

(2003) 08 KAR CK 0074
In the Karnataka High Court
Case No : Writ Petition 26800 of 2001

B.K. Nagaraj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Citation : AIR 2004 Kar 90 : (2003) ILR (Kar) 4236 : (2004) 1 KCCR 31

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : D.M. Joshi, for the Appellant; B. Manohar, AGA for R3-4 and Aravind Kumar, ACGSC for R1-2, for the Respondent

Final Decision : Allowed

Judgement

H. Rangavittalachar, J.—This is an unfortunate case where a freedom fighter recognised as such by the State Government, has to repeatedly approach this Court for grant of Freedom Fighter's Pension in accordance with the Swatantra Sainik Samman Pension Scheme, 1980 (hereafter called as the Scheme) promulgated by the Government of India to honour freedom fighters.

2. The Government of India promulgated a Scheme for granting pension to freedom fighters, i.e. those who suffered imprisonment for a minimum period of six months for the cause of the country during freedom movement. Under the Scheme, an applicant desirous of obtaining pension should apply in a prescribed form, in duplicate, one copy to be sent to the Chief Secretary of the concerned State who would forward the same with his recommendations and, another to be addressed directly to the Deputy Secretary, Government of India annexing a certificate issued by the concerned jail authorities or a co-prisoner in proof of imprisonment. Petitioner had filed an application on 27.11.1997 as per annexure A. In the column 11 (d) under the heading "Actual period of imprisonment suffered" petitioner has stated that he was imprisoned from 2.2.1942 to 4.11.1942 and from 14.9.1947 to 12.10.1947. This application came to be rejected by the Government of India by an order dated 14.8.1998 in the first

instance on the ground that the identity of the petitioner was not established in as much as, there was a variation in the description of the father's name. Petitioner challenged the said order by filing W.P. 6267/1999. This Court by its order dated 18.9.2002, quashed the order observing: "The authorities have to remember that these persons who are illiterates, largely depend on person who claim to be literate to fill up the application forms and submit the application. Minor discrepancy here and there cannot be viewed as a serious discrepancy if otherwise the claim is genuine" and directed for re-enquiry regarding the identity of the petitioner. On remand, however, the Government of India on an altogether different reason namely, that "petitioner had failed to prove that he was imprisoned from 2.2.1942 to 24.9.1942 and that the jail extract sent by the Senior Superintendent, Central Prisons, vide his letter dated 5.8.1998 indicated that he was sent to jail on 25.9.1942 and released on 18.11.1942 and in the absence of any evidence to show that the petitioner had suffered imprisonment for six months, he was not entitled for grant of pension", yet again rejected the application by the order dated 8.2.2001. This order is challenged again.

3. There is no dispute that the State of Karnataka recognising petitioner as a freedom fighter granted freedom fighter's pension vide Annexure K dated 6.6.1992, which means that he should be recognised as a freedom fighter by the Government of India also, as has been held by the Madras High Court in K.S. Velusamy Vs. The Government of India and Another, that "When the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. In other words, once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State or under the Central Government Scheme without any further enquiry on the claimant fulfilling the guidelines and the Government cannot reject the claim summarily that he is not a freedom fighter". I am in respectful agreement with the said view. Petitioner is a "freedom fighter" cannot be doubted. But the next question is whether the petitioner had fulfilled the other requirement of the Scheme i.e., he had suffered imprisonment for a minimum period of six months during the freedom movement.

4. In so far as the said requirement is concerned, petitioner has stated in the application filed before the Central Government that he was imprisoned from 2.2.1942 to 4.11.1942 and from 14.9.1947 to 12.10.1947. When he approached the Senior Superintendent, Central Prisons in which prison he has stated to have been imprisoned, for a certificate in proof of his detention, the Senior Superintendent, Central Prisons has issued a certificate vide Annexure a dated 15.3.1991 to the following effect:

Sub: Issue of jail extract regarding

Ref: Your application dated 11.3.1991

With reference to the above subject, I write to inform you that the conviction

register, under trail register and reference register for the year 1942 is completely torn and some of the pages are missed.

However, on verification of the release dairy and bata book of prisoner an entry is found stating that one convict prisoner No. 22 Nagaraja has been released from this jail on 4.11.1942.

Yours faithfully,

Sd/- Senior Superintendent Central Prisons, Bangalore

5. The State has also filed an affidavit sworn to by one V.S Raja who was working as Senior Superintendent, Central Prisons during the period 7.4.2003 confirming what is stated in Annexure A. This certificate and the affidavit sworn to by the Senior Superintendent clearly establishes that though the petitioner was imprisoned, but was unsuccessful in getting the certificate from the jail authorities to show the exact period of his imprisonment because some of the pages in the register pertaining to his detention were torn out. Petitioner cannot be blamed for it nor he can be asked to bring into existence a documents which is lost. Where a person of the status of a freedom fighter makes a statement in the application that he was imprisoned for six months, the Courts may start with the presumption that such statements are true unless they are disproved by any material on record or other evidence. However, Sri Arvind Kumar, learned Counsel in this context submitted that, when the Scheme insists that* an applicant should produce the prisoners certificate or a co-prisoner certificate, he must do so, otherwise, he is not entitled to claim pension. A reading of the Scheme does not convey such a meaning. It does not State so expressly or even remotely suggest that "even where an applicant falls to produce the certificates, even when the jail records pertaining to his detention is missing, destroyed or nor available, he is not entitled to claim any pension". One another factor that also requires to be kept in mind by the authorities while dealing with application of freedom fighters is such a Scheme has been promulgated by the Government of India or the State Government, to honour the freedom fighters in the true spirit of the terms as held by the Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, it is an honour to those who have given the best part of their life to the country" and the approach should be to liberally interpret the scheme so that the real freedom fighter is not dishonored by the technical approach and he must feel really honoured. In this case, unfortunately the approach of the Government of India is not in the said spirit. It looks it is finding ways and means to reject the application. In the first instance, the application was rejected on the ground that the petitioner had failed to establish his identity. When the said order was quashed, the application is rejected on an altogether new ground which is again unsustainable for the reasons stated above.

6. Therefore, the impugned order- Annexure D dated 8.2.2001 is set aside. Normally, this Court should have remanded the case for reconsideration. But, having regarding to the age of the petitioner who is now about 75 years and also

having regard to the approach of the authorities while rejecting the application, the following order is passed.

7. Respondents are directed to grant pension to the petitioner in accordance with Scheme and as per his entitlement, from the date of his application. Petition is allowed.