case."

4. On issuance of notice, affidavit-in-reply is filed by the respondent-State inter alia contending that the petition deserves to be dismissed at the threshold.

5. It is contended that he could not have participated in the "Quit India Movement" at the age of 12 years. It is also very unlikely that he had actually participated. He would not be able to give certificate of the person who was imprisoned for minimum period of one year. It is say of the respondent-State that the certificate issued by Mahipatram J. Trivedi in favour of the petitioner is not in accordance with the rule and scheme.

6. Affidavit-in-rejoinder also filed by the petitioner denying all these contentions.

7. Respondent No. 3 filed affidavit-in-reply contending inter alia that the name of the petitioner has not figured in the category of sanctioned or rejected cases. He never applied for grant of Samman pension for Central Revenue. His application has been never received by the Central Government, and therefore, respondent No. 3 had no occasion to deal with the application.

8. Heard learned Counsel Mr. Utpal Panchal appearing for the petitioner, learned Advocate Mr. Kalpesh Shastri appearing for respondent No. 3 and learned Assistant Government Pleader Mr. Jaimin Gandhi appearing for respondent No. 1 and 2.

9. Learned Advocate Mr. Panchal appearing for the petitioner has urged that the petitioners are the heirs of freedom-fighters who spent his life for a noble cause. He also submitted that the age was not a barrier to participate in the freedom-fight of the country various certificate have been submitted to the Government in support of the say of the petitioner. None of this certificates has been taken into account and without being mindful of valid and cogent evidence, State Government has rejected his claim for pension. The person concerned died on 17-11-2009 and his wife passed away in the month of May, 2012. He urged the Court that the prayers made in the petition be considered in larger perspective and to uphold the honor of the freedom-fighter.

10. Learned Assistant Government Pleader Shri Jaimin Gandhi appearing for the State has contended that it is not a believable fact that the person would participate at such an age of 12 years. He further also argued that none of the certificates produced is in conformity with the requirement. It is say of the learned A.G.P. that for want of fulfilment of the requirement set out in the rules. Pension is not made available and also does not deserve to be allowed.

11. Learned Advocate Mr. Shastri appearing for the respondent No. 3 submitted that the petitioner at no point of time approach the Central Government. Again, the regulations prepared by the Central Government have certain requirements and on fulfilment of such requirements, a person become eligible to get pension for himself and for his dependent as defined under the regulations. He has relied upon the Full Bench decision of this Court rendered in case of Patel Rambhai Ganeshbhai Vs. State of Gujarat and Others, wherein Court has insisted upon fulfilment of conditions set out in the regulations for a person to become eligible under this regulations.

12. It is also to be mentioned that father of the present petitioner at no point of time had applied for pension to the Central Government. The regulations of the Central Government define various requirement and specify how a person concerned can be eligible for pension. Admittedly, when no claim was made by the father of the petitioner from the funds available with the Central Government for such purpose, those regulations, require no elaboration. Respondent No. 3 at no point of time has denied making such an application by such a person. However, with no application at any stage having been moved or pending these regulations merit no further consideration.

13. The question that begs attention is whether challenge to rejection of request made by the State Government deserves consideration in the present petition.

13.1. The original petitioner died during the pendency of the petition. He was already aged 74 years when he moved the present petition before this Court. His

wife also passed away in the year 2012 during the pendency of the petition. His heirs have been substituted as parties in the present petition, and therefore, maintainability of the petition is not an issue.

13.2. On merit, it can be noticed that the original petitioner was born in the year 1930. He filed an application for getting pension on March 25, 1990 when he had completed nearly 68 years of age. He had urged that he participated in "Quit India movement" in the year 1942 and that he had remained underground for more than six months. He gave certificates of other freedom-fighters, namely, (1) freedom-fighter Shri Mahipatram Jivanlal Trivedi of District Surendranagar dated March 12, 2000, and (2) freedom-fighter Shri Mohanlal Tulsidas Patel of District Surendranagar dated January 4, 2000. He also gave certificates of Shri Bhaishankar Kalyanji Joshi and Labhshankar Maganlal, both of District Surendranagar. The freedom-fighters Shri Trivedi and Shri Patel certified that the original petitioner (deceased) was very active during pre-independence period when the fight for freedom of the country was going on. However, in absence of any certificate of imprisonment having undergone, minimum for a period of one year from either of these freedom-fighters, the District Committee headed by the Collector rejected the claim of pension of the deceased petitioner and the respondent-State, in turn, rejected the request of pension vide order dated May 31, 2002, and therefore, this challenge.

14. Mainly, the grounds are three-folds for rejection:

"(i) Absence of any cogent proof of the original petitioner having undergone for a period of one year of imprisonment during the freedom movement, including arrest warrant.

(ii) Certificate of other freedom-fighters speak of no imprisonment.

(iii) Age of the petitioner in the year 1942 being of 12 years; on, the ground of improbability, the request of pension was found not sustainable."

15. The application of the original petitioner indicates that he had taken active part and had remained underground for more than six months. In his first application dated September 6, 1999, he has asked for pension on this ground and subsequently, while adducing the certificate of other freedom-fighters as per the rules and procedure meant for freedom-fighters" pension, he emarginated that he had remained underground during the period of freedom movement. The record of Viramgam Court had been burnt, and therefore, no proof with regard to a person being proclaimed offender or whether any award for any arrest had been announced or any other steps being taken for his arrest by the British Government would be available.

16. In the case of freedom-fighters Shri Mahipatram Trivedi, co-prisoner had certified that he was at Karachi Jail for about 18 months and on the strength thereof, he received a pension. This fact is not disputed. The certificates of both the freedom-fighters Shri Patel and Shri Trivedi have stated of the original

petitioner having participated as a freedom-fighter very actively as a young person at Dhrangadhra State. They also have said that from the year 1942 to 1945, he was active when they had remained underground. These freedom-fighters are already found entitled to pension and were getting the same when they were issued such certificates in favour of the deceased-original petitioner.

17. It is true that none of the certificates makes a mention of the original petitioner having been imprisoned for a period of one year, but the rules and procedure meant for freedom-fighters' pension do not make it obligatory and sole criterion for grant of pension. It is to be noted that initially the income ceiling for eligibility to pension in such category was Rs. 5,000/-, however, from January 1, 1980, the benefit was extended to all freedom-fighters as a token of respect to them and this was introduced during the Silver Jubilee of Independence by the Central Government. However, later by making such rules and procedure, the same has been extended further. Neither his being young aged about 12 years at the time of "Quit India Movement" nor the absence of any document to indicate his having been imprisoned for one year, are found to be justifiable grounds to reject his request.

18. In the present day scenario, it would be unthinkable that a teenager between 13 years and 16 years, for the country would choose to fight and go underground by actively participating in the freedom movement. The pages of history are full of such valour and the case of the original petitioner cannot be said to be so exceptional. Thousands of such young persons had contributed and inclusion of such category in the Rules also further vindicates that the makers of the Rules and procedure were aware of this reality. Another aspect that needs to be considered is two of the freedom-fighters who have been found entitled for pension, have also certified that the original petitioner was very active in the underground activities between the years 1942 and 1945. They would not state incorrect facts in their recommendations for pension as that generation was inculcated the basic lessons of truth and integrity in the public life by the Father of the Nation. A person at age of 68 years may not choose to ask for pension and even if he would so do it, all those who have been respected and have availed the pension as freedom-fighters, may not oblige him by giving certificates which are not genuine and that also is not the case of the respondent-State. In such circumstances, if the original petitioner was said to have been active in various activities of independence and had remained underground for more than six months as such activities continued for the period from the years 1942 to 1945, absence of any proof of his having been a proclaimed offender or on whose head the award for arrest was announced, etc., cannot deny him the pension in wake of absence of documents available at Court.

19. The petitioner had emphatically averred that the record of Viramgam Court had got burnt. The said factum is not being disputed. Assuming that such record was not a part of the Viramgam Court (which again is not the case of respondent-State) then also, those requirements to be complied with after about more than

55 years of Independence would be next to impossible for anyone.

20. As in the case of other freedom-fighters, the versions of the co-prisoners have been accepted for the grant of pension, there is no reason as to why in the present case also, the similar treatment is not accorded to the certificate of other freedom-fighters who have been categorical of the original petitioner being underground with them for the aforementioned years. Resultantly, the present petition succeeds and is, accordingly, allowed. The impugned orders are quashed and set aside. On receipt of this order, the respondent-State shall work out the pension and arrears to that effect of the original petitioner. The payment thereof shall be made by an acceptable mode to the heirs of the original petitioner in 4 months' period. Rule is made absolute to the aforesaid extent.