

(2001) 08 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 95 of 1994

Bhagabat Pradhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Ori 98

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : B. Routray, A.K. Mohanty, S.N. Biswal, M.M. Moharana and S. Sahoo, for the Appellant; S.K. Das, (Central Govt. No. 1) and Additional Government Advocate (for No. 2), for the Respondent

Judgement

L. Mohapatra, J.—The petitioner in this writ application has prayed for quashing Annexure 5(B) wherein by order dated 21-5-1996 the State Government decided to stop payment of Freedom Fighters' pension under the Freedom Fighters' Pension Scheme, 1972 on the ground that the particulars furnished by the petitioner for getting pension under the scheme are not acceptable.

2. Case of the petitioner is that the Government of India introduced a scheme, i.e. Freedom Fighters' Pension Scheme, 1972 for providing pension to the living freedom fighters or to their families if such freedom fighters are no more alive. Under the scheme, the Freedom Fighter has been defined as a person who has suffered a minimum imprisonment for six months in the main land jails before Independence. The claims that he had actively participated in the Quit India Movement and was convicted u/s 188 of the Penal Code and was sentenced to imprisonment. His further case is that because of such conviction he served sentence from 13-3-1942 for a period of six months and was also directed to pay a fine of Rs. 60/- by the then Dewan of Nilgiri State. Since the petitioner found himself eligible for getting pension under the scheme he applied for such pension and after enquiry the State Government in the Finance Department by resolution

dated 8-3-1984 read with resolution dated 2-11-84 and 3-3-86, was pleased to grant Freedom Fighters' pension of Rs. 40/- per month with effect from 1-1-84. Thereafter, the pension was enhanced to Rs. 100/- from 2-10-84 and to Rs. 200/- from 1-1-86. While the petitioner was getting his pension under the scheme by letter dated 22-7-1993 and notice dated 12-10-93 he was asked to show cause within 21 days from the date of receipt of the notice as to why the pension already sanctioned in his favour shall not be cancelled and the amount already paid under the scheme shall not be recovered. After receipt of the notices the petitioner submitted his reply immediately and without verification of the records and without consideration of the explanation submitted by the petitioner, by the impugned order the Freedom Fighters' pension which had been granted to the petitioner was stopped. Challenging the said order, this writ application has been filed.

3. It is submitted by Sri Routray, learned counsel for the petitioner that under the scheme a person who has suffered a minimum imprisonment of six months in the main land jails before Independence is entitled for pension. Along with the application, an applicant is also required to submit documents in support of his claim that he had been imprisoned. In view of the requirements under the scheme, the petitioner along with his application has submitted a certificate issued by the Superintendent, Nilgiri Sub-Jail stating that the petitioner having been convicted u/s 188 of the Penal Code, had been sentenced and suffered imprisonment from 13-3-1942 for a period of six months and was also directed to pay a fine of Rs. 60/- imposed by the then Dewan of Nilgiri State vide Sl. No. 26 (A) dated 13-3-1942 of the admission register of convicted prisoners. On the basis of such certificate, enquiries were made and pension was granted. While the petitioner was continuing to get pension, notice was issued on 22-7-1993 to show cause as to why payment of pension shall not be stopped and the amount already paid shall not be recovered on the ground that the jail certificate furnished by the petitioner in support of his claim of imprisonment suffered in the national freedom struggle is not genuine. The petitioner submitted his reply to the aforesaid letter in Annexure-8 stating that the Jail certificate furnished by him was issued to him by the jail authorities giving definite particulars of the register of convicted prisoners and there was no difficulty on the part of the State Government to verify the particulars. However, it is argued by Sri Routray that without making proper verification, in the impugned order in Annexure-8(B) the pension has been stopped. It is submitted by Sri Routray that once a verification is made on the basis of the application submitted by the petitioner and the State Government having been satisfied about the claim of the petitioner had granted pension under the scheme, there is no further scope of any enquiry on the basis of some records. A copy of the certificate issued by the Superintendent, Nilgiri Sub-Jail to the petitioner has been annexed to this writ application as Annexure-2. Referring to the said certificate Sri Routray submitted that the Superintendent, Nilgiri Sub-Jail has referred to the entries made in the admission register of convicted prisoners and had granted certificate being

satisfied that the petitioner was imprisoned for the period of six months from 13-3-1942 having been convicted u/s 188 of the Penal Code for participating in the Quit India Movement. Since the claim of the petitioner is based on records there was no occasion for the State Government to stop pension without verifying such records.

4. Counter-affidavit has been filed on behalf of opposite party No. 2. It is stated in the counter affidavit that after receipt of several allegations about enjoyment of Freedom Fighters' Pension under the scheme on the basis of production of fraudulent and manipulated jail records by a number of under-serving persons, the State Government constituted a Sub-Committee under the Chairmanship of late Padma Charan Samantsinghar, a prominent freedom fighter of the State, to verify the genuineness of the claim of the existing pensioners. The Sub-Committee in course of their enquiry verified the available records of the concerned jail, record room and contacted several old and eminent people of the locality to ascertain the genuineness of the claims made by different persons. It is further stated in the counter-affidavit that the Sub-Committee in their report raised serious doubts about the genuineness of the jail certificates issued from the Sub-Jail, Nilgiri and as such, on their suggestion a detailed enquiry on all such doubtful cases including the case of the petitioner was conducted by the A.I.G. of Prisons, Orissa. The A.I.G. verified the relevant Jail records of Nilgiri Sub-Jail and found serious irregularities in the issue of jail certificates issued by the officials of Sub-Jail, Nilgiri. Further. In order to confirm the above findings, the A.I.G. of Prisons got all the certificates cross-verified with the corresponding challan register (case/Court records) of Nilgiri, ex-State now preserved in the District Record Room, Balasore and found that a good number of names out of doubtful names including the name of the petitioner were not found to have been entered in the aforesaid register. He, therefore, concluded that all these cases are not genuine and based on false-papers and fraudulent entries. On the basis of the enquiry report received from the I.G. of Prisons, the State Freedom Fighters' Pension granted to all such cases were found to be based on fraudulent entries and certificates and as such payment of pension was stopped after due notice.

5. Sri Routray referring to the report of the A.I.G. of Prisons in Annexure-A/2 submitted that when an enquiry was made it was found that the convict admission register as well as Under Trial Prisoner Registers of Nilgiri Sub-Jail were in very bad condition and the pages of both the registers were in torn condition. He further submitted that from the reports, it appears that some of the names of those certificate holders find place in the convict/under-Trial Prisoner admission register. In view of such condition of the registers from which the Superintendent, Nilgiri Sub-Jail had found the name of the petitioner and issued certificate in Annexure-2, could not have been disbelieved. He further submitted that one of the certificate holders of the same jail while getting pension suffered as that of the petitioner, but the State Government subsequently recalled the order and started paying pension on the basis of the

very same certificate. He further submitted that the petitioner's participation in the freedom struggle was recognised by the State Government and he had been given Tamra Falaka" by the State Government. Two Tamra Falaka" were also produced in the Court at the time of hearing. Relying on such document and Tamra Falaka Sri Routray invited Court's attention to the decision reported in Panu Charan Mohapatra and etc. Vs. State of Orissa and Another, In the reported case both the petitioners had been given Tamra Patra in recognition of their service as Freedom fighters by the Governor of Orissa, accompanied by the usual publicity and funfare attached to such official functions and their names find place in different publications, along with other recognised freedom fighters of the State. The petitioners therein were getting freedom fighters" pension on the basis of the claim that they had served sentences in camp jail at Nayagara during Quit india Movement. On the basis of some complaints received about sanction of pension in favour of the petitioners, on the basis of incorrect and erroneous certificate about detention in camp Jail at Nayagarh, pension had been cancelled. This Court in the aforesaid judgment observed that on perusal of the scheme framed by the Government of India shows that it was intended not only to give some financial benefit to the freedom fighters but also to give them status and prestige in the society. This was a small recognition for the role played by the freedom fighters in the struggle for independence of the country and the suffering endured and the sacrifices made by them for the cause of the nation. This Court further observed that the freedom fighters had not received any recognition for their service for nearly three decades after independence and therefore the Government of India framed the scheme giving an impression that the country still remembers the freedom fighters and appreciates their services, and in token of such appreciation, some financial benefits and other forms of recognition like distribution of Tamra Patra and certificate had been given. Therefore, to brand some of the recipients of freedom fighters" pension to have manipulated and submitted false certificates and false informations for getting such pension would be simply adding insult to the injury and would adversely affect, the status/prestige and dignity of the persons concerned in society. Such drastic measures, the Court regretfully observed, should not have been taken by the opposite parties in a casual manner.

6. In the present case, the certificate issued by the Superintendent, Sub-Jail, Nilgiri, indicates the entry No. in the admission register of convicted prisoners, wherein the name of the petitioners find place. It is further mentioned in the certificate that the petitioner suffered imprisonment for a period of six months and on the basis of which such certificate the State Government had allowed application of the petitioner and granted freedom fighters" pension. Only on the basis of the report of the A.I.G. of Prisons, pension has been stopped on the ground that a doubt arises about the genuineness of the certificate issued in favour of the petitioner. It appears from the report that the convict admission register as well as Under-Trial Prisoners register of Nilgiri Sub-Jail were in such condition that he could not find out as to whether the petitioner suffered

imprisonment in the said Jail or not, whereas at least one name finds place in the convict admission register in whose favour certificate had been issued by the Superintendent of Jail. There is also no dispute that one of the certificate holders of that jail has again been allowed to get pension under the freedom fighters' pension scheme. In Para 6 of the rejoinder filed by the petitioner, it is stated that Baikuntha Nath Nayak, Purna Chandra Panigrahi, Maguni Charan Mohanty and Raghunath Panda had also obtained certificates from the same Superintendent along with the petitioner, but Sri Baikuntha Nath Nayak and Purna Chandra Panigrahi are still getting Central Freedom Fighters' pension and Sri Maguni Charan Mohanty and Raghunath Panda are getting Freedom fighters' pension from the State Government as well as from Central Government. The learned Additional Government Advocate has not disputed the said statement. It is clear from the aforesaid undisputed statement that on the face of the enquiry report of the A.I.G. Prisons, the State Government as well as the Central Government have allowed the aforesaid four persons to get their pension and there is no reason to discriminate the petitioner who has obtained certificate from the same Superintendent of the same Jail.

7. I, therefore, quash Annexure-8 (B) and direct the State Government to continue payment of Freedom Fighters' Pension to the petitioner. Arrear pension of the petitioner be calculated and paid within a period of six months from the date of communication of this order.