

(2025) 07 BOM CK 0248

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 6675 Of 2020

Bapurao Bhagwantrao Deshpande

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-07-2025

Acts Referred:

Maharashtra Village Panchayat Act, 1959 — Section 33, 33(5)

Citation : (2025) 07 BOM CK 0248

Hon'ble Judges : R. G. Avachat, J; Neeraj P. Dhote, J

Bench : Division Bench

Advocate : V. S. Panpatte, P. S. Patil

Final Decision : Allowed

Judgement

Neeraj P. Dhote, J

1. Rule. Heard finally with the consent of both the sides.

2. The Orig. Petitioner is no more and the Petition is being pursued by his widow. The Original Petitioner, who claimed to be an 'Underground Freedom Fighter', applied for Freedom Fighters' Pension in March-2004 under the 'Swatantrya Sainik Sanman Pension Scheme' which was introduced by the State Government vide Government Resolution dated 04.07.1995 (hereinafter referred to as the 'said G.R.'). The Petitioner claimed to have participated in the Hyderabad Liberation Movement. As no decision was taken on the said Application of the Petitioner for a considerable time, the Petitioner filed Writ Petition No.3601 of 2016 seeking declaration and directions. The said Petition was decided by this Court by order dated 16.04.2016, directing the Petitioner to comply with the deficiencies if any, and further directed the Respondent - Authorities to take effective steps in the matter expeditiously, considering the fact that the Petitioner was a senior citizen. The Petitioner removed the deficiencies on 17.05.2016 by filing the necessary documents. The Application was placed before the District Honour Committee, which recommended the Petitioner's claim for grant of the

aforesaid Pension under the category of 'Underground Freedom Fighter'. The matter was referred to the State Government by communication dated 24.05.2016 for approval. By communication dated 31.08.2016, the Petitioner was informed that, his claim for the said Pension was rejected.

3. The Petitioner filed the Writ Petition No.6972 of 2017, challenging the rejection of his claim by the State Government. The said Petition was decided by the Judgment dated 18.02.2020 and the impugned order of rejection of Petitioner's claim came to be set aside and the State Government was directed 'to reconsider the Petitioner's claim appropriately viewing the case having regard to laudable object underlying bringing in the scheme and having regard to decisions which have been referred to in the order'. It was observed in the said order that, 'It would also be pertinent that matter would not be approached perfunctorily and hyper technically'. The State Government had thereafter reconsidered the Petitioner's claim and by the impugned communication dated 29.06.2020 maintained its earlier decision of rejection of Petitioner's claim for the aforesaid Pension. Being aggrieved by the same, the present Writ Petition is filed.

4. It is submitted by the learned Advocate for the Petitioner that, the State Government rejected the Petitioner's claim without considering the observations of this Court in the earlier round of litigation. The State Government's decision was the result of non Application of mind to the genuine claim of the Petitioner. The Petitioner had proved his eligibility and entitlement criteria prescribed under the said G.R. The Petitioner had submitted the relevant documents, such as, the Affidavits of himself and the other Pensioner Freedom Fighters, Certificates of Police Patil and Senior Citizens of his village, in support of his claim. The Clause Nos. 3 and 4 of the said G.R., under the caption 'Underground Freedom Fighter' were optional. The District Honour Committee recommended the Petitioner's claim for the said Pension. The rejection of the Petitioner's claim by the impugned order was in the teeth of decision of this Court dated 18.02.2020 in Writ Petition No.6972 of 2017. The impugned order was not sustainable and be quashed and set aside. Due to the death of the Petitioner, Widow of the Petitioner was impleaded as Legal Heir of the Petitioner. In support of his contentions, he relied on the following Judgments :-

- (a) Mukund Lal Bhandari vs. Union of India, 1993 AIR (SC) 2127;
- (b) Kishan Hanuji Jambhulkar (Dr.) vs. State of Maharashtra & others, 2004 (2) Bom. C.R. 433;
- (c) Chhotubhai 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 & Anr. vs. A. Manickam Pillai, 2010 (2) SCC 669;
- (f) Kamalbai Sinkar vs. State of Maharashtra & Ors, (Civil Appeal No.5344 of 2012) decided on 20.07.2012;

(g) State of Maharashtra & Ors vs. Namdeo etc etc., (2013) 14 SCC 225

(h) Kishansinha s/o. Tukaramsinha Chandel vs. The State of Maharashtra and Others in Writ Petition No.2831 of 2000 decided on 26.07.2010;

(i) Kalidas Nivrutti Dhale vs. State of Maharashtra & ors., 2014 (3) Mh.L.J. 673;

(j) Punjaram s/o. Madhav Indewad vs. The State of Maharashtra & Others in Writ Petition No.2632 of 2011 dated 28.08.2013, which was confirmed by the Hon'ble Supreme Court of India by dismissing SLP No.17614/2015 on 28.09.2015;

(k) Rajabai W/o. Pandoji Kshirsagar vs. The State of Maharashtra & Others, dated 04.02.2016;

(l) Tulshiram s/o. Eknathrao Kolhe vs. The State of Maharashtra and Others in Writ Petition No.6730 of 2014 dated 20.03.2018.

5. It is submitted by the learned Addl. G.P. for the Respondents – State that the State Government considered the Petitioner's claim under the said G.R. and found that, the Petitioner failed to place on record the documents, showing his participation in Freedom Fighters' Movement. After initial decision of the Government rejecting the Petitioner's claim, the matter was remanded back by this Court for reconsideration, however, the Petitioner did not supply any new document / proof and therefore, the earlier decision of rejection of the claim was maintained. He submitted that, no case was made out to interfere in the impugned decision of the Government and the Petition be dismissed. He also relied on the Judgment in State of Maharashtra & Ors vs. Namdeo etc etc., (2013) 14 SCC 225, which is cited by learned Advocate for the Petitioner.

6. Heard both the sides. Perused the papers on record. The case revolves around the said G.R., which is in respect of Freedom Fighters Pension. There is no dispute that, the Petitioner made the Application and the Respondent – State considered the said Application under the said G.R. The Petitioner claimed the Freedom Fighters' Pension under the head 'Underground Freedom Fighter'. The said category or clause of Freedom Fighter is referred in the said G.R., which is reproduced below :

"Freedom Fighters, who worked by remaining underground in the Quit India Movement (Bharat Chodo Andolan) during 1942-44 or in Hyderabad Liberation Movement during 1947-48, will submit the following documents :

(1) A Certificate mentioning as to which type of difficulties and troubles from the following was faced / undergone during the agitation.

(a) Had to move away from home,

(b) Had to drop education or expelled from the educational institute.

(c) Received beatings from the Police causing disabilities

(2) A Certificate to the effect that, he was punished for minimum of two (2)

years or declared and remained absconding for a minimum of two (2) years, from two (2) Freedom Fighters of that area along with the document showing that the Freedom Fighter giving Certificate was imprisoned or advertisement of declaration of absconding or Government order. Also, the Certificate on oath of such Freedom Fighter.

(3) The Certified copy of the Government record of the relevant time showing "remained underground", if available.

(4) Original copy of newspaper published at the relevant time giving information about the Applicant having gone underground with name, if available.

(5) Recommendation and opinion of 'the Zilla Gaurav Samiti' giving specific information."

7. In the earlier round of litigation, wherein the rejection of the Petitioner's claim for the said Pension was challenged in the Writ Petition No.6972 of 2017, it was observed as follows :-

"9. Here, in the present case, may be, the comments by the desk officer suspect the contents of police patil's certificate and affidavit by one Mr. Patil. Both, in any case, are pointer to that petitioner had abandoned and left his place of residence as well as education. The application had been supported by certificate issued by an age old police patil and two affidavits accompanied by imprisonment certificates of co-workers who had been awarded swatantrya sainik pension. In such a case, this hyper sensitive and suspective approach does not appear to be compatible with the object, purpose and intention underlying the bringing in of the scheme.

10. Besides aforesaid, petitioner's case had also been recommended by District Honour Committee, Latur. It appears that application of the petitioner had been scrutinized by Desk Officer and he had put up a note along with his comments opining that there is no definitive proof with respect to that the petitioner had to abandon his residence or education, purporting to appreciate police patil's certificate and the affidavit filed by one of the freedom fighters namely Mr. Patil, to be discrepant on this aspect, raising suspicion about its veracity. The noting also refers to that there is recommendation by District Honour Committee. With such an approach, the desk officer had put up the matter for decision before the high power committee.

11. Division bench in the decision, referred to above, had further observed that it was not the case of the petitioner therein that the government record or original papers showing that petitioner was not underground freedom fighter were available. In such a case, even if the petitioner has not complied with requirements No. 3 and 4, his claim cannot be rejected on said ground. It is further been observed that District Honour Committee recommendation was that petitioner was underground freedom fighter. In the present case, there is no comment whatsoever in respect of the recommendation by the District Honour

Committee.

12. Above all, it has to be referred to that a hyper technical pedantic approach shall be eschewed while considering claims by freedom fighters, especially age old ones while claims are being made when they are in dire need.

13. Going by the observations of the Supreme Court in "Gurdial Singh V/s Union of India and Others" reported in 2001 (8) SCC 8 as well as the decisions referred to above and having regard to that high power committee has not done its bit and exerted itself to apply mind to the application by the petitioner, it appears to be expedient that the State Government shall re-consider the case of the petitioner for aforesaid purpose. As such, we deem it appropriate to set aside the impugned order in the present writ petition.

14. In view of aforesaid, impugned order is set aside. State Government to re-consider petitioner's case appropriately viewing the case having regard to laudable object underlying bringing in the scheme and having regard to decisions which have been referred to in this order. It is reported that age of the petitioner is eighty seven years and he frequently requires medical attention and often hospitalization. Having regard to the same, re-consideration of the application of the petitioner shall be done as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of writ this order. It would also be pertinent that matter would not be approached perfunctorily and hyper technically.

15. Rule is made absolute in aforesaid terms. Writ petition stands disposed of. Original record, which is stated to be with government pleader, shall be sent back forthwith to the State government."

8. Thereafter, the impugned Order maintaining the earlier rejection of Petitioner's claim towards the said Pension is passed. The impugned Order shows that the Petitioner's claim towards the said Pension is rejected on the following grounds :-

(a) The Applicant has not submitted the documents / proof in support of the requirement Nos.1, 3 and 4 of the above referred G.R.

(b) The recommendation of the District Honour Committee (Zilla Gaurav Samiti) was based on the Certificates issued by the Freedom Fighters.

(c) The participation of a person in the Freedom Movement is necessarily to be established by the contemporary documents / record.

(d) The recommendation Certificates / Affidavits of the Freedom Fighters and the Police Patil contained vague information and not supported by the contemporary record.

(e) The Certificate signed by the villagers was based only on their information / memory and so, it cannot be the concrete proof. The said Certificate do not find place in the said G.R.

(f) No new proof was submitted by the Applicant.

9. The rejection of the claim towards the said Pension on the ground that no document / proof in support of Clause Nos. 3 and 4 of the above referred Government Resolution, is unsustainable for the reason that, the said Clause Nos. 3 and 4 from the said G.R., reproduced above, clearly show that the documents referred therein were to be submitted, only if available. The said clauses nowhere shows that, the documents referred therein were mandatorily to be submitted. As the Clause Nos.3 and 4 of the said G.R. do not mandate the availability of contemporary document in respect of the remaining underground in the nature of Government record or the newspaper, the observation that the participation in the Freedom Movement was necessarily to be established by the contemporary documents / record will have no weight or force. In absence of any such mandate in said clause Nos.3 and 4, we find merit in the submission of the learned Advocate for the Petitioner that the requirements under the said Clause Nos.3 and 4 were optional.

10. As regards the rejection of the claim towards the said Pension on the ground of not submitting the document / proof as per Clause No.1 is concerned, admittedly the copies of the Application dated 24.03.2004 requesting for the 'Underground Freedom Fighter Pension'; the Application in the prescribed form; the Petitioner's Affidavit Prapatra - 'A';, Certificate in Prapatra - 'B' issued by the Pensioner Freedom Fighter; Affidavit dated 16.08.2004 of the Petitioner and Pensioner Freedom Fighter Apparao Malshetti Patil and undated Affidavits of Pensioner Freedom Fighters Devidas Kishanrao Joshi, Hanmantrao Babarao Dhuppe along with true copies of Sanman Patra by the Hon'ble Chief Minister, Maharashtra State, in their name were submitted to the District Collector, Latur.

11. The Affidavit dated 16.08.2004 submitted by the Petitioner speak of his participation in Hyderabad Liberation Movement during 1947-48, during which period he got inspired with the speeches of the then Freedom Fighters and cut the trees and burnt them which led to breach of the law prevalent at that time, due to which he suffered atrocities at the hands of police, his house was looted, which caused him loss and he had to leave his home and remained underground. The Affidavit further speak of taking primary training to use the arms and ammunition, participation in the armed conflict with the Police in Tiruka and Ghonsi villages and during that time he had to stay in the forest, hills etc. and remained underground. The Affidavit further speak that, during that period, he used to provide the secret information to Apparao Patil and undergone sufferings. The Clause No.1 of the said G.R., reproduced above, does not speak of requirement of any proof in respect of the activities mentioned therein. What it requires is the Certificate to that effect. The other Affidavits of the Pensioner Freedom Fighters, as referred above, support the claim of the Petitioner that, he actively participated in the Hyderabad Liberation Movement during 1947-48. There is no dispute that, the said Freedom Fighters who submitted their Affidavits in support of Petitioner's claim were the recipient of the Freedom

Fighter's Pension. Thus, there is no difficulty in observing that the Condition No.1 in the said G.R., referred above, was fulfilled and the observation that no document / proof in support of requirement of Clause No.1 was submitted, cannot be said to be sustainable in absence of mandate in the said G.R.

12. The Papers on record goes to show that, in the meeting dated 17.05.2016 the District Honour Committee had favourably recommended the case of the Petitioner for grant of Freedom Fighters Pension and by communication dated 24.05.2016 issued from the office of District Collector, Latur under the signature of Resident Deputy Collector, Latur the recommendation was forwarded to the Respondent - State. The Clause No.5 of the said G.R., reproduced above, which speak of recommendation from the District Honour Committee was therefore complied. However, the said recommendation was not accepted by the Respondent - State on the ground that the said recommendation was based on the Certificate issued by the Freedom Fighters. The rejection of the recommendation of the District Honour Committee as noted by the Respondent - State in the impugned order cannot be said to be in consonance with the aforesaid Clause No.5 of the G.R. The reason for rejection of the recommendation of the District Honour Committee by Respondent - State do not find support from the said G.R. The said clause nowhere specifies as to what should form the basis for the District Honour Committee to recommend the Freedom Fighter for Pension.

13. In addition to the above referred documents, the Certificate signed by nine (9) villagers between the age group of 85 to 95 that, the Petitioner participated in the Hyderabad Liberation Movement during 1947-48 is discarded by Respondent - State on the ground that the aforesaid G.R. do not provide for such document. True, that the said G.R. do not provide for such document, it was an additional document submitted by the Petitioner in support of his claim. The ground for its rejection appears improper.

14. Much emphasis is given by the learned AGP for the State on the decision in the case of State of Maharashtra & Ors vs. Namdeo etc etc.(supra). The said decision is also relied on by the learned Advocate for the Petitioner. The said Judgment is in respect of said G.R. issued by the State of Maharashtra towards Freedom Fighters Pension Scheme. The Respondents therein claimed the Pension under the category 'Underground Free Fighters' and the above referred clauses from the said G.R. were considered. In the said case, except the Affidavits of certain persons, no material or proof was given in support of the claim for the Pension, having been participated in the Freedom Movement. The Recommendation from District Honour Committee was signed only by two Members and not signed by the Official Member namely Additional Collector. This shows that the recommendation of the District Honour Committee in that case was not unanimous. As the claims in that case was based only on Affidavits with no other material, it was observed that if claims are allowed merely on such Affidavits, that would amount to giving complete go bye to the requirement of

the scheme and that cannot be allowed. Here, in the case at hand, it is not so. Unlike the said case, there is unanimous recommendation by the District Honour Committee recommending the Petitioner for the said Pension. This aspect shows that, factual aspects were not similar. By considering the earlier Judgment, the legal position on the issue involved is summed up in the said case of Namdeo etc etc. (supra), in paragraph no.19, which is reproduced below :

“(a) The claims of the freedom fighters are to be dealt with, with sympathy.

(b) The authorities are not to go by the test of “beyond reasonable doubt” and standard of proof based on this principle has to be discarded.

(c) On the contrary, the principle of probability is to be applied and eschewing the technicalities, the approach should be to uphold the entitlement.

(d) When scheme itself mentions the documents which are required to be produced by the applicant, normally those documents need to be produced to prove the claim.

(e) The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. The order of the State Government is to be examined applying the parameters of judicial review which are available in examining the validity of such orders.

(f) Even if order is found to be perverse or flawed, the High Court can, at the most, remit back to the State Government to reconsider the case.

However, this Court has also observed that there may be cases where because of long lapse of time or other circumstances beyond the control of the applicant, it is almost impossible or cumbersome to procure and produce all the stipulated documents. In such cases, the claim cannot be summarily rejected for want of documents, even though as per the Pension Scheme, such documents are to be provided. We are of the opinion that to meet such eventualities, following principle needs to be added:

(g) On the basis of evidence/documents/material submitted by the applicant, the Government should examine whether it is a genuine case and the documents produced establish that the applicant had participated in the freedom movement. It should be done applying the principle of probability. If the material/documents produced are otherwise convincing, the Government in appropriate cases may not insist on strict compliance with all the requirements stated in the Scheme.”

15. As observed above, the papers on record goes to show that the Respondent - State maintained its earlier decision of rejection of Petitioner’s claim towards Freedom Fighters Pension on the grounds not in consonance with the requirement of the said G.R. At the cost of repetition, Condition No.1 was fulfilled and the documents referred in Condition Nos.3 and 4 were optional. There is unanimous recommendation by the District Honour Committee. In addition to the said document, there were the Affidavits of the Pensioner

Freedom Fighters and the Certificate signed by the certain villagers between the age group of 85 to 95 in support of Petitioner's claim. Considering the above referred legal position and the requirement of the said G.R., the impugned order passed by the Respondent - State does not stand the scrutiny of the above referred G.R. and the legal position as summed up in the above referred Judgment. In the earlier order of this Court remanding the matter to the Government, it was observed that, the matter would not be approached perfunctorily and hyper technically. However, the Respondent - State maintained its earlier decision rejecting the Petitioner's claim for the 'Underground Freedom Fighters Pension' by discarding the material available on record on the grounds uncalled for. We see no other option, but to allow the Petition. Hence, the following order.

ORDER

- (i) The Petition is allowed.
- (ii) The impugned order dated 29.06.2020 passed by Respondent - State (Exh. 'J') is quashed and set aside.
- (iii) The Respondent - State shall issue necessary Certificate in the name of the Orig. Petitioner as the 'Underground Freedom Fighter' having been participated in Hyderabad Liberation Movement and sanction the Pension accordingly, in accordance with the said G.R. from the date of the Application i.e. 24.03.2004.
- (iv) Rule is made absolute in the aforesaid terms.